2024:DHC:7789

$~3

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

Date of decision: 30th SEPTEMBER, 2024

IN THE MATTER OF:

\+ **CRL.REV.P.(NI) 22/2024**

AJAY TYAGI .....Petitioner

Through: Mr. Vishal Bhatnagar, Ms. Lata Walia, Ms. Reena Kangur, Ms. Rani Yadav, Advocates with Petitioner in person.

versus

ANHEUSER BUSCH INBEV INDIA LTD. .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court challenging Order dated 24.05.2024 passed by learned Additional Session Judge, Patiala House, New Delhi, suspending the sentence of Petitioner till the disposal of the appeal, subject to the Petitioner depositing 20% of the total fine amount by way of FD and furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Trial Court.

2. Material on record indicates that the Petitioner has been convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881 *vide* Judgment dated 26.03.2024 passed by the learned Metropolitan Magistrate and the Petitioner has been sentenced to fine of Rs.2,72,000/- to be paid to the Complainant as compensation *vide* Order on Sentence dated 09.04.2024

passed by the learned Metropolitan Magistrate.

3. The facts in brief leading to this petition are that the Complainant company, i.e., Respondent herein, is the manufacturer of various and distributor of various brands of beer. It is stated that the Petitioner approached the Complainant company for purchase of various brands of beers and the Complainant company supplied the goods to the Petitioner accused. It is stated that a sum of Rs.74,51,000/- was due and payable against the Petitioner accused.

4. It is stated that the Petitioner herein issued two cheques of Rs.1 lakh each in favour of the Respondent for the payment of the outstanding dues. However, it is stated that the said cheques were dishonoured with the remark 'exceeds arrangement'. A legal notice dated 13.11.2019 was sent to the Petitioner asking for payment of the said amount. Since the Petitioner failed to make the payments, proceedings under Section 138 of the NI Act were initiated against the Petitioner.

5. The trial was conducted and after considering all the material and the Petitioner has been convicted for offences under Section 138 of the NI Act. Appeals have been filed. The appeal has been filed primarily questioning the outstanding amounts and the issue as to whether the amount which was sought for was legally enforceable debt or whether the cheques had been issued for the legally enforceable debts or not.

6. It is pertinent to mention that Petitioner accused has not filed any application for dispensing with the provisions of Section 138 NI Act which provides that an appeal by a drawer against conviction and that an Appellate Court while considering an appeal by the drawer for conviction under Section 138 of the NI Act can direct the Appellant to deposit such sum

which shall be minimum of 20% of the fine or compensation by the Trial Court.

7. An application under Section 389 CrPC was filed by the Petitioner for suspension of the sentence. The entire application reads as under:-

> *"APPLICATION U/S. 389 CR.P.C., 1973 ON BEHALF OF THE CONVICT AJAY TYAGI SEEKING SUSPENSION OF SENTENCE IN CRIMINAL COMPLAINT BEARING NO. CC/19180/2019 IN CASE TITLED AS "ANHEUSER BUSCH INBEV INDIA LTD. VS AJAY TYAGI" VIDE JUDGEMENT DATED 26.03.2024 AND 09.04.2024 (ORDER ON SENTENCED) U/S 138 OF THE N.I. ACT, 1881 TILL FILING OF THE APPEAL BEFORE THE HON'BLE SESSIONS COURT IN THE ABOVEMENTIONED CASE.*
>
> *MOST RESPECTFULLY SHOWETH: -*
>
> *1. That the applicant herein is the appellant and has been convicted by Ld. Trial Court of Ms. Neha Garg, Ld. MM-02 (NI Act), New Delhi District, Patiala House Courts, Delhi in Criminal Complaint bearing no. CC/19180/2019 in Case titled as "Anheuser Busch InBev India Ltd. Vs Ajay Tyagi" vide Judgement dated 26.03.2024 and 09.04.2024 (Order on sentenced) U/s 138 of the N.I. Act, 1881.*
>
> *2. That the applicant herein has been constrained to file the present appeal, the contents of the said appeal is not being repeated herein for the sake of brevity and repetition. However, the contents of the said appeal may kindly be read as part and parcel of the present application.*
>
> *3. That the applicant submits and contends herein that*

that compliance of 148 under N.I. Act, 1881 is no more res integra, that the appeal can be entertained subject to compliance of 148 of the N.I. Act, 1881.

