

\$~R-94

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 19th March, 2019

+ CRL.A. 792/2002

SUNITA MEHTA

..... Appellant

Through : Mr. M.L. Yadav, Adv. along
with the appellant.

versus

STATE & ANR.

..... Respondents

Through : Mr. Amit Ahlawat, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT(ORAL)

1. On the criminal complaint (CC No.80/2002) of the second respondent, the appellant was put on trial and held guilty by the Court of Additional Sessions Judge by judgment dated 03.10.2002 on the accusations for offence punishable under Section 138 of Negotiable Instruments Act, 1881, the gravamen of the charge brought home against her concerning non payment in spite of notice of demand after dishonor of two cheques each for Rs.3,500/- issued by her in favour of the said second respondent.

2. By the judgment dated 03.10.2002, the trial court held the appellant guilty and convicted her by order dated 07.10.2002. It awarded rigorous imprisonment for a period of one year with fine of

Rs.14,000/-, it being an amount equivalent to twice the amount of the two cheques put together with further directions that, in case of default, the appellant would additionally undergo simple imprisonment for six months. It was also directed by the trial court in the order dated 07.10.2002 that from the amount of fine, if recovered, Rs.10,000/- would be paid as compensation to the complainant.

3. The appellant challenged the said judgment and order on sentence by the present appeal. The substantive sentence was suspended by order dated 10.10.2002. The appeal was admitted and put in the list of “Regulars” to come up in due course. It has come up for hearing more than 16 years after it had been presented.

4. The counsel for the appellant submits that the appellant is now an aged woman of 63 years age, she suffering from kidney ailments, requiring regular dialysis. He also submits that the amount of Rs.14,000/- imposed as fine was deposited with the trial court on 07.10.2002, this being confirmed by an endorsement to that effect on the margin of the order sheet dated 07.10.2002 of trial court.

5. The counsel for the appellant submits that the appellant does not press the appeal on merits insofar as the finding of guilty and conviction is concerned, his prayer being for lenient view to be taken in the matter of punishment. He points out that the appellant underwent imprisonment for seven days for the period from 05.10.2002 to 11.10.2002, as is confirmed by the nominal roll dated 21.01.2019.

6. Given the nature of the offence, the age, the medical condition of the appellant, the value of the cheques involved, the period that has lapsed since the date of commission of the offence and after filing of the present appeal, in the considered view of this court, it would not be just and proper to send the appellant back to incarceration. The court is of the opinion that the nature of the case and the circumstances are such where instead of being sent to imprisonment, the appellant deserves to be given benefit of release on probation of good conduct subject to she appropriately compensating the complainant in terms of Section 5 of the Probation of Offenders Act, 1958.

7. Thus, while maintaining the conviction returned by the impugned judgment, it is directed that subject to she paying a sum of Rs.60,000/- (sixty thousand only) as compensation to the complainant, instead of being sentenced at once the appellant shall be released on probation of good conduct for a period of six months upon she furnishing personal bond in the sum of Rs.5,000/- with one surety in the like amount to the satisfaction of the trial court (or its successor court) and in case of default or breach of the conditions imposed to appear and undergo the sentence as awarded by the trial court, and in the meantime, to keep the peace and be of good behaviour. Ordered accordingly.

8. The amount of compensation directed to be paid shall be deposited with the trial court (or its successor court) along with bail bonds in terms of the above directions within a period of two weeks. The amount of Rs.14,000/- (Fourteen Thousand only) earlier deposited

on 07.10.2002 shall be adjusted there-against. Upon such amount being deposited, the trial court shall notify the complainant by appropriate process and release the amount of compensation to him.

9. With the above modification in the order on sentence the appeal is disposed of.

10. *Dasti* under signatures of the Court Master.

MARCH 19, 2019

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R.K.GAUBA, J.

