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

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Judgment delivered on: 08.03.2018

+ CRL.M.C. 1015/2018

YASAH PAL GUPTA

..... Petitioner

versus

STATE & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. M.K. Gautam with Mr. Abhishek
Gautam, Advocates.

For the Respondents : Ms. Anita Abraham, APP for the State.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

08.03.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A.3671/2018 (exemption)

Exemption is allowed subject to all just exceptions.

CRL.M.C. 1015/2018 & Crl.M.A.3670/2018 (stay)

1. The petitioner impugns order dated 05.12.2017, whereby, the Revisional Court has rejected the revision petition filed by the petitioner impugning the order of the learned Metropolitan Magistrate seeking to recover compensation from the petitioner.

2. Complaint was filed under Section 138 of the Negotiable

Instrument Act by the respondent No.2 against the petitioner for having committed an offence under Section 138 of the Negotiable Instrument Act.

3. By judgment dated 03.07.2014, the petitioner was acquitted of the said offence by the Court of Metropolitan Magistrate. In an appeal filed by the complainant/respondent No.2 before this Court, by a detailed judgment, dated 30.06.2015, the order of the learned Metropolitan Magistrate, acquitting the petitioner, was reversed and the petitioner was held guilty of having committed an offence under Section 138 of the Negotiable Instrument Act. By Order of Sentence dated 31.08.2015, the petitioner was sentenced to pay a fine of Rs.11,50,000/-. In default of deposit of the fine, the petitioner was to undergo imprisonment for a period of three months.

4. The petitioner did not deposit the fine and underwent the sentence in default of deposit of fine of imprisonment for a period of three months.

5. After the petitioner was released, having undergone the sentence, the respondent initiated proceedings seeking to recover the compensation amount. Warrants of attachment were issued which were challenged by the petitioner before the Revisional Court, which led to the passing of the impugned order.

6. The Trial Court in addition to directing issuance of Warrants of Attachment for recovery of Rs.11,50,000/-, further imposed cost of

Rs.50,000/-. By the impugned order dated 05.12.2017, the Revisional Court modified the order of the Trial Court insofar as additional cost of Rs.50,000/- was imposed. However, noticing the judgment of the Supreme Court in *Kumaran vs. State of Kerela*: 2017(5) JT SC 368, the Revisional Court dismissed the revision petition.

7. The Supreme Court in *Kumaran* (supra) has specifically laid down as under:-

“27.The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not 357(3). Despite this being so, so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 IPC and Section 421(1) proviso would make it clear that by a legal fiction, even though a default sentence has been suffered, yet, compensation would be recoverable in the manner provided under Section 421(1). This would, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive “or” following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by applying the fiction contained in Section

431, to compensation payable under Section 357(3).”
(underlining supplied)

8. The Revisional Court has correctly appreciated the law laid down by the Supreme Court in *Kumaran* (supra) and, has correctly rejected the contention raised by the petitioner that as default sentence has been undergone, no compensation amount is payable.

9. I find no infirmity in the view taken by the Revisional Court that despite the petitioner having undergone the default sentence, the petitioner would remain liable to pay the compensation amount awarded by the Court while sentencing the petitioner. By merely undergoing the default sentence, the accused cannot claim discharge of the liability to pay the compensation amount.

10. In view of the above, I find no merit in the petition. The petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

March 08, 2018
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