
(1997) 03 MAD CK 0062

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 931 of 1997 in Criminal R.C. No. 139 of 1997

Altaf Ahmed

APPELLANT

Vs

Minerals and Metals Trading Corporation

RESPONDENT

Date of Decision : 24-03-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389(1), 397
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1997) 89 CompCas 837

Hon'ble Judges : V. Rengasamy, J

Bench : Single Bench

Advocate : K. Asokan, for Karthikeya Narayanan, for the Appellant; P. Seshan, for the Respondent

Judgement

Rengasamy, J.—This petition is filed u/s 397(1) of the Code of Criminal Procedure, 1973, for the suspension of the conviction and fine

imposed by the Principal Sessions Judge, Madras, confirming the order of conviction passed by the VIIth Metropolitan Magistrate, Chennai, in

C.C. No. 143 of 1996.

2. The revision petitioner was prosecuted along with some others for the offence u/s 138 of the Negotiable Instruments Act, 1881, before the

VIIth Metropolitan Magistrate, George Town, Chennai. The learned VIIth Metropolitan Magistrate has found the petitioner herein guilty of the

offence and has sentenced him to undergo simple imprisonment for six months and also to pay a fine of Rs. 25,02,000, in default to suffer simple

imprisonment for three months. Further, he also has directed that out of the fine of Rs. 25,02,000, Rs. 25,00,000 would be paid to the

complainant towards the compensation. This order of conviction was affirmed by the learned Principal Sessions Judge, Chennai, in C.A. Nos. 10

and 13 of 1997. Therefore, the petitioner herein has come forward with a revision, Crl. R.C. No. 139 of 1997. The revision petitioner has filed

with a revision, Crl. R.C. No. 139 of 1997. The revision petitioner has filed this petition for suspension of the sentence pending disposal of the revision.

3. Learned senior counsel, Mr. Asokan, appearing for the revision petitioner, submitted that section 397 of the Code of Criminal Procedure, 1973,

empowers the revisional court to suspend the execution of sentence, that in this case the courts below have imposed the fine of Rs. 25,02,000

which is a very heavy amount for the offence u/s 138 of the Negotiable Instruments Act, 1881, that the very punishment itself is harsh especially

when the petitioner had suffered huge losses in the business and is unable to gather the funds, and, therefore, the suspension of the substantive

sentence and the fine amount has to be ordered. He also mentioned that in the lower appellate court, the petitioner was directed to deposit Rs. 1

lakh towards the portion of the fine amount and the balance alone remains payable under this order and this might be suspended. One other

contention raised by learned senior counsel. Mr. Asokan, is that the petitioner-company has given collateral security to the complainant to the value

of Rs. 93 lakhs, and, therefore, even if it found that the petitioner is liable to pay the cheque amount, the complainant can realise this amount

through the civil court by proceeding against the collateral security, and, therefore, it is proper to suspend the substantive sentence and the fine

amount. Learned counsel referred to the decision in Rama Narang v. Ramesh Narang [1995] 83 Comp Cas 194; [1995] 1 LW 85 (SC), wherein

even the order of conviction has been suspended and when the court has powers of suspend the conviction itself, in this case, the sentence of

imprisonment and fine might be suspended.

4. Certainly, section 397 of the Criminal Procedure Code, 1973, empowers the revisional court to suspend the execution of the sentence of the

order challenged. If this court is satisfied that there are sufficient reasons to suspend the sentence, the substantive sentence as well as the fine amount

can be suspended pending disposal of the revision. The petitioner seeks the

suspension of the fine amount only on the basis of his inability to pay the amount. But, in this case, even though it was argued for the petitioner that imposing the fine of Rs. 25,02,000 in this case is harsh, it cannot be forgotten that except of Rs. 2,000 the balance amount of Rs. 25,00,000 is towards the compensation payable to the complainant. The complainant, Minerals and Metals Trading Corporation Limited, is a Government of India public sector undertaking. The cheque for Rs. 25 lakhs was issued by this petitioner on behalf of the first accused, the company, in the business transaction towards their liability to pay the amount. However, the cheque bounced. Therefore, taking into consideration the loss sustained to the complainant, the learned VIIth Metropolitan Magistrate has awarded this compensation of Rs. 25 lakhs to the complainant and the balance of Rs. 2,000 alone is the actual fine amount payable to the State. Section 138 of the Negotiable Instruments Act, 1981, permits the imposing of fine up to twice the cheque amount. However, in this case, the trial magistrate has imposed a fine which is equal to the cheque amount, towards the compensation. Under these circumstances, it cannot be stated that the punishment to pay a fine of Rs. 25,02,000 is very harsh. As the fine amount of Rs. 25 lakhs has to go to the complainant towards the compensation after the disposal of the revision, I feel that the fine cannot be suspended even if the complainant has civil remedies.

5. The next question is when the fine is not suspended, can the substantive sentence, namely, six months imprisonment, be suspended. Both sides have submitted that this question is not governed by any precedent. Learned senior counsel, Mr. Asokan, submitted that when the order of conviction itself can be suspended as held in *Rama Narang v. Ramesh Narang* [1995] 83 Comp Cas 194; [1995] 1 LW 85 (SC), the substantive sentence can be suspended even if the fine amount is not suspended. He would further submit that for the non-payment of the fine, the default sentence is only three months" simple imprisonment which the petitioner is prepared to undergo and this default sentence cannot be clubbed with the substantive sentence, and, therefore, the refusal of the court to suspend the fine amount cannot stand in the way of suspending the substantive sentence. But I feel that it is not permissible under the Code. Section 389(1) of the Criminal Procedure Code, 1973, empowers the appellate court

to suspend the sentence or order appealed against pending appeal and simple power is conferred on the revisional court also u/s 397 of the Code

of Criminal Procedure, 1973. In both the sections the words ""sentence"" and ""order"" refer to the punishment and order of conviction as a whole.

No doubt, the types of punishment are mentioned in section 53 of the Indian Penal Code, 1860, and the punishments are, death sentence,

imprisonment for life, imprisonment, either rigorous, i.e., with hard labour, or simple, forfeiture of property and fine. When the court has inflicted

the penalty of imprisonment and fine, which is referred to as sentence in the aforementioned sections, the language of the section ""suspend the

execution of any sentence or order"" is referable only to the whole of the sentence or impugned order in full, because the word ""sentence"" and does

not refer to the plurality and the sections also do not give power to bisect the penalty or the impugned order of conviction to allow a portion of the

sentence to be suspended while the rest to be undergone by the convict. Even though section 69 of the Indian Penal Code, permits termination of

the death sentence on payment of a proportional part of the fine, such facility is not provided for bisecting the punishment of imprisonment and fine,

for suspending the sentence. Learned senior counsel, Mr. Asokan, referred to section 424 of the Code of Criminal Procedure, which has not

bearing on this case because it refers to the sentence of fine only with default clause. Therefore, as the word ""sentence"" used in section 397 of the

Code of Criminal Procedure, has to be taken as a whole, suspension of the substantive sentence alone is not permissible. In view of this position,

the petitioner is not entitled to have the sentence suspended. The petition, is therefore, dismissed.