

07.10.2024
Sl. No.4
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IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C. R. R. 3635 of 2024

In Re: ***Asim Kumar Roy***

... .. Petitioner

Mr. Sandip Ghose
Mr. Supratim Bhattacharjee
... .. for the petitioner

Mr. Arnab Das
Ms. Akansha Yadav
Ms. Syeda Romana Sultan
... .. for opposite party no.2

1. Petitioner is aggrieved by the direction given by the appellate court to deposit 20% of the fine amount as a last chance for the purpose of suspending the sentence imposed upon him.
2. Petitioner was facing prosecution for dishonour of one cheque bearing No.479102 dated 30.12.2015 amounting to Rs.12,76,406/-. After trial, learned Magistrate convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to pay compensation of Rs.12,76,406/-, in default, to suffer simple imprisonment for eight months.
3. Petitioner preferred an appeal and by order dated 11.06.2024 appellate court suspended the compensation on condition he deposits 20% of the said amount.
4. Learned Advocate for the petitioner contends the requirement to make a deposit of 20% of the fine amount for suspending fine/compensation is not mandatory. He relies on *Jamboo Bhandari vs. M.P. State Industrial Development*¹.
5. Section 148 of the Negotiable Instruments Act empowers the appellate court to direct a convict to deposit a sum not less than

¹ 2023 INSC 822

20% of the fine amount and/or compensation awarded by the trial court within 60 days of the said order.

6. In *Jamboo Bhandari* (Supra), the Apex Court, inter alia, held the requirement to deposit a minimum sum of 20% is not an absolute rule which cannot accommodate any exception.
7. The ratio clarifies that the appellate court is vested with jurisdiction to waive the requirement of deposit of 20% or more of the fine/compensation amount in exceptional cases.
8. Whether any exceptional case is made out or not must appear from the facts of each case. In the present case, prosecution was instituted in 2016 and had lingered for more than eight years. It also appears petitioner is a businessman and the cheque was issued in connection with a commercial transaction. It cannot be said petitioner comes from a marginal or penurious section of society.
9. In this backdrop, no exceptional case for waiving the condition of minimum deposit of 20% of the fine amount pending appeal is made out.
10. Under such circumstances, I direct the petitioner to make the deposit within eight weeks from date. In the event, said deposit is made within the stipulated time frame, compensation shall remain suspended failing which it shall be open to opposite party no.2 to realize the compensation in accordance with law.
11. With the aforesaid direction, CRR 3635 of 2024 is disposed of.
12. Photostat certified copy of this order, if applied for, be given to the petitioner on usual undertaking.

(Joymalya Bagchi, J.)

