
(2020) 05 MP CK 0105

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 50057 Of 2019

Goel & Goel Partnership Firm

APPELLANT

Vs

Channi Randhawa

RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 317, 389(1), 482
Negotiable Instruments Act, 1881 — Section 138, 148
Constitution Of India, 1950 — Article 226

Citation : (2020) 05 MP CK 0105

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Ajay Gupta, Aman Dawar

Final Decision : Allowed

Judgement

This M.Cr.C under Section 482 Cr.P.C has been preferred by the petitioner for seeking following reliefs:-

- a. Compliance of Section 148 of N.I. Act is mandatory before proceeding to hear the appeal on merits.
- b. The Appellate Court should cancel the order of the suspension of sentence for reason of appellant not following the mandatory provision of Section 148 of the Negotiable Instrument Act and to ensure attendance of the appellant before proceedings to hear the appeal on merits.
- c. In case, the appellant fails to comply with Section 148 of the Negotiable instrument Act then his appeal can be heard only if he has surrendered and is in custody before proceeding with hearing of his appeal on merits.
- d. Any other appropriate order or direction, which Hon'ble Court may deem fit may also be passed.

2. According to case, the complainant/petitioner has filed a Criminal Case No.

300968/2013 against the respondent for the offence under Section 138 of N.I. Act. Vide judgment dated 28. 03.2019, the learned trial Court convicted the respondent in the aforesaid offence and awarded the sentence to undergo R.I. for one year with the direction to pay compensation amount of Rs. Five Crore to the petitioner. Being aggrieved by the findings of the trial Court, the respondent approached the learned 3rd ASJ, Itarsi, District Hoshangabad by way of filing a Criminal Appeal No. 15/2019. The learned Appellate Court has admitted the appeal and while considering the application of suspension of sentence, the learned Appellate Court directed the respondent to deposit Rs. One Crore which is 20% of amount of compensation as per Section 148 of N.I. Act within a period of 60 days. On 17.06.2019, the learned Appellate Court granted further time of 30 days to deposit the said amount. In the meanwhile, the respondent has filed two petitions before the High Court seeking relief in depositing 20% amount of compensation. Both the petitions were dismissed by this Court and directed the respondent to pay the same, but the respondent did not comply the provision of NI Act. Hence, the Court below has issued non-bailable warrant against the respondent.

3. Further, looking to the conduct of the respondent, the petitioner has preferred an application for dismissing the appeal on the ground of non-payment of 20% of compensation amount as per Section 148 of N.I. Act. The respondent has also filed reply of said application as well as filed an application under Section 317 of Cr.P.C. The learned Court below has dismissed the application of the petitioner and allowed the respondent to appear through his counsel. On 14.10.2019, the respondent was again absent before the Appellate Court and filed another application under Section 317 of Cr.P.C. which was again allowed by the learned Appellate Court discarding the objection of the petitioner. Thereafter, on 23.11.2019, the petitioner has filed an application under Section 389(1) of Cr.P.C. for cancellation of order of suspension of sentence and bail passed by the Appellate Court, but vide order dated 26.11.2019, the learned Appellate Court has rejected the same.

4. Learned counsel for the petitioner submits that the learned Appellate Court has failed to appreciate the object of Section 148 of the N.I. Act which makes deposit of 20% of compensation amount mandatory to hear the appeal of accused. In such circumstances, it is necessary that either the appellant/accused deposits 20% amount or surrendered himself, but herein neither the appellant/accused deposited the amount nor surrendered himself rather he is disobeying the order of this High Court as well as Lower Court, continuously. As per Section 148 of N.I. Act, the appeal of the accused cannot be heard without following the mandatory provision of law. In the case of Surinder Singh Deswal @ Col. S.S. Deswal & other Vs. Virender Gandhi & another passed by Criminal Appeal Nos. 1936-1963 of 2019, the Hon'ble Apex Court has categorically held that the provision of Section 148 of N.I. Act is mandatory in nature and due to non compliance of the same, order of suspension of sentence can be vacated.

5. On the other hand, learned counsel for the respondent oppose the same and submits that the petitioner has not challenged any specific order in this petition, hence, this petition is not entertainable. He submits that the appeal and bail are legal right of the accused and he cannot be deprived to avail the remedy provided by the law. The learned Appellate Court has rightly considered all the aspects while rejecting the application of cancellation of bail filed by the petitioner/complainant. With the aforesaid, he prays for dismissal of this petition.

