

(1998) 02 MAD CK 0135

In the Madras High Court

Case No : Criminal Revision Petition No. 490 of 1997 and C.M.P. No. 3281 of 1997

Bay Leathers Exports Pvt. Ltd.

APPELLANT

Vs

Saileela

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

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

Citation : (1998) 1 ALT(Cri) 523 : (2001) 103 CompCas 792 : (1998) CriLJ 3719 : (1998) 1 LW(Cri) 239 : (1999) 4 RCR(Criminal) 343

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : S. Uthirasamy, for the Appellant; N.K. Sankaranarayanan, for the Respondent

Judgement

M. Karpagavinayagam, J.—The question that arises for consideration in this revision petition is whether the appellate court u/s 389(1) of the Criminal Procedure Code, 1973, could suspend the sentence of fine, while admitting the appeal and if so, under what circumstances ?

2. The facts leading to the filing of this revision are as follows : The petitioner filed a complaint against the respondent for the offence u/s 138 of the Negotiable Instruments Act, since the cheque issued for a sum of Rs. 5,23,700 by the respondent was dishonoured and the cheque amount was not paid despite the demand made in the statutory notice. After trial, the respondent was convicted to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1 lakh in default to undergo simple imprisonment for one year and she was further directed to pay Rs. 95,000 to the complainant as compensation out of the fine amount and the remaining amount to be deposited in court as fine to the Government, This judgment was dated April 24, 1997. On the same date, the respondent, the accused paid Rs. 5,000 being the fine amount and Rs. 5,000 towards compensation. The respondent filed a petition for extension of time for

payment of the balance amount and the time was granted and sentence was suspended by the trial court itself.

3. Thereafter, the respondent filed an appeal in C. A. No. 73 of 1997 before the District and Sessions Judge, Periyar District at Erode and also filed an application in Crl. M. P. No. 1165 of 1997 u/s 389(1) of the Criminal Procedure Code requesting for the suspension of the execution of the sentence including the payment of fine pending disposal of the appeal. In this application, notice was given to the petitioner, who, in turn, appeared before the appellate court and objected to the suspension of the sentence of fine alone, since the word "sentence" as contemplated in Section 389(1) would not include "fine" and it would apply only to the imprisonment. However, this objection was rejected by the appellate court holding that the word "sentence" as contained in Section 389(1) would include both imprisonment and fine and both sentence of imprisonment and fine were suspended by the order dated May 22, 1997, on the respondent executing a bond for Rs. 5,000 with two sureties for the like sum. This order is challenged in this revision.

4. Mr. Uthirasamy, though initially raised a point that the word "sentence" in Section 389 of the Criminal Procedure Code means only substantive form of imprisonment but not sentence of fine, ultimately conceded that the word "sentence" would mean both. However, he would vehemently contend that while the appellate court suspending the sentence, the condition existed in Section 389(1) has not been complied with. To elaborate the said submission, he contended that while the appellate court thinks it fit to suspend the execution of sentence, the reasons for the same have necessarily to be recorded and that in the absence of reasons, the order suspending the sentence would become bad.

5. Mr. Uthirasamy would further point out that while suspending the sentence of fine of Rs. 1 lakh, the appellate court has not even cared to obtain the security for the said sum to enable the court to recover the said fine, in the event of the dismissal of the appeal. It is further submitted that due to the order suspending the fine amount inclusive of compensation, the petitioner/complainant has been greatly prejudiced because in the event of dismissal of the appeal, it would be very difficult for the petitioner to recover the said amount of fine and he has to necessarily undergo the long drawn legal process for making recovery of the said amount by invoking the relevant sections, viz., Sections 421, 431 of the Criminal Procedure Code.

6. Mr. Sankaranarayanan, on the other hand, would submit that the appellate court has got powers to suspend the sentence u/s 389(1) of the Criminal Procedure Code and as such, he requests this court to confirm the impugned order.

7. At the outset, I may point out that the impugned order suffers from illegality, and is liable to be set aside for more than one reason.

8. Before going to the validity of the said order, I must state that even the trial

court while suspending sentence to enable the party to file an appeal before the appellate court, has not satisfied the requirements as contemplated u/s 389(3) of the Criminal Procedure Code.

9. In this case, the respondent was convicted by judgment dated April 24, 1997. On the very same day, the accused filed a petition by depositing Rs. 5,000 towards fine and Rs. 5,000 towards compensation, out of Rs. 95,000 being compensation, requesting for extension of time for the payment of the balance amount and for suspending the sentence. On the basis of this request, the sentence was suspended by the trial court.

