HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.773 OF 2017

ORDER:

The present Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), requesting to relax the clause in the order, dated 26.12.2016, passed by the learned XIII Additional District and Sessions Judge - cum - Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar in Crl.M.P. No.86 of 2016 in Criminal Appeal No.1088 of 2016 so far as the condition to deposit 1/4th of the amount on the compensation, which comes to Rs.2,25,000/- within one month is concerned.

2. Heard Sri R. Mangulal, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Telangana.

3. The learned III Special Magistrate at Hasthinapuram, Ranga Reddy District, by the judgment, dated 24.11.2016 in C.C. No.103 of 2016, while convicting the petitioners - accused, inflicted the sentence of simple imprisonment for six months and awarded compensation of Rs.9,00,000/-, directing to pay within a period of one month from the date of judgment, and in default, to undergo simple imprisonment for three months, and the said compensation shall be payable to the complainant - respondent No.2 herein under Section 357 (3) of the Code after appeal time is over.

4. When Criminal Appeal No.1088 of 2016 was preferred before the learned Sessions Court, the petitioners herein filed Criminal M.P. No.86 of 2016 also for grant of bail and suspension of the sentence. The learned appellate Court while allowing the petition, directed both the petitioners to be released on bail on their executive a bond for Rs.5,000/- with two sureties each for like-sum each, and on such execution, with a condition to deposit 1/4th of the amount on the compensation which works out to Rs.2,25,000/- within one month, upon which the portion of sentence of imprisonment awarded by the trial Court stands suspended.

5. The submission of the learned counsel for the petitioners is that imposition of such a condition is contrary to law and, therefore, requests to relax the said condition and, in fact, refers to the provisions of sub-sections 2 and 3 of Section 357 of the Code.

6. In the instant case, it is no doubt true, the compensation was awarded besides imposition of sentence of imprisonment for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and convicted under Section 255 (2) of the Code. But, certainly, the power of appellate Court in directing to deposit 1/4th of Rs.9,00,000/-, which amount was awarded towards compensation by the trial Court cannot be faulted and cannot be relaxed in view of the decision of the Hon'ble Supreme Court in **Stanny Felix Pinto v.**

Jangid Builders Pvt. Ltd. and another[1], wherein, the Apex Court approved the payment of fine amount or part thereof as a condition precedent therein suspending the sentences. The relevant portion (Paragraph No.2) would read thus:

> "2. When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine he moved the superior court for suspension of the sentence. The High Court while entertaining his revision granted suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time. It is against the said direction that this petition has been filed. In our view the High Court has done it correctly and in the interest of justice. We feel that while suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition. Hence, there is no need to interfere with the impugned order. As such no notice need be issued to the respondent. Appeal is accordingly dismissed."

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[1]. (2001) 2 SCC 416

In view of the aforesaid decision and the facts and circumstances of the case, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

February 21, 2017.
Mgr