

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6274 of 2018

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the order dated 29.05.2018 passed in Crl.M.P.No.92 of 2018 in Crl.A.No.490 of 2018 by the XVI Additional District and Sessions Judge, Ranga Reddy District, Malkajgiri.

2. The petitioner is accused in C.C.No.195 of 2016 on the file of the Special Magistrate Court-I, Cyberabad at Malkajgiri, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'). After full-fledged trial, the petitioner was found guilty for the said offence, convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.24,00,000/-, in default, to undergo simple imprisonment for a period of 6 months and out of the said fine amount, a sum of Rs.20,00,000/- shall be paid to the complainant towards compensation.

3. Aggrieved by the conviction and sentence, the petitioner preferred Crl.A.No.490 of 2018 before the XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri. Along with the said appeal, he filed Crl.M.P.No.92 of 2018 for suspension of the substantive sentence and fine amount including the amount payable towards compensation under Section 357 of Cr.P.C., on the ground that the fine amount ordered by the trial Court is excessive and the petitioner is not in a position to deposit the said amount within the time stipulated. But the Sessions Judge while suspending the

substantive sentence of imprisonment ordered for release of the petitioner subject to execution of bond for a sum of Rs.10,000/-with two sureties for a like sum each to the satisfaction of the trial Court and granted time for payment of fine amount till statutory period for filing appeal is expired.

4. The present petition is filed on the ground that when the appeal is preferred against the order imposing compensation, which forms part of the fine amount, within the statutory period, the petitioner is not liable to pay or deposit the fine amount as per Section 357(2) of Cr.P.C., and therefore, the order impugned is illegal. It is also contended that the petitioner is not in a position to pay the huge amount of Rs.24,00,000/- as fine and in case, the sentence is not suspended including payment of fine amount, the petitioner will be deprived of his right to file a statutory appeal under Section 374(1) of Cr.P.C., and prayed to quash the order passed by the Court below.

5. During hearing, learned counsel for the petitioner reiterated the same grounds and requested to set aside the order passed by the Court below at the stage of admission itself.

6. Undisputedly, the petitioner was found guilty for the offence punishable under Section 138 of the Act and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.24,00,000/-, which is double the amount of cheque dishonored and out of it, a sum of Rs.20,00,000/- shall be paid to the complainant towards compensation. The bone of contention of the petitioner is that an appeal is filed within the

statutory period of 30 days against the judgment and therefore, the petitioner need not deposit the amount awarded as compensation in terms of Section 357(2) of Cr.P.C.

7. According to Clause (1) of Section 357 of Cr.P.C., when a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in defraying the expenses properly incurred in the prosecution; and in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.

8. Therefore, the compensation awarded for the offence under Section 138 of the Act out of the fine amount imposed by the trial Court would fall within Section 357(1) of Cr.P.C., but not under Section 357(2) of Cr.P.C. The petitioner wanted to take advantage of sub-section (2) of Section 357 of Cr.P.C., which speaks about the obligation of the petitioner to pay compensation if the appeal is filed after expiry of the time prescribed.

9. Section 357(2) Cr.P.C., says that 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. Taking advantage of this Section, the petitioner contended that he is not under obligation to pay compensation. An identical question came up before the Apex Court in **Dilip S.Dahanukar v. Kotak Mahindra**

Co. Ltd., and another¹, wherein the Apex Court held that a direction to deposit reasonable amount can be passed by the Court while exercising power under Section 389(1) of Cr.P.C. But, in the later judgment of the Apex Court in **Satyendra Kumar Mehra v. The State of Jharkhand**², wherein the appellant, who is one of the accused in the case of **Lalu Prasad @ Lalu Prasad Yadav**, aggrieved by the order to pay a fine of Rs.25,000/- under each head as part of sentence preferred an appeal, but in the appeal the High Court of Jharkhand directed the appellant to deposit the fine imposed by the trial Court. Aggrieved by the order, the petitioner approached the Apex Court raising identical grounds and placed reliance on the judgment in **Dilip S Dahanukar** case referred supra, but the Apex Court based various judgments of Apex Court in **K.C. Sareen v. C.B.I. Chandigarh**³ and **Hari Singh v. Sukhbir Singh and Ors.**,⁴ upheld the order of the High Court holding that the Judgment in **Dilip S Dahanukar** would fall within clause (3) of Section 357 Cr.P.C.

10. Therefore, when fine is directed to be paid though ordered to be paid as compensation to the complainant, who suffered injury on account of such offence, it would fall under sub-Section(1) of Section 357 Cr.P.C. only, but not under sub-Section(3) of Section 357 Cr.P.C.

11. In the present case, it is the specific contention of the petitioner that an appeal is preferred within the time stipulated by the

¹ (2007) 6 SCC 528

² 2018(5) Scale 109

³ (2001) 6 SCC 584

⁴ (1998) 4 SCC 551

Court against the conviction and sentence passed by the trial Court, the petitioner need not pay compensation before the decision of the appeal. Section 357 of Cr.PC., only deals with payment of compensation. But in the present case, a fine of Rs.24,00,000/- was imposed by the trial Court and out of the said amount, a sum of Rs.20,00,000/- is ordered to be paid as compensation, which would fall under Section 357(1) of Cr.P.C. Hence, the direction to deposit Rs.24,00,000/- after expiry of the appeal time by the Court below is erroneous. However, the petitioner shall deposit the fine amount of Rs.4,00,000/- set apart the compensation amount for suspension of substantive sentence and out of the compensation amount, by applying the principle in **Dilip S Dahanukar** case, referred supra, the petitioner shall deposit 20% of the compensation amount within a period of one month from today. On such deposit, the substantive sentence shall be suspended.

12. With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

19th June, 2018

sj