10. u/s 389(3) of the Criminal Procedure Code the trial court shall release a person on bail for such period by affording sufficient time to present the appeal and obtain orders of the appellate court under Sub-section (1).

11. The reading of Section 389(3) would make it clear that the sentence of imprisonment alone could be suspended by the trial court. But, in this case, strangely the trial court suspended sentence of both imprisonment and fine permitting the respondent and accepting the undertaking given by the respondent and giving the time for depositing the balance amount.

12. In view of the wordings contained in Section 389(3), the trial court can suspend the sentence of imprisonment alone. However, the question raised in this case is, whether the appellate court has got powers u/s 389(1) to suspend the sentence of fine. But, we need not delve into the question, since the counsel for the petitioner himself has conceded that the word "sentence" in Section 389(1) would include fine. Therefore, the incidental question that would arise is can the sentence of fine be suspended by the appellate court, merely because the appellate court is empowered to do.

13. My emphatic answer is the appellate court cannot exercise the said power lightly, in view of the wordings contained in Section 389(1) as "the appellate court may, for reason to be recorded by it in writing, order that the execution of the sentence ... be suspended".

14. From the plain language of Section 389 of the Criminal Procedure Code, it is clear that the section confers discretionary jurisdiction on the appellate court to suspend the execution of sentence during the pendency of the appeal only on the valid reasons recorded in writing.

15. The expression "sentence", of course, means, not only substantive sentence of imprisonment but also included sentence of fine. Though the language of Section 389 of the Criminal Procedure Code is silent in terms of the same, the appellate court has to consider the two situations, while ordering suspension of sentence of fine. The one is to find out the reasons for suspending the sentence of fine and the next is to impose suitable conditions, as may be justified on the facts of each case, in order to ensure that the order of sentence of fine which may ultimately be imposed on the appellant as a result of the appeal, can be

executed without any difficulty.

16. In a case where the sentence of both imprisonment and fine is imposed, the legitimate condition that could be imposed by the court while granting the prayer for suspension of imprisonment could be to call upon the appellant to execute a bond on suitable terms and furnish sureties to ensure his presence before the court to undergo the sentence of imprisonment, in the event of dismissal of the appeal. For suspending the sentence of fine the legitimate condition that could be imposed would be to direct the appellant to furnish a suitable security which could ensure the deposit of fine which may ultimately be imposed on the appellant as a result of the decision of the appeal.

17. In this case, neither were reasons given for suspending sentence of fine, nor was any condition imposed to furnish a suitable security for the sum of Rs. 1 lakh. Only if such a condition is imposed, the appellate court would be able to recover the fine from the appellant, in the event of confirming the conviction.

18. But in the instance case, the appellate court miserably failed in the proper exercise of Section 389(1) of the Criminal Procedure Code by suspending the sentence of fine including the compensation by merely saying that the court has got power to do so. This, in my view, is beyond the jurisdiction.

19. Coming to the facts of this case, the cheque amount is Rs. 5,23,700. As per Section 138 of the Negotiable Instruments Act, the trial court could impose fine to the extent of twice the amount of the dishonoured cheque. In the instant case, the trial court took a lenient view and imposed a fine of Rs. 1 lakh, out of which the respondent was directed to pay Rs. 95,000 to the complainant as compensation. Therefore, though the appellate court has got the powers to suspend the sentence of fine, in the absence of any valid reason to suspend the fine imposed in this case, I do not think that the impugned order would stand.

20. In view of the fact situation, the impugned order is set aside. The respondent is directed to comply with the order of the trial court directing him to deposit the balance amount of Rs. 90,000 in court. However, it is agreed that the complainant/petitioner herein would not withdraw the same as compensation, till the appeal is over. Now the counsel for the petitioner seeks twelve weeks time for deposit of the said amount from today. However, I feel that nine weeks time from today would meet the ends of justice. The respondent/accused is directed to deposit the balance of the fine amount of Rs. 90,000 in the lower court on or before April 30, 1998. However, the suspension order relating to the imprisonment would hold good pending appeal before the appellate court. The appellate court is directed to dispose of the appeal as expeditiously as possible after deposit of the said amount within the said period.

21. With the above direction, the revision is disposed of, and no further order is necessary in CrI. M. P. No. 3281 of 1997.