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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6377/2024 CRL.M.(BAIL) 1365/2024**
KUMSI UBHIPetitioner

Through: Mr. Ashesh Lal, Ms. Rachna Lal, Mr.
Raghav Parwatiyar and Ms. Shikha
Walia, Advs.

versus

STATE OF NCT OF DELHI AND ORSRespondent
Through: Mr. Satinder Singh Bawa, APP for
State with SI Pooja, PS Karol Bagh.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

29.11.2024

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1. This petition has been filed for setting aside judgment dated 22nd October 2018 and order dated 14th November 2018 and directing the Appellate Court to hear the appeal on merits.

2. The factual background which relates to the proceedings under Section 138 NI Act is as under:

2.1 As per complainant, on 29th March 2012, a cheque of Rs.8 lakhs was issued by petitioner in favour of respondent no.2; thereafter another cheque of Rs. 8 lakhs was given on 8th April 2012;

2.2 The said cheques were dishonoured on presentation and proceedings under Section 138 NI Act were initiated, which resulted in conviction of petitioner by order dated 27th August 2018 and sentenced to RI 1 year with compensation of Rs.25 lakhs.

2.3 Against the said order, appeal was preferred in September 2018



before the ASJ, Tis Hazari Courts on the basis of settlement arrived at between the parties; the said appeal was disposed of stating that in case petitioner fails to pay the instalments, the substantive sentence of imprisonment shall come into force;

2.4 Subsequently, since the first instalment was not paid by the appellant, order dated 14th November 2018 was passed disposing off the appeal and directing the appellant to surrender. Against this revision petition was filed before this Court being CrI. Rev. Pet. No.1113/2018;

2.5 During the pendency of the revision petition on 25th November 2019, a statement was made by husband of petitioner, who was present in the Court, that Rs.13 lakhs would be deposited with the Registrar General with 3 days and other Rs.4.5 lakhs within next 2 weeks. On this undertaking by husband of the petitioner for deposit of Rs.17.5 lakhs, impugned orders were stayed; however, it was clarified that if petitioner fails to deposit the said amounts, the stay would stand vacated automatically;

2.6 Thereafter, revision petition was on Board of this Court and was finally dismissed for non-prosecution on 14th September 2022.

3. Considering the assertions which have been made on behalf of the petitioner, that she was estranged from her husband, whom she accuses of gambling and that she had no knowledge of the circumstances which had ensued, notices were issued to the complainants.

4. The mother and the brother of the complainant appear in Court, the mother being the Power of Attorney Holder. They state that the complainant is in the North-East and is unable to present himself in Court.



5. A perusal of the record would show that, *vide* order dated 25th November 2019 in Crl. Revision Petition No. 1113/2018, which had been filed challenging the dismissal of the appeal, against the judgment of conviction and order on sentence, when the Court gave an opportunity for deposit of Rs.17.5 Lacs, it also clarified that, “*in case the petitioner fails to deposit the aforesaid two amounts within the stipulated period, the stay of the impugned order granted on 11th December, 2018 will stand vacated automatically*”.

6. Considering that there has been non-compliance of the said order, notwithstanding the circumstances in which the petitioner has not been able to deposit the money, the orders of the Court will get triggered and the stay order granted on the impugned order of conviction and sentence shall stand vacated.

7. Petitioner will be at liberty to pursue whatever remedies that they wish to and as advised in accordance with law.

8. Considering that, a plea is made by the counsel for the petitioner that, since they have deposited Rs.5 Lacs before this Court and were granted interim relief in the meantime, the same order be extended for a period of one month, for them to, initiate any proceedings, if they wish to.

9. Accordingly, the directions in para 2 of order dated 16th August 2024 shall remain in force till 10th January 2025.

10. Petition is disposed of with the aforesaid directions.

11. *Dasti.*

12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 29, 2024/MK