

14.08.2025
Ct. No. 32
Sl. No.36
Sws.M

CRR 3758 of 2024

In the matter of : **Rajesh Sanei**

... Petitioner

Mr. Amarta Ghose
Mr. Souryadeep Ghosh

.....for the petitioner

Mr. Shyama S. Bhalotia
Mr. Anurag Bagaria
Ms. Riya Debnath

.....for the opposite party

1. This revisional application has been preferred assailing the order dated 19th March, 2024 passed by the learned Chief Judge, City Sessions Court, Calcutta and order dated 2nd August, 2024 passed by the learned Additional District & Sessions Judge, Fast Track Court No. 1, Calcutta in connection with Criminal Appeal No. 26 of 2024 arising out of CN Case No. 551 of 2018.
2. Learned Metropolitan Magistrate, 20th Court, Calcutta disposed of the application under Section 138 of the Negotiable Instruments Act, 1881 in connection with CN Case No. 551 of 2018 by promulgating an order of conviction where the accused/petitioner herein was found guilty of committing offence under Section 138 of the N.I. Act and was sentenced to pay fine of Rs.10,00,000/- and to suffer simple imprisonment for four months. Further order was promulgated directing the accused to pay the entire fine amount of Rs.10,00,000/- to the complainant as

compensation within 60 (sixty) days from the date of judgment and order.

3. Being aggrieved by and dissatisfied with the judgment and order passed by the learned Trial Court, one appeal being Criminal Appeal No. 26 of 2024 was preferred before the learned Chief Judge, City Sessions Court, Calcutta. On 19th March, 2024, the Chief Judge took up the appeal for admission.
4. After hearing the learned counsel appearing on behalf of the appellant, learned Chief Judge admitted the said appeal subject to condition of depositing 30% of the fine amount before the learned Trial Court as security deposit within 7th May, 2024, and thereafter the appeal was transferred to the Additional Sessions Judge, Fast Track Court No.1 for disposal where one application was filed on 7th May, 2024 for dispensing with the condition imposed at the time of admission of appeal.
5. Mr. Amarta Ghose, learned counsel appearing on behalf of the petitioner has submitted that right to file an appeal is statutory right and no condition can be imposed after taking assistance of Section 148 of the NI Act. In support of his contention he relied on a judgment in the case of ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and Anr.***, reported in ***(2007)6 SCC 528***.
6. In opposition to that Mr. Shyama S. Bhalotia, learned counsel appearing on behalf of the opposite party relied on a judgment in the case of ***Jamboo Bhandari vs. M.P.***

State Industrial Development Corporation Ltd. & Ors.,
reported in **2023 LiveLaw (SC) 776.**

7. Learned counsel appearing on behalf of the opposite party has submitted that an Appellate Court has the authority to impose condition at the time of admitting appeal within the meaning of Section 148 of the NI Act.
8. In **Dilip S. Dahanukar** (supra), the Hon'ble Apex Court handed down the following principles particularly in paragraphs 12 and 55 which read as follows:

“12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.

55. Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the court can release a person on bail having regard to the nature of offence but as also the other relevant factors including

its effect on society. A person upon arrest may have to remain in jail as an undertrial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to sub-section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgement whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount.”

9. In **Jamboo Bhandari** (supra), the Hon’ble Apex Court set out the principle for invoking the provision of Section 148 of the NI Act in the pending appeal only, unlike the facts of the case in hand.
10. However, right to appeal is recognized as fundamental and substantive right under the Constitution of India, specifically protected under Article 21, and is considered as an intrinsic part of the right to fair trial and personal liberty. Hon’ble Apex Court has consistently held that the right to appeal is a fundamental right linked to the right to life and liberty. Right to appeal is a creature of statute, but

once conferred, it cannot be rendered illusory or arbitrarily curtailed, as doing so shall violate the constitutional guarantee of a fair trial under Article 21 of the Constitution of India.

11. In ***Dilip S. Dahanukar*** (supra), the Hon'ble Apex Court also ratified further that an appeal is a statutory right and an offender who has been convicted entirely can avail the right to appeal which is provided under Section 374 of the code and the right to appeal from a judgment of conviction affecting the liberty of a person is also a fundamental right while keeping a view of extensive definition of Article 21 of the constitution. The Hon'ble Apex Court has further observed that the right of appeal, thus, can neither be interfered with nor impaired, nor can it be subjected to any condition.
12. In the aforesaid view of the matter, I find no other option but to modify the order dated 19th March, 2024 passed by the Chief Judge, City Sessions Court with respect to admission of appeal only to the extent of direction to deposit 30% of the fine amount before the learned Trial Court within a specific time and also set aside the order dated 2nd August, 2024 thereby disallowing the prayer for waiver of payment of compensation.
13. However, liberty is given to the opposite party to file appropriate application for compensation in compliance with the provision of NI Act during pendency of the appeal.
14. Other portion of the order shall remain unaltered.

15. I make it clear that I have not gone into the merit of the appeal in any manner whatsoever.
16. With the above observation, CRR 3758 of 2024 stands disposed of.
17. All parties to act on the server copy of this order duly downloaded from the official website of the Court.
18. Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Bibhas Ranjan De, J.)