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Court : Delhi

Decided On : May-15-2012

Judge : M.L. Mehta

Appeal No. : CRL.REV.P. 241 Of 2012

Appellant : Govind Lal

Respondent : State and Another

Judgement :

M.L. MEHTA, J.

1. This revision petition assails the order dated 25.4.2012 of ASJ, Saket District Courts, New Delhi.

2. The petitioner was convicted by the M.M. under Section 138, N.I.Act and was sentenced to SI of six months and fine of Rs. 2,50,000/-. The entire fine amount was ordered to be paid as compensation to the complainant. The petitioner carried the matter in appeal to the court of ASJ, Saket Courts. The learned ASJ suspended the substantive sentence subject to the petitioner depositing the entire fine amount of Rs. 2,50,000/- with the Trial Court and on his furnishing personal bond of Rs. 20,000/- with one surety in the like amount. It is this order of the ASJ that has been challenged in the present petition.

3. The petitioner challenges the impugned order of the ASJ and the order of the M.M. on two grounds. Firstly, that M.M. could not impose fine of Rs.2,50,000/-. In this regard, it was submitted that as per Section 29 (2) Cr PC, the M.M. could not impose fine exceeding Rs.5000/-. The second ground for assailing the impugned order is that the learned ASJ erred in directing deposit of the entire fine amount while suspending the substantive sentence. In this regard, his submission was that if the appeal was found fit to be admitted for hearing, the sentence of fine as imposed was also necessarily to be suspended like the substantive sentence or in any case, the condition of deposit ought not be more than the one-third of the fine imposed or in any case, more than the cheque amount. In other words, the submission was that the condition of depositing the entire amount was harsh and onerous and incapable of compliance by the petitioner.

4. I have heard learned counsel for the petitioner finally at the initial stage itself.

5. The contention that the M.M. did not have the jurisdiction to impose fine exceeding Rs. 5000/- as per Section 29 (2) Cr PC cannot be gone into the present proceedings as that is pending determination before the learned ASJ in the appeal against order of M.M.

6. With regard to the contention of deposit of the entire fine amount as imposed by the learned ASJ for suspending the substantive sentence, the learned counsel has relied upon various judgments on different High Courts. In the case of **Stanny Felix Pinto Vs. M/s. Jangid Builders Pvt. Ltd. and Another**, passed in Criminal Appeal No. 86 of 2001, the Supreme Court observed as under:

“We feel that while suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act, it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal”

7. The ratio of all those judgments is that the Appellate Court may impose condition while suspending the sentence and that the power of imposing conditions was discretionary. There is no impediment to put the applicant on

terms, while suspending the substantive sentence, like depositing of fine in the court, but the amount of such condition must be reasonable, having regard to the entire factors including the one referred to in Sub-Section (5) of Section 357 Cr PC. In some of the judgments which have been cited, it was held that normally, the court should direct to deposit the entire amount of compensation, but such direction is necessarily to depend upon the facts and circumstances of each case.

8. The decision of Stanny Felixc Pinto (supra) was also followed in **Dilip S. Dahanukar Vs. Kotal Mahindra Company Ltd.**, 2007 (5) SCALE 452, wherein it was held that not only the amount of compensation must be reasonable, but the condition of suspending the sentence should also be reasonable.

9. In the present case, the amount of cheque in question was Rs. 1,53,000/- and the fine that has been imposed by the M.M. was Rs. 2,50,000/-. The legality and propriety as regard to the judgment and order of conviction and sentence including that of the fine is the subject matter the appeal that is pending before the ASJ and thus, need not to be commented upon by this court. However, the unanimous view of the judicial pronouncements has been that the condition of suspension of sentence should be just and reasonable and not harsh and onerous. This will all depend upon the facts and circumstances of each case and also the financial capacity of the convicts. For one person, even Rs. 10,000/- may be the onerous and harsh condition, but for other, Rs. 2,50,000/- may not be so. Though, the financial condition alone is not the determining factor. This is the prudence and the wisdom of the judge to make a just and reasonable condition depending upon various factors. Having regard to the entire factual matrix, the condition of deposit of cheque amount i.e. Rs. 1,53,000/- by the petitioner seems to be just and reasonable. Thus, while maintaining that the Appellate Court enjoys the power of imposing any condition and that there was no illegality in imposing the condition of deposit of the entire fine amount, but in the given facts as also the financial condition of the petitioner, the same is found to be slightly harsh and onerous. Consequently, the impugned order is modified to the extent that the substantive sentence would stand suspended subject to the petitioner depositing with the Trial Court a sum of Rs. 1,53,000/- and that the same shall not be released to the complainant till the disposal of the appeal. The rest of the impugned order remains

undisturbed.

10. Revision petition stands disposed of with the above direction.

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