

(2016) 03 DEL CK 0260
In the Delhi High Court
Case No : Crl. Rev. P. 141/2016

Shree Sainath Wires (I) Pvt. Ltd. and Others APPELLANT
Vs
PEC Limited and Others RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(1), Section 427, Section 482
Limitation Act, 1963 — Section 5
Negotiable Instruments Act, 1881 (NI) — Section 138, Section 141

Citation : (2016) ACD 403 : (2017) 1 BC 175 : (2017) 1 DCR 266 : (2016) 3 JCC 172 : (2016) 3 RCRCriminal 491

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Manoj Ohri, Senior Advocate, Heena Sharma, Manas Gaur and Kuldeep Singh, Advocates, for the Appellant; Sanjeev Narula, Ajay Kalra and Dipika, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

P.S. Teji, J.—Crl. M.A. No. 2782/2016 (permission to file separate revision petition in respect of each complaint)

1. By this application filed under Section 482 of Cr.P.C., the petitioners seek permission to prefer a separate petition challenging the common judgment and order dated 03.11.2015 passed in Criminal Complaint being CC No. 909/2011.

2. Learned Senior Counsel for the petitioner submitted that under the bonafide impression, they have filed one common revision petition being Crl. Rev. P. No. 745/2015, challenging the impugned order dated 03.11.2015, commonly passed in 18 appeals filed by the petitioners against the orders of conviction and sentence passed by learned ACMM, Delhi, in 18 separate complaints.

3. I have heard the submissions made on behalf of the petitioners and gone through the contents of the application.

4. In view of the aforesaid submissions made on behalf of the petitioners and for the reasons stated in the application, the same is allowed and the separate petition in respect of common order dated 03.11.2015 passed by the learned Additional Sessions Judge in 18 separate appeals preferred by the petitioners, is ordered to be taken on record.

5. With aforesaid directions, the present application stands disposed of.

Crl. M.A. No. 2785/2016 (Condonation of delay of 11 days in filing the revision petition)

6. By this application filed under Section 5 of Limitation Act read with Section 482 of Cr. P.C., the petitioners seek condonation of delay of 11 days in filing the accompanying revision petition.

7. Learned Senior Counsel for the petitioners submitted that under the bonafide impression, the petitioners had preferred one common revision petition being Crl. Rev. P. No. 745/2015, challenging the impugned common order dated 03.11.2015, passed in 18 separate appeals filed by the petitioners whereby they had challenged the order of conviction of petitioner No. 2 and sentence passed by learned ACMM, Delhi, in 18 separate complaints.

8. I have heard the submissions made on behalf of the petitioners and have gone through the contents of the application.

9. In view of the aforesaid submissions made on behalf of the petitioners and for the reasons stated in the application, and considering the fact that a revision petition challenging the common order in 18 separate appeals, being Crl. Rev. P. No. 745/2015 has already been filed, the same is allowed and the condonation of delay of 11 days for filing the present revision petition is condoned.

10. With aforesaid directions, the present application stands disposed of.

Crl. M.(Bail) No. 494/2016 (suspension of sentence)

11. By this application filed under Section 397(1) of Cr. P.C., the petitioner seeks suspension of sentence passed by learned ACMM, Delhi for the offence punishable under Section 138/141 of Negotiable Instruments Act, 1881, which was upheld by learned Additional Session Judge vide order dated 03.11.2015.

12. In this revision petition, the petitioners have challenged the order passed in criminal complaint being CC No. 909/2011. Apart from the present complaint, there were 17 other criminal complaints against the petitioners being Nos. 902/2011, 903/2011, 906/2011, 898/2011, 157/2013, 905/2011, 912/2011, 910/2011, 911/2011, 901/2011, 899/2011, 900/2011, 907/2011, 897/2011, 908/2011, 904/2011 filed by respondents against the petitioners under Section 138/141 of Negotiable Instruments Act, 1881. After considering the evidence on record, the Trial Court vide order dated 30.05.2014 held the petitioners guilty for the offence punishable under Section 138/141 of Negotiable Instruments Act, 1881 and sentenced petitioner No. 2 to undergo simple imprisonment for a

period of one year with fine of Rs.51 lacs in each of the complaints. Petitioner No. 2 was further directed to undergo simple imprisonment for a period of six months in default of payment of fine of Rs.51 lacs within a period of 30 days in each case.

13. Against the aforesaid order passed by the learned Metropolitan Magistrate, the petitioners had preferred separate appeals before the learned Additional Session Judge, Patiala House Courts, New Delhi. The said appeals filed by the petitioners were dismissed by common order dated 03.11.2015 while upholding the order passed by learned Metropolitan Magistrate. The petitioner No. 2 was taken into custody on the same day, i.e., 3rd November 2015.

14. Aggrieved by the aforesaid orders passed by the learned Metropolitan Magistrate as well learned Additional Session Judge, the petitioners have preferred the present revision petition challenging the order of the conviction and awarding of the sentence to undergo simple imprisonment for a period of one year with fine of Rs.51 lacs payable as compensation to the complainant within a period of 30 days.

15. Mr. Manoj Ohri, learned Senior Counsel for the petitioners has advanced his argument on the present application, i.e., seeking suspension of sentence and on the question of quantum of sentence.

16. Apart from the above, learned Senior Counsel for the petitioners further argued on merits of the case that all the cheques were given for the purposes of security and the judgments relied upon by the appellate Court while deciding the appeals, were not applicable to the facts of the present case. In support of his submission, learned Senior Counsel for the petitioners relied upon judgment in Collage Culture & Ors vs. Apparel Export Promotion Council, , 2007 (99) DRJ 251; and Icon Buildcon Pvt. Ltd. vs. Aggarwal Developers Pvt. Ltd. & Ors., , 2014 (143) DRJ 136.

