

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21353 of 2018

Arising Out of PS.Case No. -2932 Year- 2014 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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Manoj Kumar Singh, son of Late Anugrah Narain Singh, resident of village-
Shyampur, P.S.- Mohammadpur, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sonu Kumar, son of Shri Kameshwar Singh, resident of village- Chandan Tola
Nawada, P.S.- Barauli, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mrs. Soni Srivastava, Advocate
	:	Mr. Indrajeet Bhushan, Advocate
For the Opposite Party No.2	:	Mr. Anjum Akhtar, Advocate
	:	Mr. Vikash Kumar Shukla, Advocate
For the State	:	Mr. Ram Bilash Roy Raman, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2018

This application under Section 482 of the Code of Criminal Procedure(for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 19.02.2018 passed by the learned Sessions Judge, Gopalganj in Cr. Appeal No.63 of 2017 arising out of judgment and order of sentence passed by the learned Additional Chief Judicial Magistrate- XI, Gopalganj on 24.04.2017 in C-2932 of 2014 corresponding to Trial No.360 of 2017 wherein the learned Sessions Judge, Gopalganj has admitted the appeal subject to deposit of rupees ten lacs through Challan payable to the successful party and has ordered that suspension of sentence would be condition precedent



of deposition of the said amount.

2. Mrs. Soni Srivastava, learned counsel for the petitioner, submitted that right to appeal against the judgment of conviction is a statutory right as well as fundamental right in view of expansive definition of Article 21 of the Constitution of India and the same could not have been made subject to any condition. She submitted that in **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and Another [(2007) 6 SCC 528]**, the Apex Court unequivocally held that fundamental right of appeal under Section 374 of the Cr.P.C. read with Article 21 of the Constitution of India cannot be interfered with or impaired or subject to any condition. She contended that the impugned order by which the Session Judge, Gopalganj has directed for deposit of rupees ten lacs as a pre-condition of admitting appeal is, therefore, in the teeth of law laid down by the Supreme Court as referred to above. She pleaded that if fine is imposed in a case which is subject to appeal, no such payment is to be made if an appeal is presented in time before the appellate court. Hence, the pre-condition imposed for stay of fine by the appellate court is equally bad.

3. Per contra, learned counsel appearing for opposite party no.2 submitted that there is no illegality in the order impugned passed by the court below. He contended that while convicting the petitioner under Section 138 of the Negotiable Instruments Act (for short



‘N.I.Act’) and cancelling his bail bonds and after taking him in custody when hearing on the point of quantum of punishment was made the Court of Magistrate after taking into consideration the fact that the petitioner is an accused in several other cases of similar nature, punished him with fine of rupees twenty four lacs with simple interest at the rate of six per cent per annum or the twice amount of the dishonoured cheques whichever is lesser and ordered that the amount shall be given to the complainant. He contended that the amount for which the petitioner had issued cheques to the complainant, which got dishonoured on the presentation in the bank was of rupees twenty four lacs. Thus, the liability upon the petitioner was to the tune of at least twenty four lacs with six per cent interest. He pleaded that the condition imposed by the appellate court is quite reasonable and there is no merit in the present application preferred under Section 482 of the Cr.P.C.

4. Learned counsel appearing for the State has also adopted the contentions advanced on behalf of opposite party no.2. He contended that there cannot be any automatic stay of fine and the order passed by the appellate court directing the petitioner to deposit rupees ten lacs as condition precedent for stay of fine is quite reasonable and requires no interference by this Court.

5. I have heard learned counsel for the parties and carefully



perused the record.

6. The short fact of the case is that the respondent no.2 had filed a complaint case in the court of learned Chief Judicial Magistrate, Gopalganj on 22.10.2014 vide Complaint Case No.2932 of 2014 for the offence punishable under Section 138 of the N.I.Act with allegation, *inter alia*, that the petitioner had offered the respondent no.2 to sell his wife's house situated at Jharkhand, Mohalla-Gorakhpur for consideration of rupees thirty five lacs and the petitioner showed urgency of money and requested for rupees twenty five lacs as an advance amount. The respondent no.2 paid rupees ten lacs on 08.12.2013 and rupees fourteen lacs on 15.12.2013. It has been alleged that after receiving the said amount, the petitioner had assured him that he will get the sale deed of the house executed through registered sale deed within two months. When the promise was not fulfilled within the time, the respondent no.2 demanded his money back but, in lieu of money, the petitioner gave two cheques to the respondent bearing cheque no.023706 of rupees ten lacs fifty thousand and cheque no.023707 of rupees thirteen lacs fifty thousand on 15.06.2014 and 21.07.2014 respectively drawn on Central Bank of India. The respondent no.2 deposited those cheques on 20.08.2014 in his own account in the Central Bank of India. However, they were dishonoured due to lack of sufficient fund in the account of the



petitioner. Later on, the respondent no.2 gave legal notice to the petitioner on 02.09.2014 demanding the payment of money due under the cheque to him from the petitioner through registered post. The petitioner did not respond to the notice. After conducting enquiry, the learned Magistrate found a *prima facie* case to be made out under Section 138 of the N.I.Act. Hence, the complaint case was filed in the court.