6. Heard the parties and perused the case.

7. First I would proceed to decide the objection raised by the respondent's counsel that the petition is not maintainable as the petitioner has not challenged any specific order of the Courts below. On careful reading of the Section 482 of Cr.P.C. it appears that it gives inherent power to the High Court to make such orders as may be necessary to prevent abuse of process of any Court or otherwise to secure the ends of justice. Under Section 482 of Cr.P.C., there is no necessity to challenge any specific order of any Court, if the aggrieved person feels that the act of anyone is amount to abuse of process of law, he can pray to the High Court to exercise its inherent jurisdiction and pass appropriate direction to secure the ends of justice. Herein, in petition memo, the petitioner prays for specific direction with regard to hearing of appeal and cancellation of order of suspension of sentence and bail granted to the respondent, therefore, I do not find any force in the ground raised by the respondent's counsel and it is hereby discarded.

8. As far as merits of the case is concerned, it is apparent that vide order dated 18.04.2019, the learned Appellate Court has allowed an application under Section 389 of Cr.P.C. directing the respondent inter alia to deposit 20% of compensation amount i.e. one crore within a period of 60 days. Thereafter, on the application filed by the respondent, vide order dated 17.06.2019 the Appellate Court has further extended 30 days period for depositing the amount as directed in earlier order dated 18.04.2019. It is an admitted fact that earlier the respondent has filed two petitions before this Court seeking relief against the depositing 20% of compensation amount as per Section 148 of N.I. Act, the same were dismissed on merits and the respondent was directed to comply the provision of Section 148 of N.I. Act even than the respondent did not comply with the earlier orders of this High Court. There is no necessity to discuss the law relating to Section 148 of N.I. Act regarding deposit of 20% of compensation amount as in earlier round of litigation in M.Cr.C. No. 21372/19 order dated 17.07.2019 and M.Cr.C. No. 32664/19 order dated 20.08.2019, after considering each and every aspects, this Court has held that the provision of Section 148 of N.I. Act is discretionary in nature and the appellate Court can pass an order in pending appeal to direct the appellant/accused to deposit compensation amount which shall not be less than 20% of the fine of compensation amount. Further, this Court has also observed that the Higher Court should prevent itself to interfere in the discretionary power of the Lower Court as provided under the

law. Therefore, once it has been decided by this Court that the learned appellate Court has rightly exercised its discretionary power directing the respondent to deposit the 20% of compensation amount while suspending the sentence, the respondent can not enjoy the bail without complying the condition imposed by the Court of law.

9. Although, I am persuaded with the findings of the learned Appellate Court that the appeal is a legal right of the accused and cancellation of bail is not an indefeasible right of the complainant to get the appellants bail canceled but herein, it is pertinent to mention that though appeal is a legal statutory right of the appellant accused but the same cannot be used to abuse the process of law, it is not disputed that bail which was granted to the respondent was conditional in character, i.e. depositing of 20% of the compensation amount and same has been affirmed by this Court in earlier round of litigation. Since, condition stipulated therein has been violated by the respondent, he cannot longer take benefit of the same and plead at this stage that these are his legal right. The respondent cannot be allowed to abuse the process of law and pertinently this aspect has not considered by the learned trial Court. It is also pertinent to note that the learned trial Court has also made reference to article 21 of the Constitution of India, 1950. In this regard, it should be noted that article 21 of the Constitution provides that no person should be deprived of his life or personal liberty except according to procedure established by law. In the present case the respondent was granted bail in accordance with procedure established by law, and by violating condition mention therein, he has violated such procedure and hence, no benefit of such violation can be taken by him.

10. Further, In the case of Surinder Singh Deswal @ Col. S.S. Deswal (Supra), the Hon'ble Supreme Court has held that the Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance, the relevant para is quoted as under:-

"18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to

consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated."

11. Therefore, in view of the specific provision of Section 148 N.I. Act with regard to power of Appellate Court ordering of payment in pending appeal against conviction under the N.I. Act, I am not persuaded with the learned ASJ that there is no condition to the complainant to approach the Appellate Court for cancellation of bail.

12. Accordingly, this petition is allowed and order dated 26.11.2019 passed by Second ASJ, Itarsi District Hoshangabad is hereby set aside. Consequently, due to non complying the condition of bail order dated 18.04.2019 as well as the direction of this High Court in the case of M.Cr.C. No. 32664/19, the order of suspension of sentence and bail is hereby vacated. The respondent is directed to surrender himself before the Trial Court and thereafter he may pray to the Court for expedite final hearing of his appeal.