

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 3538 of 2015

With

CRAN 2 of 2020

Shri Biswajit Maji

Versus

Moloy De & Anr.

For the petitioner : Mr. Golam Mustafa

..... Advocate

Heard on : 15.12.2020

Judgment on : 24.12.2020

Jay Sengupta, J.:

1. This is a revisional application challenging an order dated 08.09.2015 passed by the Learned Sessions Judge, Purba Medinipur in Criminal Appeal No. 12270 of 2015, re-numbered as Criminal Appeal No. 01 of 2015, thereby directing the appellant to pay 50% of compensation amount for hearing of the application under Section 5 of the Limitation Act filed in connection with the appeal.

2. From the affidavit of service filed on behalf of the petitioner, it appears that notice was duly given to the complainant/opposite party. Despite service of notice, no one appeared on behalf of the complainant/opposite party.

3. On 12.11.2014 the Learned Judicial Magistrate, 2nd Court, Tamluk, Purba Medinipur convicted the present petitioner on a charge under Section 138 of the Negotiable Instruments Act for the dishonour of two cheques, one amounting to Rs. 20,000/- and the other amounting to Rs. 29,900/-, and sentenced him to suffer simple imprisonment till the rising of the Court and to pay Rs. 90,000/- as compensation to the complainant.

4. Being aggrieved by the judgment and order of conviction and sentence passed by the Learned Trial Court, the petitioner preferred an appeal being Criminal Appeal No. 12270 of 2015 along with an application for condonation of delay. On 08.09.2015 the Learned Appellate Court directed payment of 50% of the compensation amount for hearing of the appeal and the application. Being aggrieved by the excessive amount directed to be paid

as a pre-condition for hearing of the appeal, the petitioner preferred the present revision.

5. It appears that initially an interim order of stay was once granted in this revision. But, the same was not extended.

6. A certified copy of the order number 47 dated 25.11.2020 passed by the Learned Appellate Court as filed by the petitioner was earlier taken on record. It appears from the said order that on 25.11.2020 the Learned Appellate Court dismissed the application for condonation of delay and consequently, the appeal presented by the petitioner because the stay granted by the High Court had expired long ago and as such, there was no bar on the appellate Court to proceed with the matter and the petitioner had not deposited the sum as directed.

7. Learned Counsel appearing on behalf of the petitioners submits as follows. The petitioner has been suffering from financial stringency. As such, he was not in a position to pay 50% of the compensation amount as a pre-condition for hearing of the application and the appeal. However, the appellant has good grounds for challenging the judgment and order of conviction and sentence passed against him. The appellant has also made out a good case for condonation of delay in his application under Section 5 of the Limitation Act. The appellant's right to prefer an appeal should not get frustrated merely because of his inability to pay 50% of the compensation amount awarded, that too during the Covid-19 pandemic. A further opportunity ought to have been given by the Learned Appellate Court for the

petitioner to pay a lesser percentage of the compensation amount. The order directing the appellant to pay was not a final order and as such, could have been modified by the Learned Appellate Court.

8. I have heard the submissions of the learned counsel appearing on behalf of the petitioner and have perused the revision petition and the subsequent order dated 25.11.2020 passed by the Learned Appellate Court.

9. It is germane to mention that Section 148 of the Negotiable Instruments Act, which was introduced by way of an amendment, has retrospective operation. On this, reliance may be placed on the decision of the Hon'ble Apex Court in G.J. Raja vs Tejraj Surana, (2019) 19 SCC 409.

10. Section 148 of the Negotiable Instruments Act provides as follows:

“ S. 148. Power of Appellate Court to order payment pending appeal against conviction. – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court.

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not

exceeding thirty days as any be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”

11. Therefore, a minimum of 20% of the compensation amount may be directed to be paid at the time of hearing of the appeal. Thus, fixing 50% of the compensation amount as a pre-condition for hearing of the application and the appeal was not an absolute imperative. It has to be remembered that the right of appeal of a convict is too precious to be thwarted by technical embargoes, that too discretionary ones. As such, so far as the direction to pay 50% of the compensation amount is concerned, the same ought to be suitably modified.

12. In the present case, during pendency of this revision, the Learned Appellate Court has proceeded with the matter and dismissed the appeal and the application of the present petitioner on the technical ground that

50% of the compensation amount could not be paid by him. It is true that in the absence of a stay, it is open to a Learned Appellate Court to proceed with the matter. However, every discretion has to be exercised judiciously. Furthermore, it is also true that the delay in disposing of a matter does not depend merely on a litigant who prefers an application. Sometimes, there are systematic delays. Sometimes, there are other factors which come into play like the onset of a pandemic, as in the present case. Without going into the petitioner's role in protracting a proceeding, he cannot be penalised for the purported delay.

13. In view of the above and in the facts and circumstances of the present case, it shall be just and proper if the petitioner is directed to deposit 25% of the compensation amount in terms of Section 148 of the Negotiable Instruments Act.

14. It appears that subsequently the Learned Appellate Court went on to dismiss petitioner's application for condonation of delay and appeal on the ground that 50% of the compensation amount was not paid by him. Without going into the merits of the subsequent order, it would be fair to reiterate the settled position of law that if an order of a Court is set aside by a superior Court, then the consequent orders passed by the earlier Court subsequently shall also have to be set aside. On this, reliance is placed on the decision of the Hon'ble Apex Court in *State of U.P. & Ors. Versus M/s Mahindra & Mahindra Ltd.*, (2011) 13 SCC 77 and the decision of the

Hon'ble Patna High Court in Lila Mahton Versus Sheo Govind Singh, AIR 1956 Pat 108.

15. It is trite law that inherent powers as contemplated under Section 482 of the Code can be exercised to give effect to an order passed under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In Inder Mohan Goswami versus State of Uttaranchal & Ors., (2007) 12 SCC 1, the Honble Apex Court, among other things, held that a Court can exercise its inherent powers *ex debito justitiae* to do real or substantial justice.

16. I find the present case to be a fit one to exercise the inherent powers of this Court for setting the subsequent orders passed by the Learned Appellate Court consequent to the order dated 08.09.2015 passed by it.

17. Accordingly, the impugned order dated 08.09.2015 and the subsequent orders including the order dated 25.11.2020 passed by the Learned Appellate Court are set aside, the application for condonation of delay and the appeal are restored to their original file and number before the Learned Appellate Court, the matter is remanded back to the Learned Appellate Court so that the application and the appeal can be decided afresh. The petitioner is directed to pay 25% of the compensation amount before the Learned Appellate Court in terms of Section 148 of the Negotiable Instruments Act.

18. With these observations the revisional application and the connected application are disposed of.

19. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)