7. After conducting enquiry, the court summoned the petitioner. He was put on trial.

8. In course of enquiry, four witnesses were examined on behalf of the complainant.

9. After closing the evidence of the complainant, the statement of the petitioner was recorded under Section 313 of the Cr.P.C.

10. Thereafter, one witness was examined on behalf of the defence.

11. Several documents were also exhibited on behalf of the complainant as well as on behalf of the defence in course of trial.

12. On completion of evidence on behalf of the parties arguments were advanced and the judgment was delivered by the learned Additional Chief Judicial Magistrate on 24th July, 2017 whereby the petitioner was found guilty under Section 138 of the



N.I.Act and his bail bond was cancelled. He was taken into custody.

13. On 24th July, 2017 itself, hearing on the point of quantum of punishment was made.

14. After hearing the parties, the learned Additional Chief Judicial Magistrate punished the petitioner with fine of rupees twenty four lacs to be paid with simple interest at the rate of six per cent or the twice amount of the dishonoured cheques whichever is lesser. He also ordered that the amount of fine shall be given to the complainant.

15. It was against the said judgment and order dated 24th July, 2017, the petitioner had preferred an appeal in the Court of Session vide Cr. Appeal No.63 of 2017 wherein the learned Session Judge passed the impugned order dated 19.02.2018 whereby stay of fine and admission of appeal was made subject to the condition that the petitioner shall deposit proportionate amount of rupees ten lacs through Challan payable to the successful party.

16. Learned counsel for the petitioner has rightly submitted that an appeal is a statutory right as well as Constitutional right under Article 21 of the Constitution of India and the same can neither be interfered with or impaired, nor can it be subjected to any condition. In **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and Another** (supra) the Supreme Court observed:-

“An appeal is indisputably a statutory right and



an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty to a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.”

17. Thus, the appellate court was not right in making admission of appeal subject to condition of deposition of rupees ten lacs by the petitioner. However, stay of fine, during the pendency of the appeal, is neither automatic nor a matter of right. In **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and Another** (supra), as would appear from a careful perusal of the judgment, the Supreme Court has interpreted Section 357 of the Cr.P.C. In that case the appellant no.2 was directed to pay compensation to the complainant of rupees fifteen lacs apart from simple imprisonment whereas the appellant no.1 was directed to pay a fine of twenty five lacs. The appeal was preferred against the order of conviction. The appellate court while admitting the appeal directed them to deposit a sum of rupees five lacs each within four weeks from that date. In this background of the fact, the Supreme Court in paragraph-71 of its



judgment observed as under:

“71. We are prima facie of the opinion (without going into the merit of the appeal) that the direction of the learned Trial Judge appears to be somewhat unreasonable. Appellant herein has been sentenced to imprisonment. Only fine has been imposed on the Company. Thus, for all intent and purpose, the learned trial Judge has invoked both sub-sections (1) and (3) of [Section 357](#) of the Code. The liability of the appellant herein was a vicarious one in terms of [Section 141](#) of the Negotiable Instruments Act. The question may also have to be considered from the angle that the learned trial Judge thought it fit to impose a fine of Rs.25,000/- only upon the Company. If that be so, a question would arise as to whether an amount of compensation for a sum of Rs.15 lakhs should have been directed to be paid by the Chairman of the Company. We feel that it is not.”

18. The Supreme Court ultimately directed the appellant to deposit rupees one lac towards compensation and recorded its conclusion in paragraph-72 as under:-

“72. We, therefore, are of the opinion :

(i) In a case of this nature, Sub-Section (2) of [Section 357](#) of the Code of Criminal Procedure would be attracted even when Appellant was



directed to pay compensation;

(ii) 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;

(iii) The amount of compensation must be a reasonable sum;

(iv) 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 [Code of Criminal Procedure](#);

(v) No unreasonable amount of compensation can be directed to be paid.”

19. Thus, in **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and Another** (supra), the Supreme Court while dealing with compensation awarded by the court under Sub Section (3) of Section 357 of the Code did not deal anything regarding fine which was part of the sentence. Hence, no interference on stay of fine can be drawn from the decision of the Supreme Court.

