

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.812 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to set aside the order, dated 24.01.2017, in CrI.M.P. No.3 of 2017 in Criminal Appeal No.2 of 2017 on the file of the II Additional Sessions Judge, Parvatipuram, Vizianagaram District.

2. Heard Sri Kuruti Bhaskara Rao, learned counsel for the petitioner and of course the learned Additional Public Prosecutor appearing for the State of Andhra Pradesh.

3. Turning to the facts, the petitioner herein had undergone trial in Calendar Case No.278 of 2008 on the file of the Judicial Magistrate of First Class, Salur, Vizianagaram District for the offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'the Act'). The learned Magistrate, by his judgment, dated 09.12.2016, while convicting the petitioner under Section 142 of the Act for the offence under Section 138 of the Act, not only inflicted simple imprisonment of one year, but also sentenced him to pay a fine of Rs.12,70,000/-, giving a further direction that out of the said amount, a sum of Rs.12,40,000/- be paid to the complainant, who is respondent No.1 herein, towards compensation and the rest of Rs.30,000/- to be remitted to the State.

i) When the sentence of imprisonment and fine inflicted by the learned Magistrate were challenged by preferring an appeal in Criminal Appeal No.2 of 2017 requesting to suspend the execution of sentence of imprisonment and payment of fine under Section 389 (3) of the Code, the learned II Additional Sessions Judge, Parvatipuram, by his order, dated 24.01.2017, in Crl.M.P. No.3 of 2017, placing reliance on the decision of the Hon'ble Supreme Court in **Stanny Felix Pinto v. Jangid Builders Pvt. Ltd. and another¹**, directed to pay 1/3rd of the fine amount, upon which, the sentence of imprisonment and fine imposed by the learned Magistrate was suspended during pendency of the appeal, on the petitioner executing a self-bond for Rs.10,000/- with two sureties each for the like sum to the satisfaction of the learned Magistrate.

4. The aforesaid order of the learned Sessions Judge is under challenge before this Court.

5. The learned counsel for the petitioner, no doubt, contended that as against the cheque amount of Rs.7,00,000/-, the learned Magistrate imposed a fine of Rs.12,70,000/- and ordered to pay Rs.12,40,000/- to the complainant erroneously, and also submits that the learned Sessions Judge overlooked the recent decision of the

¹. (2001) 2 SCC 416

Hon'ble Supreme Court in **Dilip S. Dahanukar v. Kotak Mahindra Co.Ltd. and another**² and, therefore, seeks to set aside the order.

6. In **Stanny Felix Pinto's Case** (Supra), the Hon'ble Supreme court held in paragraph No.2 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.”

². (2007) 6 SCC 528

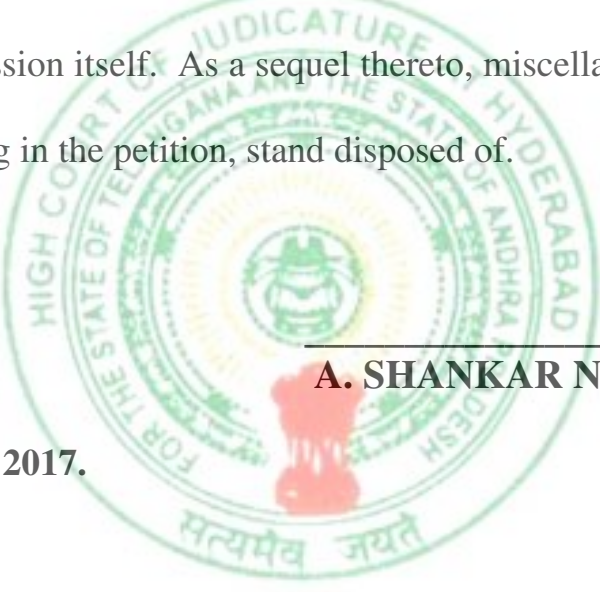
Thus, it is clear when the learned Magistrate had sentenced the revisionist to imprisonment and imposed a fine in a large sum of Rs.20.00 lakhs, the High Court required the revisionist to remit Rs.4.00 lakh within a specified period as a condition precedent to suspend the sentence, the Hon'ble Supreme Court held that the same was not unjust or unconscionable.

7. In the case in hand, as against Rs.12,70,000/- fine imposed by the learned Magistrate, the appellate Court has reduced it to 1/3rd thereof as a condition precedent to suspend the sentences of imprisonment, which, certainly, cannot be held as improper, more particularly, when the Calendar Case is of 2008 year, ended by the judgment of the learned Magistrate on 09.12.2016. Thus, it took eight (8) years for disposal of the Calendar Case and the learned Additional Sessions Judge having regard to the fact that the criminal case was dragged on by the petitioner for nearly eight years before the learned Magistrate's Court by taking the matter up to that Court was only to harass the complainant.

8. Of course, the learned Sessions Judge has not specified within which period the fine amount is required to be remitted. But, however, upon deposit of 1/3rd of fine amount imposed by the learned Magistrate, and thereupon executing a self-bond for Rs.10,000/- with two sureties for the like sum each to the satisfaction of the learned Magistrate, suspension of sentences would occur. It is suffice to say

that it is for the petitioner to deposit 1/3rd of the amount, as directed, and to comply with the other condition of executing a self-bond for Rs.10,000/- with two sureties for the like sum each to get the sentences suspended. There is no merit in the present petition and the condition imposed by the learned Sessions Judge cannot be faulted. Since order of the learned Sessions Judge is not interfered with, no notice need be issued to the complainant - respondent No.1.

Therefore, the present Criminal Petition is dismissed at the stage of admission itself. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.



A. SHANKAR NARAYANA, J

February 13, 2017.

Mgr