

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CRIMINAL REVISION CASE Nos.455, 456 and 457 of 2017

COMMON ORDER:

These revision cases are preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the orders dated 06.02.2017 passed in CrI.M.P.No.452 of 2017 in CrI.A.No.118 of 2017, CrI.M.P.No.453 of 2017 in CrI.A.No.119 of 2017, CrI.M.P.No.451 of 2017 in CrI.A.No.117 of 2017 by the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Hyderabad.

The petitioner herein filed appeals referred above challenging the conviction and sentence passed by the XII Special Magistrate, Hyderabad in C.C.Nos.206, 210 and 212 of 2014 dated 05.01.2017, whereby the petitioner was found guilty for the offence punishable under Section 138 of Negotiable Instruments Act and convicted and sentenced to undergo simple imprisonment for three months each, concurrently in C.C.Nos.206, 210 and 212 of 2014 and to pay compensation of Rs.1,69,482/- in C.C.No.212 of 2014, Rs.1,38,952/- in C.C.No.206 of 2014 and Rs.99,195/- in C.C.No.210 of 2014 (total compensation of Rs.4,07,629/-) within one month from the date of judgment.

Along with the criminal appeals, petitioner filed petitions under Section 389 (1) of Cr.P.C. to suspend the sentence of imprisonment imposed by the Court below. But the appellate

Court in the petitions referred above suspended the substantive sentence of imprisonment imposed by the Court below subject to depositing half (1/2) of the compensation amount awarded in each case by the trial Court within 5 days from the date of order.

The said order passed by the appellate Court is now under challenge on the following grounds.

Under Section 389 (1) Cr.P.C. the appellate Court has no jurisdiction to direct the petitioner to deposit half of the compensation amount awarded by the trial Court within five days during pendency of the appeal. The trial Court committed grave error in directing the petitioner to deposit half of the compensation awarded by the trial Court within very short period of 5 days. Therefore, insisting the petitioner to deposit half of the compensation amount awarded by the trial Court is an illegality and prayed to set aside the same.

When the matter reached, Sri Giri Babu Marthy, learned counsel for the petitioner in all the cases, did not appear and advance argument, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in “**Nisha Sharma and others v. Vinod Kumar Sharma**”¹ wherein it is made clear that the revision cannot be dismissed for default and even if the petitioner or his advocate did not appear before the Court,

¹ 1990 Cri.L.J. NOC 57 (Delhi)

the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

Undisputedly, the petitioner was convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for three months each, concurrently in C.C.Nos.206, 210 and 212 of 2014 and to pay compensation of Rs.1,69,482/- in C.C.No.212 of 2014, Rs.1,38,952/- in C.C.No.206 of 2014 and Rs.99,195/- in C.C.No.210 of 2014 (total compensation of Rs.4,07,629/-) within one month from the date of judgment.

In appeals, in the petition filed under Section 389 (1) of Cr.P.C. the appellate Court suspended the substantive sentence of imprisonment subject to deposit half of the compensation amount awarded by the trial Court in each case.

The ground urged in these revisions is that Section 389 of Cr.P.C. does not permit the appellate Court to impose such condition. Section 389 (1) of Cr.P.C. reads thus:

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a

term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release.

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

While passing an order under Section 389 (1) of Cr.P.C. the Court has to record its satisfaction to suspend the substantive sentence of imprisonment, but in the present cases the appellate Court suspended the substantive sentence of imprisonment subject to deposit of half of the compensation awarded by the trial Court, this order is inconsonance with the law laid down by the Apex Court in “**Dilip S. Dhanukar v. Kotak Mahindra Co. Ltd.**”². In the above decision, it is made clear that in case of conviction for the offence punishable under Section 138 of Negotiable Instruments Act sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted when appellant was directed to pay compensation; the appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right; the amount of compensation must be a reasonable sum; the Court, while fixing such amount, must have regard to all relevant factors including the one referred to in Sub-section (5) of 357 of the Cr.P.C.; no unreasonable amount of compensation can be directed to be paid.

² (2007) 6 SCC 528

By applying the said principles laid down by the Apex Court in the judgement referred supra, the orders under challenge are not illegal. Moreover, the orders under challenge are interlocutory in nature since the said orders would not culminate the entire proceedings. Therefore, the powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding in view of the bar under Section 397 (2) of CrP.C.

Having considered the facts and circumstances of the case, I find no ground to set aside the impugned orders passed by the appellate Court. Consequently, the criminal revision cases are liable to be dismissed.

In the result, the criminal revision cases are dismissed. However, the appellate Court is directed to decide the matters in accordance with law without giving undue preference to these revisions.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.09.2017
Ksp