20. The case of the petitioner is squarely covered by the decision of the Supreme Court in **Stanny Felix Pinto vs. Jangid Builderls Pvt. Ltd and Another [(2001) 2 SCC416]**. In that case along with sentence of imprisonment fine was also imposed while convicting the appellant under Section 138 of the N.I.Act. The High Court while entertaining the revision of the convict, granted



suspension of sentence by imposing a condition that part of fine shall be remitted in court within a specified time. The said direction made by the High Court was challenged before the Supreme Court. The Supreme Court while upholding the said direction observed as under:-

“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.”

21. In Satyendra Kumar Mehra @ Satendera Kumar Mehra vs. State of Jharkand [(2018) 2 (SC) PLJR 260] an appeal was filed before the Supreme Court against the order of High Court of Jharkhand at Ranchi by which the High Court while allowing an interlocutory application filed by the appellant had directed to grant suspension of sentence of the appellant. It further directed that the appellant should also deposit the fine amount awarded before the court below. Being aggrieved only against that part of the order by which the High Court had directed to deposit fine amount, the appellant had filed the appeal before the Supreme Court. After considering the case of the parties and elaborately dealing with the provisions prescribed under Sections 357, 374 and 389 of the Cr.P.C., the Supreme Court dismissed the appeal finding no infirmity in the order of the High Court whereby it had directed the appellant to deposit fine awarded by the trial court. The relevant observations made by the Supreme Court are as under:-

“33. What is the purpose and object of sub-



Section (2) of section 357 Cr.P.C.? Section 357(1) Cr.P.C. contemplated utilisation of fine imposed in certain circumstances as compensation to be paid to victim. Sub-section (2) engrafted an embargo that such payment shall not be made till the period allowed for appeal has elapsed or if the appeal is filed, till the same is decided. Legislature was conscious that compensation paid if utilised, there may not be appropriate measures to recover the said amount utilised from victim to whom the compensation is paid hence embargo in payment has been engrafted in Sub-section (2).

Thus at best Sub-section (2) of Section 357 Cr.P.C. is a provision which differs or withholds the utilisation of the amount of compensation awarded till the limitation of appeal elapses or if filed till it is decided. The provision in no manner stays the sentence of fine during the pendency of the appeal. The purpose for which Sub-section (2) of Section 357 Cr.P.C. has been enacted is different as noted above and it never contemplates as stay of sentence of fine imposed on accused.

34. We, however, make it clear that Appellate Court while exercising power under Section 389 Cr.P.C. can suspend the sentence of



imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the Appellate Court while exercising jurisdiction under Section 389 Cr.P.C.. The Appellate Court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine.

35. xxxx xxxx xxxx xxxx
36. xxxx xxxx xxxx xxxx

37. In view of the foregoing discussion, we are of the view that Section 357(2) Cr.P.C. was not attracted in the present case since there was no direction of payment of any compensation out of the fine imposed by the trial court as part of sentence. Section 357 Cr.P.C.(2) comes into play only where any order of payment of compensation utilising the fine imposed as sentence under Section 357(1) Cr.P.C. or compensation as directed under Section 357(3) Cr.P.C. is made. Present being neither a case of Section 357(1) Cr.P.C. nor Section 357(3), Sub-section (2) of Section 357 Cr.P.C. is clearly not applicable and the submissions raised by the learned counsel for the appellant are without any substance. We, thus, do not find any infirmity in the impugned order of the High Court where the High Court has directed the appellant to deposit the fine



awarded by the trial court. In the result, the appeal is dismissed.”

22. In view of the ratio laid down by the Supreme Court in **Stanny Felix Pinto vs. Jangid Builderl Pvt. Ltd and Another** and **Satyendra Kumar Mehra @ Satendera Kumar Mehra vs. State of Jharkand** (supra), when I consider the case of the petitioner, I find that he has been punished with fine of rupees twenty four lacs with simple interest of six per cent per annum or the twice amount of the dishonoures cheques issued by the petitioner. The appellate court has directed him to pay rupees ten lacs through challan as pre-condition of admission of appeal as also for stay of fine. As I have already held that the admission of appeal could not have been subject to any condition, the order impugned to that extent by the appellate court is bad in law. Further, I am of the opinion that asking the petitioner to deposit rupees ten lacs as condition for stay of fine in the facts and circumstances of the case at the stage when appeal itself is pending is too harsh.

23. Hence, the order impugned passed by the learned Session Judge in Cr. Appeal No.63 of 2017 is modified to the extent indicated hereinbelow:-

- (a) The admission of the appeal shall be conditional.
- (b) The stay of fine shall be subject to remittance of rupees four lacs fifty thousand within six weeks from today by



the petitioner.

(c) In case, the aforesaid fine amount is remitted within six weeks the learned Magistrate shall proceed ahead and take all possible steps for realization of fine in accordance with law.

24. With the aforesaid observations and directions, the appeal stands allowed in part.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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