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

+ **CRL.M.C. 2605/2019 & CRL.M.A.11307/2019,**
CrI.M.A.10436/2019

BIRENDRA SHUKLAPetitioner
Through: Mr. Tarun Chandiok and Ms. Suman
Thakur, Advocates.

Versus

STATE & ANRRespondents
Through: Mr. Izhar Ahmed, Additional Public
Prosecutor for respondent no. 1-State.
Mr. Suneet Bhardwaj, Advocate for
respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
28.05.2019

Impugned order of 26th April, 2019 rejects petitioner's application for waiver of the condition of deposit of 20% of the total fine amount imposed vide order 31st January, 2019. The Appellate Court in the impugned order has taken note of Section 148 of the Negotiable Instruments Act, 1881 and has referred to the decision of High Court of Bombay in *Ajay Vinodchandra Shah vs. The State of Maharashtra and Another* 2019 SCC OnLine Bom 436 and the decision of High court Punjab & Haryana in *Nitin Shashwat and Another vs. M/s Ajanta Timbers and Another* (CrI M. 22839/2018 decided on 13th February, 2019).

In the impugned order, the Appellate Court has distinguished the decision of High Court of Bombay in *Ajay Vinodchandra Shah* (Supra), as the

said decision relates to an order passed under Cr.P.C. prior to coming into force of the Negotiable Instruments (Amendment) Act, 2018.

Challenge to impugned order by learned counsel for petitioner is on the ground that Appellate Court has misinterpreted the decision of High Court of Bombay in *Ajay Vinodchandra Shah* (Supra), as in the said decision, Section 143A and Section 148 of NI Act have been duly considered. It is submitted that it is not mandatory to order deposit of fine/compensation. It is pointed out that pre-condition to deposit 20% fine compensation amount cannot entail cancellation of petitioner's bail. It is submitted that Section 18 of *The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002* mandates that the appeal shall not be entertained unless the borrower has deposited 50% of the amount of debt due from him, whereas such a stringent condition is not prescribed by Section 148 of Negotiable Instruments Act.

It is submitted that the merits of the case have to be considered prior to directing the deposit of 20% of the fine/compensation amount. It is further submitted that trial in this case was not conducted summarily, so the bar to impose fine of not more than ₹5000/- is attracted to the instant case.

It is further submitted that the trial in this case was not conducted summarily but was a regular trial and so, the sentence as per the Code of Criminal Procedure has to be awarded and first proviso to Section 148 of Negotiable Instruments Act does not apply. So, it is submitted that the pre-condition of deposit of 20% of the fine amount deserves to be set aside.

On the contrary, respondent's counsel supports the impugned order.

Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that Section 148 of the Negotiable Instruments Act is less stringent than Section 18 of SARFAESI Act. On merits, nothing has

been urged on behalf of petitioner to justify exercise of discretion to reduce the pre-deposit amount from 20% to a lesser amount. In *Ajay Vinodchandra Shah (Supra)*, the pre-deposit amount was reduced from 25% to 20% of the total compensation amount. In *J.V. Baharuni and Anr. Vs. State of Gujarat and Anr* (2014) 10 SCC 494 it has been reiterated that summary trial is the preferred mode of trial in the cases under the Negotiable Instruments Act and if a case which is a summarily triable, is tried as a summons case, then it will not entail *de novo* trial.

Reliance placed by petitioner's counsel upon Section 143 of Negotiable Instruments Act to urge the trial in this case was not summarily conducted is of no consequence because the sentence awarded is of a period less than one year. Section 143 of Negotiable Instruments Act mandates that in a summary trial, sentence not exceeding one year and fine amount exceeding ₹5000/- can be imposed.

Petitioner at no point of time had made any grievance that the trial in this case was not conducted in a summary way. So, there is no basis to urge that fine of more than ₹5000/- cannot be imposed. Imposition of deposit of 20% of fine amount in cases under the Negotiable Instruments Act has been already upheld by High Court of Kerala in *Alikkattu Veettil Musthafa Vs. The State and Another*, (Crl M.C.No. 6384 of 2017 decided on 19th September, 2017) and *Nitin Shahwat and Another* (Supra).

In the facts and circumstances of this case, I find that the direction issued by the Appellate Court to make pre-deposit of 20% of fine amount is justified. However, the consequence of non-deposit of fine, entailing cancellation of petitioner's bail is onerous one. Instead thereof, it is directed that if pre- deposit of 20% fine amount is not made by petitioner within six weeks from today, then petitioner's appeal be not entertained. Finding the

impugned order to be otherwise well reasoned, this petition and applications are dismissed with cost of ₹25000/- to be paid by petitioner to respondent at the time of hearing of the appeal, if the pre-deposit is made by petitioner within the above stipulated time.

With aforesaid directions, this petition is disposed of while refraining to comment on merits of the case.

(SUNIL GAUR)
JUDGE

MAY 28, 2019
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