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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 22nd May, 2017

+ CRL.A. 798/2016

SHEELA SHARMA

..... Appellant

Through: Mr. Anil Dwedi, Advocate
along with appellant in person.

versus

MAHENDRA PAL

..... Respondent

Through: Mr. K.K. Kundra, Advocate
with Mr. Vivek Shokeen,
Advocate along with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent was prosecuted by the appellant by criminal complaint no.375/01/2011 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on the ground that he having taken a friendly loan of Rs.10 lacs from her sometime around October, 2008 and having assured repayment after 24 months, had issued a cheque on 21.07.2011 for a sum of Rs.10 lacs in her favour which upon presentation was returned unpaid by the bank with remarks "*funds insufficient*" and in spite of notice of demand dated 23.08.2011 sent on 01.09.2011, he had failed to make any payment.

2. The case was contested by the respondent, *inter alia*, on the grounds that the cheque had not been issued for discharge of any

legally enforceable liability. The Metropolitan Magistrate dismissed the complaint acquitting the respondent by her judgment dated 18.05.2015. The appellant brought the criminal appeal against acquittal, with leave of this court, challenging the said decision.

3. The criminal appeal no.798/2016 was decided by judgment dated 02.08.2016 whereby it was found that the respondent's guilt for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 has been brought home. He was thus convicted and the question of sentence was considered on 15.09.2016. On that date the respondent (convicted person) tendered Rs.1.25 lacs in cash to the complainant (the appellant) which was accepted by her without prejudice to her rights and contentions. The court considered the question of sentence and decided to impose a fine of Rs.15.50 lacs. Since the respondent was seeking such liberty, by order dated 15.09.2016, he was granted time till next date (22.12.2016) for first instalment of Rs.4 lacs to be paid, the remaining amount to be paid in February, 2017. It was further directed that if the amount was not deposited as per schedule so fixed, the convict would undergo simple imprisonment for a period of three months, such sentence, however, to remain suspended till further orders on the condition the convict would furnish solvent security to the satisfaction of the court within four weeks for the amount of Rs.15.50 lacs. The matter was directed to be listed before the joint Registrar (judicial) on 04.10.2016 for such purposes.

4. The record would show that the respondent (convict person) did not furnish security before the Joint Registrar on 04.10.2016 or on 17.10.2016 on which date he was not even present, his counsel seeking adjournment on the ground he was away on official duty.

5. When the matter came up before the court on 22.12.2016, the respondent handed over a cheque of Rs.4 lacs dated 30.12.2016 to the appellant (complainant) assuring that it would be honoured upon presentation and also stating that the balance amount in terms of the order on sentence would be paid in the month of February, 2017. The cheque was allowed to be handed over to the appellant in view of the undertaking and assurance held out by the respondent though with the caution that in case the same was not honoured, the respondent would be directed to undergo sentence of imprisonment, his salary also being attached. The matter was adjourned to 08.03.2017.

6. On 31.01.2017, the appellant moved Crl.M.A.2717/2017, *inter alia*, stating that the cheque which had been handed over to her on 22.12.2016 when presented at the bank had been returned unpaid with the remarks "*funds insufficient*". This application came up for consideration on 08.03.2017. The respondent tendered pay order for Rs.4 lacs in favour of the appellant which was accepted by the appellant his counsel submitting that he would arrange the remaining amount of Rs.10.25 lacs within two months and would also pay interest on the said amount at 10% per annum. He was directed to remain present in person with the remaining amount today, he being allowed to take back original cheque which was earlier returned unpaid.

7. When the matter is taken up today against the above noted backdrop, the respondent through counsel again seeks adjournment on the ground he has not been able to make arrangement for the balance amount.

8. Given the past conduct, including the tender of cheque even after conviction and sentence for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 which also returned unpaid with similar report, there is no good ground for any further indulgence to be shown. The order on sentence therefore, must be executed.

9. The respondent is directed to deposit the balance amount of fine with the trial court within a period of seven days, failing which the order of sentence in default would come into force leading to appropriate action to be taken to have the respondent taken into custody and made to suffer the requisite punishment. Ordered accordingly.

10. A copy of this order shall be sent to the trial court for enforcing order on sentence. Needless to add, no payment in the form of cheque shall be accepted from the respondent. If the balance amount is deposited, the same shall be released to the complainant as compensation.

11. The parties shall appear before the trial court on 30th May, 2017. The Magistrate will be within jurisdiction to take the respondent in custody in case fine is not deposited on that date.

12. This disposes of the criminal appeal.

13. The trial court record shall be returned along with copy of the judgment and all proceedings recorded thereafter including this final order.

R.K.GAUBA, J.

MAY 22, 2017

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