
(2015) 01 CAL CK 0061
In the Calcutta High Court
Case No : C.R.R. No. 3685 of 2014

Nand Kishore Bhagat and Others

APPELLANT

Vs

Biswakantha Dey and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 2 JCC 114

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Ayan Bhattacharjee and Arijit Ghosh, for the Appellant

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.

1. The petitioners were convicted under Section 138 of the N.I. Act and sentenced to pay fine and compensation, by the Trial Court. Against the said order, they preferred an appeal before the Sessions Court at Barasat. However, the learned Sessions Judge admitted the appeal but was of the opinion that their prayer for stay of realization of fine and the payment of compensation shall be considered only after appearance of the complainant/opposite party. It is the case of the petitioners that the notice was duly served upon the complainant/opposite party, still he was not appearing in the court below. In this regard, the learned Counsel for the petitioners invited the attention of this court to the order passed in connection with the said appeal on November 18, 2014. He then pointed out from the postal track record, at Page 41 of this criminal revision, that notice was duly served upon the complainant/opposite party.

2. Aggrieved by the refusal of the learned Sessions Judge to take up the matter for consideration on the question of stay of the operation of the sentence and the payment of compensation, the petitioners have now approached this court.

3. Heard the learned Counsel appearing for the petitioners and considered his submissions. Perused the materials on record.

4. It appears from the affidavit of service that the notice was sent to the opposite party/complainant at his correct address, as was mentioned in the petition of complaint but the same could not be delivered to him because he was not available there and in spite of notice of the postal authority, nobody turned up to take delivery.

5. Be that as it may, this is a case where the learned Sessions Judge on July 28, 2014 passed an order in connection with Criminal Appeal No. 29/2014 and on that date, the appeal has been admitted. However, he did not pass any order staying the operation of the order of sentence and compensation. In all likely, the learned Sessions Judge has overlooked the provision of Sub-section (2) of Section 357 Cr.P.C. According to the said provision, if fine is imposed in a case which is subject to an appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, if an appeal be presented, before the decision of the appeal. Therefore, according to the mandate of law, since the appeal is admitted, the learned Sessions Judge was bound to stay the realization of fine. Furthermore, the learned Judge might direct the petitioners to deposit a portion of the compensation amount in the Trial Court but his approach in non-considering the question of stay of the order of payment of fine and compensation, unless the complainant appeared in court, is totally erroneous, improper and not in accordance with law. Judicial discretion must always be supported by reason and justification and same cannot be arbitrary and fanciful. When the learned Judge found merits in the appeal and categorically recorded that there are grounds for admission and admitted the appeal, it is totally unjust not to consider the question of stay of fine and compensation, more particularly, on the face of provisions of sub-section 4 of section 357 CrPC. In any event, the learned Judge should have taken up the matter for consideration of stay of fine and compensation, when from the postal records, it is found that the complainant was avoiding the court process.

6. Having regard to above, it is directed within a week from the date of communication of this order the Appeal Court shall dispose of the question of stay of fine and compensation without insisting presence of the complainant.

7. In the result, this application stands allowed and disposed of.

8. This court has been informed that during the pendency of the hearing of the petitioners' prayer for stay in connection with the appeal, the trial court has issued warrant of arrest against him. The said order of issuance of warrant of arrest is quashed. Urgent xerox certified copy of this order, if applied for, be given to the parties within a week from the date of making such application.