BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD)No.459 of 2024
and
Crl.M.P.(MD)No.5004 of 2024

S.Prathiba ... Petitioner/Petitioner/
Sole Accused

Vs.

R.Seralathan ... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 01.04.2024 made in Crl.M.P.No.2435 of 2024 in C.A.No.76 of 2024 on the file of the learned Principal District and Sessions Court, Thanjavur against the Judgment in S.T.C.No.3 of 2022 on the file of the Judicial Magistrate/Fast Track Court, Thanjavur in respect of directing the petitioner to deposit 20% compensation as fixed by the learned trial Court and modify the same as 10% compensation as fixed by the trial Court.

For Petitioner : Mr.A.K.Baskarapandiyan

For Respondent : Mr.A.Arun Prasad

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ORDER

This Criminal Revision case has been filed to set aside the order dated 01.04.2024 made in Crl.M.P.No.2435 of 2024 in C.A.No.76 of 2024 on the file of the learned Principal District and Sessions Court, Thanjavur against the Judgment in S.T.C.No.3 of 2022 on the file of the Judicial Magistrate/Fast Track Court, Thanjavur in respect of directing the petitioner to deposit 20% compensation as fixed by the learned trial Court and modify the same as 10% compensation as fixed by the trial Court.

2.The case of the prosecution is that the petitioner and the respondent are close friends. On 13.11.2028, the petitioner's husband has received a loan sum of Rs.2,00,000/-, Rs.10,00,000/- on 27.11.2018, Rs.2,00,000/- and Rs.1,00,000/- on 08.04.2019 and Rs.37,00,000/- on 10.04.2019, totally Rs.52,00,000/- from another bank after executing promissory note promising 12% interest on 14.04.2019. After repeated request by the complainant, the cheque bearing No. 160003, dated 10.11.2021 was given by the petitioner. On 11.11.2021, when the petitioner presented the same for payment, it was returned with an endorsement as “bank account has been closed”. On 17.11.2021, notice was sent to the petitioner's address stating that the cheque has been returned and after receiving the notice, false reply was given by the petitioner. Therefore, the respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instrument Act and the case was taken on file.

3.During trial, the complainant examined himself as P.W.1 and exhibited 17 documents as Ex.P.1 to Ex.P.17 and on the side of the accused, she examined herself as R.W.1 and no documents were marked.

4.The learned Judicial Magistrate/Fast Track Court, Thanjavur, after full-fledged trial, passed the judgment in S.T.C.No.3 of 2022, dated 02.03.2024 and convicted the petitioner/accused for the offence under Section 138 of Negotiable Instrument Act and sentenced her to undergo 1 year Simple Imprisonment and to pay a fine of Rs.70,00,000/- to the complainant within one month, in default, to undergo 2 months Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner preferred the Criminal Appeal before the learned Principal District and Sessions Court, Thanjavur in C.A.No.76 of 2024, dated 01.04.2024 and the same was allowed with the conditions that the petitioner is to execute a personal bond for Rs.10,000/- with two sureties each for a like sum to the satisfaction of the Judicial Magistrate, FTC, Thanjavur and also to deposit

20% compensation award which comes to Rs.14,00,000/-. Aggrieved over the same, the petitioner has filed this revision before this Court.

5.The learned counsel appearing for the petitioner submitted that the petitioner was on bail during the time of trial and interim suspension of execution of sentence has been ordered by the trial Court and further submitted that the petitioner is ready to deposit 10% of compensation amount. Hence, he prays to allow this revision.

6.Per contra, learned counsel for the respondent/complainant submitted that this revision has been filed to prolong the non-payment. Further, the Hon'ble Supreme Court also stated that the Court below has jurisdiction to look into facts and circumstances of each cases and to impose the conditions. Hence, there is no need to interfere with the order passed by the first appellate Court.

7.This Court has considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

8.Before going into the merits of the case, this Court extracts 148 of the Negotiable Instrument Act which is as follows:

"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 subsection 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 may 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.

9.The above amendment was brought to redress the grievance of the public including the trading community relating to the pendency of the dishonour of cheques and the same is as follows:

6.2. *While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the NI Act, as amended by way of Amendment Act 20 of 2018 and Section 148 of the NI Act* as *amended, are required to be referred to and considered, which read as under:*

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the

offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy."

10. The Hon'ble Supreme Court in the case of ***Surinder Singh Deswal @ Col.S.S.Deswal and others vs. Virender Gandhi***, reported in ***2019 11 SCC 341*** has applied purposive interpretation to the word “may” and also the non-obstinate clause, namely, “notwithstanding anything containing the Code of Criminal Procedure” and has held as follows:

> ***8.*** *Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI Act as amended, the appellate court “may” order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and the word used is not “shall” and therefore the discretion is vested with the first appellate court to direct the appellant-accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the appellate court is an exception for which special reasons are*

to be assigned. Therefore amended Section 148 of the NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the *cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.*

11. The same was also reiterated by the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal Alias Colonel S.S.Deswal and others Vs. Virender Gandhi and another*** reported in ***2020 (2) SCC 514*** and further held that in the event of the non-compliance of the condition it has adverse effect on the continuation of the suspension of sentence.

> ***19.*** *The High Court is right in its opinion that Question 2 as framed in Vivek Sahni case [Vivek Sahni v. Kotak Mahindra Bank Ltd., CRM-M No. 29187 of 2019 (O&M), order dated 18-7-2019 (P&H)] was not correctly considered. When suspension of sentence by the trial court is granted on a condition, noncompliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to noncompliance of condition of deposit of 25%*

of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20-7-2019.

20. *It is for the appellate court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the appellate court in such circumstances is for the appellate court to consider and decide. However, noncompliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.*

12. The Hon'ble Supreme Court in the subsequent decision reported in ***2023 LIVE LAW SC 776*** has directed the Courts to consider the facts of each case before imposing 20% deposit. The relevant paragraphs are as follows:

6.What is held by this Court is that a purposive interpretation should be made of Section 148 of the Negotiable Instruments Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

> *7.Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C., of an accused who has been convicted for offence under Section 138 of the N.I Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the revisions for coming to the said conclusion must be recorded.*

13.From the consideration of the above law laid down by the Hon'ble Supreme Court and the object behind the incorporation of Section 148 of the Negotiable Instruments Act, this Court is of the considered view to admit the case and directs the petitioner to deposit 10% of the compensation amount.

14.In view of the above deposit of 10%, this Court inclines to set aside the order dated 01.04.2024, made in Crl.M.P.No.2435 of 2024 in C.A.No.76 of 2024 on the file of the learned Principal Sessions Court, Thanjavur, against the Judgment in S.T.C.No.3 of 2022 on the file of the Judicial Magistrate/Fast Track Court, Thanjavur, with the following terms:

(i)the order passed by the learned appellate Judge is modified to 10% as compensation amount, which was already deposited by the petitioner;

(ii)the learned Judicial Magistrate(Fast Track Court), Thanjavur is directed to accept the surety of the petitioner with the conditions already imposed in S.T.C.No.3 of 2022, dated 02.03.2024; and

(iii)the learned appellate Judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

14.1.The learned trial judge, is hereby directed to re-deposit the 10% of amount in any one of the Nationalized Bank in interest bearing account.

15.With the above directions, this Criminal Revision case is disposed of. Consequently, connected miscellaneous petition is also closed.

26.07.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
RJR/*sbn*

To

1.The Principal District and Sessions Court, Thanjavur .

2.The Judicial Magistrate/Fast Track Court, Thanjavur.

3.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

K.K.RAMAKRISHNAN, J.

RJR/*sbn*

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