4. That the applicant submits and contends herein that ever since, the liquor policy in Delhi was rescinded, the financial crises has been eclipsed upon the applicant. The complete financial management, be it personal and professional was shattered, which leads the applicant financial bankruptcy. The present condition is such, that he is not in a position to manage his household expenditure(s) as well. The said fact is undisputedly being mentioned by the applicant himself in the proceedings before the Ld. Trial Court. The compliance U/s 148 of the N.I. Act,1881 would only have incarceration and would add miseries to the applicant.

5. That the applicant submits and contends herein that the bank statement of State Bank of India bearing Account number 34142044568 and Indian Bank Bearing Account number 424581618 and again of Indian Bank bearing Number 6227258177 and lastly of Punjab National Bank Account Bearing Number 012008700235879 depicts the financial constraints of applicant.

6. That the applicant submits and contends herein that in a recent judgement the Hon'ble Supreme Court has held that the Court should have a purposive interpretation apropos section 148 of the NI Act. Hence, 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. In the present case at hand, the appellant truly deserves *suspension of sentence without imposing the condition of the deposit of 20% of Fine/Compensation amount.*

7. That the Applicant has always maintained good conduct all through the trial wherein the Applicant was always regular in attending the Court dates and have faced a rigorous trial for more than 5 years.

8. That the applicant has got a good case at hand and there is every likelihood of the appeal succeeding before this Hon'ble court.

9. That the Applicant has got a fixed abode of living and apart from the present case have never been convicted by any Court. It would be significant to state that the Applicant share a good reputation in the society and Manu Wester have been a victim of bad· faith by the Respondent/Complainant.

10. That the Applicant beseeches Hon'ble before this Court to allow, suspension of sentence filing of appeal or, 2024 interest till disposal of the present appeal.

11. That the Applicant undertakes to abide by the of this Hon'ble Court as and when directed to so.

12.That the applicant undertakes to maintain peace and harmony and carry a good conduct in if the liberty of suspension of granted to him. The applicant for this act of kindness as in duty bound shall ever pray .

PRAYER
i. It is Most respectfully prayed before this Hon'ble Court that allow the present application and entertain the present appeal on merits."

8. The said application has been disposed of by the learned Additional Session Judge by the order impugned herein whereby the Appellate Court

has suspended the sentence, provided, the Petitioner herein deposit 20% of the amount of fine.

9. Learned Counsel for the Petitioner strenuously contends that it is not mandatory for the Appellate Court to direct deposit of 20% of the fine amount and that the Appellate Court must apply its mind as to whether the condition of deposit of 20% would be unjust or imposition of such condition would be depriving the right of the Appellant and whether exceptions can be made for the reasons specified on the record. Reliance is made by the learned Counsel for the Petitioner in Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors., **(2023) 10 SCC 446**.

10. Learned Counsel for the Petitioner contends that there is nothing in the order which shows that the Trial Court has applied its mind as to why the amount of 20% was to be deposited. He states that the Petitioner is in severe financial distress because of the liquor policy being rescinded. He states that since the liquor policy has been rescinded, the Petitioner has suffered severe losses in his business making him incapable for sustaining his livelihood and these circumstances warrant judicial scrutiny.

11. Heard learned Counsel for the Petitioner and perused the material on record.

12. This Court has perused the application under Section 389 CrPC. The application under Section 389 CrPC does not contain any particulars as to how the Petitioner is incapable of depositing 20% of the fine amount and as to why the Appellate Court must do away with the stipulation of deposit of 20% of the fine amount, which is prescribed under Section 148 of the NI Act.

13. Though it is stated by the Petitioner that certain documents were filed before the Trial Court but there is nothing on record to show that any other documents were filed. Even along with the memorandum of revision petition, no documents have been filed by the Petitioner. If the contention of the Petitioner is correct that certain documents had been filed, then nothing prevented the Petitioner from filing those documents along with his revision petition to substantiate his contention that the Petitioner is incapable of paying such amount. The mere *ipse dixit* of the Petitioner is not sufficient for this Court to come to the conclusion that the order of the Trial Court warrants reconsideration and that the matter ought to be sent back to the Trial Court to see whether the Petitioner can be absolved of the condition of deposit of 20% of the fine amount as mandated under Section 148 of the NI Act. Even in this revision petitions also, other than stating that losses have been suffered, no material has been filed by the Petitioner to substantiate his financial distress.

14. The Apex Court in Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors., **(2023) 10 SCC 446,** has observed 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 389CrPC 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."* (emphasis supplied)

15. In the absence of any material on record either in the application under Section 389 CrPC or any document filed along with the revision petition, this Court is not in a position to interfere with the order passed by the Appellate Court directing the Petitioner to deposit 20% of the amount of the fine as a condition precedent for suspension of sentence.

16. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 30, 2024
hsk