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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 773/2017 & CrI.M.A. 11984/2017

SURJAN SINGH

..... Appellant

Represented by: Mr. Yudhishtar Kahol, Mr.
Kunal Kahol, Advs.

versus

CBI

..... Respondent

Represented by: Mr. Philomon Kani, Ms. Kirti
Handa, Advs. for Ms. Rajdipa
Behjura, Spl.PP. for CBI.
Mr. A. S. Datar, Adv. for UOI.

+ CRL.A. 774/2017 & CrI.M.A. 11972/2017

DHARAM SINGH

..... Appellant

Represented by: Mr. Yudhishtar Kahol, Mr.
Kunal Kahol, Advs.

versus

CBI

..... Respondent

Represented by: Mr. Philomon Kani, Ms. Kirti
Handa, Advs. for Ms. Rajdipa
Behjura, Spl.PP. for CBI.
Mr. A. S. Datar, Adv. for UOI.

+ CRL.A. 775/2017 & CrI.M.A. 11987/2017

RAM PAL SINGH

..... Appellant

Represented by: Mr. Yudhishtar Kahol, Mr.
Kunal Kahol, Advs.

versus

CBI

..... Respondent

Represented by: Mr. Philomon Kani, Ms. Kirti
Handa, Advs. for Ms. Rajdipa
Behjura, Spl.PP. for CBI.
Mr. A. S. Datar, Adv. for UOI.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

23.11.2017

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1. By these appeals the limited challenge of the appellants is that on their conviction for offences punishable under Section 120-B r/w. S.419/420/468/471 and 477 IPC with an order of sentence directing them to undergo imprisonment for a period of 3 years, the appellants filed appeals before the learned ASJ. While admitting the appeals for hearing and granting suspension of sentence, the learned ASJ directed the appellants to file a fine amount of ₹35 lakhs each, which was directed to be paid by the learned Trial Court. The grievance of the appellants is that by virtue of Section 357(2) of the Cr.P.C. the fine was not payable till the appeal is decided.

2. Learned counsel for the CBI opposing the prayers vehemently contends that while suspending the sentence in the appeals, the Court is competent to impose any directions and the orders passed by the learned ASJ are after considering the facts and circumstances of the case. Reliance is placed on the decisions reported as (2007) 6 SCC 528 Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and AIR 2001 SC 659 Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd.

3. Section 357(2) of Cr.P.C. provides as under:

“357. Order to pay compensation.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.”

4. The appeals having been filed before the learned ASJ they have to be decided both on facts and law and in case the appellants are acquitted they would not be required to deposit the fine amount. Further even if the conviction is upheld it would be the discretion of the appellants to pay the fine amount or undergo imprisonment in default of payment of fine. Thus while suspending the sentence of the appellants, pending hearing of the appeals, the learned ASJ could not have insisted on the appellants to deposit the fine amount.

5. In the decision reported as Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd.(supra) relied upon by learned counsel for CBI, Section 357 (2) Cr.P.C. was not brought to the notice of Hon'ble Supreme Court. Considering Section 357 (2) Cr.P.C., this Court has already taken the view taken in the decision reported as 2016 (4) JCC 2239 Sandeep Garg Vs. CBI that a plain reading of sub-section (2) of Section 357 Cr.P.C. leaves no manner of doubt that when an appeal is pending adjudication the deposit of the fine imposed may be stayed by the appellate Court.

6. Considering the mandate of Section 357(2) Cr.P.C. the undertaking of the learned counsel for the appellants recorded by the learned Additional Sessions Judge that the fine amount will be deposited is set aside.

7. Appeals and applications are accordingly disposed of.

MUKTA GUPTA, J.

NOVEMBER 23, 2017
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