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

Date of decision: 09.05.2024

+ **CRL.M.C. 233/2024 & CRL.M.(BAIL) 45/2024**

ADESH TYAGI

..... Petitioner

Through: Mr.Rizwan, Ms.Sachi Chopra,
Ms.Nishtha Sinha, Advs.

Versus

POOJA KAUR

..... Respondent

Through: Mr.Nikhil Avana, Mr.Mohit
Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the orders dated 07.02.2023 and 16.09.2023 (in short, 'Impugned Orders') passed by the learned Special Judge (NDPS-02), Central District, Tis Hazari Courts, Delhi (in short, 'the Appellate Court') in C.A. No.29./2023, titled as *Adesh Tyagi v. Pooja Kaur*.

2. By the order dated 07.02.2023, the learned Appellate Court has directed the petitioner herein to deposit 20% of the compensation amount awarded by the learned Metropolitan Magistrate (NI Act-02), Central District, Tis Hazari Courts, Delhi (in short, 'MM') vide its order dated 07.01.2023 in CC No.7646/2017, titled as *Pooja Kaur v.*



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Adesh Tyagi.

3. By the Impugned Order dated 16.09.2023, the learned Special Judge revoked the suspension of the sentence *inter alia* on the ground that the direction to deposit 20% of the compensation amount as ordered by its earlier order dated 07.02.2023, has not been complied with and the petitioner has not deposited the amount.

4. The learned counsel for the petitioner submits that the respondent had also filed a civil suit seeking recovery of *inter alia* the cheque amount, being Suit No.CS(OS) 2030/2017, titled as ***Smt.Pooja Kaur v. Shri Adesh Tyagi.*** In the said suit, a Decree dated 27.02.2018 has been passed by the learned Additional District Judge-01 (Central-District), Tis Hazari Courts, Delhi for a sum of Rs.26 lakhs alongwith interest at the rate of 6% per annum, against the petitioner and in favour of the respondent.

5. The respondent thereafter, filed an Execution Petition being Exe. No.557/2018, titled as ***Smt.Pooja Kaur v. Shri Adesh Tyagi,*** in the said suit, and pursuant to the order dated 05.08.2022, the salary of the petitioner has been attached.

6. He submits that a recovery of more than Rs.6 lakhs has already been made against the petitioner and, in fact, further recovery is still continuing.

7. He submits that the amount that has already been recovered is more than 20% of the compensation that has been awarded by the learned MM while convicting the petitioner of the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').



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8. Placing reliance on the judgment of the Supreme Court in *Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Others*, (2023) 10 SCC 446; and of the High Court of Kerala in *Baiju v. State of Kerala*, 2023 SCC OnLine Ker 10204, he submits that the condition of pre-deposit under Section 148 of the NI Act is not mandatory and the Court has to consider the attending circumstances before directing the same. He submits that, in the present case, the learned Appellate Court has erred in not considering the fact that the petitioner has already paid a sum which is more than 20% of the compensation amount, in the execution petition.

9. On the other hand, the learned counsel for the respondent submits that no benefit of the recovery made in the civil suit can be given to the petitioner. He submits that, in the present case, the liability to pay the amount of the cheque cannot be disputed by the petitioner and, in fact, the Decree in the civil suit was passed denying him a leave to defend. He further submits that the petitioner is a man of means and can easily pay the said amount, however, is not paying the same, forcing the Court to take coercive steps for recovering the same by way of attachment of his salary. He submits that the petitioner cannot be permitted to take benefit of such recovery made.

10. I have considered the submissions made by the learned counsels for the parties.

11. In *Jamboo Bhandari* (supra), the Supreme Court, considering Section 148 of the NI Act, has held as under:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the



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 the appellate court considers the prayer under Section 389 CrPC of an accused who has been convicted for offence under Section 138 NI 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 reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 CrPC for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the



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erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.”

(Emphasis supplied)

12. Therefore, it is not mandatory for the learned Appellate Court to direct deposit of 20% of the cheque amount. The learned Appellate Court has to consider the attending circumstances while considering the application filed by the appellant seeking suspension of sentence. In the present case, the salary account of the appellant already stood attached and an amount of Rs.6 lakhs, which is more than the 20% of the compensation amount awarded by the learned MM, has been recovered. The learned Appellate Court, therefore, should have considered whether the direction to the petitioner to make further deposit 20% of the compensation amount would negate his right to pursue his appeal. In the Impugned Order, there is no such consideration. It appear from the reading of the Impugned Order that the learned Appellate Court has, in fact, proceeded on the basis that under Section 148 of the NI Act, it was mandatory for the appellant to deposit 20% of the compensation amount as a pre-condition for hearing his appeal, which is contrary to the judgment of the Supreme Court in **Jamboo Bhandari** (supra).

13. Be that as it may, this Court by its order dated 10.01.2024 recorded the submission of the petitioner that he shall, without prejudice to his rights and contentions, deposit 20% of the compensation amount with the learned Trial Court. By the order dated 13.02.2024 of this court, however, on an application filed by the petitioner, being Crl. M.A.4619/2024, this Court clarified that the



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petitioner shall deposit 20% of the 'cheque amount' with the learned Trial Court. The learned counsel for the petitioner submits that the said direction has been duly complied with. He, however, submits that the respondent has filed an application seeking withdrawal of the said amount, which would prejudice the rights and contentions of the petitioner.

14. As the above amount was deposited only as a condition for considering the present petition, in which the petitioner has, in fact, succeeded, it is directed that the said amount shall remain deposited before the learned Trial Court during the pendency of the appeal and thereafter, be released subject to outcome of the appeal that is pending before it and in terms of the directions passed at the time of the disposal of the appeal.

15. Keeping in view the facts of the present case, the learned Appellate Court is requested to expedite the adjudication of the appeal and make an endeavour to dispose of the same within a period of one month of the first listing of the appeal before it post this order.

16. The petition and the pending application are disposed of in the above terms.

17. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 9, 2024/Arya/ss

Click here to check corrigendum, if any