17. The rival contention of Mr. Sanjeev Narula, learned counsel for respondent No. 1 is that the present matter is listed today for considering the applications of the petitioners for seeking suspension of sentence during pendency of the main petition and the merits of the case cannot be the subject matter for the purpose of hearing the applications. Learned counsel for the respondent No. 1 contended that whether the cheques in questions were given for the purpose of security or not, is a matter for appreciation on the evidence and both the Courts below have given their concurrent findings on the facts of the case, which cannot be looked into at this stage.

18. I have heard the submissions made by learned Senior Counsel for the petitioners as well as learned counsel for the respondent No. 1 at length.

19. After considering the contents of the application for suspension of sentence and the arguments advanced by both the sides, this Court observes that the petitioner No. 2 /accused has been convicted in 17 other cases apart from the

present case and has been awarded simple imprisonment for a term of one year with fine of Rs.51 lacs in each case and in default of payment of fine of Rs.51 lacs in each case, the petitioner No. 2 /accused is directed to undergo simple imprisonment for a period of six months, in each case. The Court also observed that the petitioner No. 2 has sought directions from this Court in respect of the sentences awarded in all the 18 separate cases to run concurrently.

20. This Court is of the considered opinion that even if the arguments advanced be learned Senior Counsel for the petitioners is presumed to be correct for the sake of argument, it may only be with regard to the substantive sentence of imprisonment of one year in each case, which may be treated to be run concurrently. But the question remains that the sentence running concurrently with regard to the sentence imposed upon the petitioner No. 2 in default of payment of fine of Rs.51 lacs in each case, which is six months in each case, will be the main subject matter of the case. Even if the same is calculated, it shall go up to 9 years simple imprisonment, as it is the admitted fact that the petitioner No. 2 has not deposited fine/ paid the compensation of Rs.51 lacs within a period of 30 days, as awarded by the Courts below. Therefore, this Court is of the opinion that the facts of the present case and the question as to whether the sentence imposed upon the petitioner No. 2 in all the 18 cases shall run concurrently or not, need not to be touched at this stage, which shall of course be the subject matter for determination at the time of final disposal of the revision petition.

21. The fact which need to be considered at this stage is that whether the petitioner No. 2 has been able to make out a prima facie case for suspension of sentence during the pendency of the main petition.

22. Learned Senior Counsel for the petitioners contended that the petitioner No. 2 has already undergone a period of four and half months out of the total substantive sentence of one year as awarded to him and since the hearing of the main petition may take time, therefore, the sentence of the petitioner No. 2 may be suspended during pendency of the revision petition. It is further contended on behalf of the petitioner No. 2 that in case of suspension of substantive sentence of one year as awarded by the Court below, out of which the period of four and half months has already undergone by the petitioner No. 2, shall tantamount to accept the plea of the petitioner No. 2 to the effect that the sentence of fine imposed upon the petitioner No. 2 to pay fine of Rs.51 lacs in each case within 30 days, as well as the sentence in default of payment of fine, in each case, shall also run concurrently, at this stage.

23. This Court further observes that the petitioner No. 2 has defaulted in payment of fine of Rs.51 lacs within a period of 30 days in all the 18 cases, meaning thereby, the petitioner No. 2 shall have to undergo at least 9 years of simple imprisonment on account of his default in payment of fine as imposed by the Court below. In any case, he shall have to pay the amount of fine @ Rs.51 lacs in 18 cases, i.e., 9,18,00,000 (Rupees nine crore eighteen lacs only).

24. After considering the aforesaid facts and circumstances of the case, this Court is of the considered opinion that the petitioner No. 2 is not entitled to suspension of substantive sentence, as imposed by the Courts below, at this stage. However, interest of justice would be secured if the final hearing of revision petition is expedited.

25. Accordingly, the application seeking suspension of sentence filed by the petitioners is hereby dismissed.

Crl. M.(Bail) No. 493/2016 (interim bail on medical grounds)

26. By this application, petitioner seeks interim bail on the medical grounds. Learned Senior Counsel for the petitioners argued that the petitioner No. 2 has been awarded the imprisonment for a period of one year and he has already undergone the period of four and half months and apart from the same, his condition in jail is being deteriorated. The medical record in respect of treatment of the petitioner No. 2 has also been placed on record for the period 2013 and 2014 and it is informed that he is now being treated by the Jail Authorities.

27. This Court has also gone through the contents of the application filed by the petitioners for seeking interim bail on debilitating medical grounds. It is contended that the petitioner No. 2 is an old, aged and infirm person and is in precarious condition of health due to cervical ankylosing spondylitis, acute diabetes, High Blood Pressure, Digestive issues due to removal of gall bladder, open heart by-pass surgery (CABG), and HLB 27 positive (acute arthritis) due to which the petitioner No. 2 is having great difficulty in even getting up or laying down on floor and has to continually sit up, has very high BP and blood sugar and is undergoing great mental depression and is complaining of mild angina pain while in jail.

28. A report of Medical Officer I/C, Central Jail No. 5 is on record, in which it is submitted that the petitioner No. 2 is under regular follow up by medicine S/R and all prescribed medicines are given from CJ-05 dispensary. The petitioner No. 2 was also sent to DDU Hospital in Ortho Department for further management where ortho specialist advised certain medications and hot water fomentation.

29. It is an admitted case of the petitioner No. 2 that the petitioner No. 2 is behind bars for four and half months and is being treated by the Jail Authorities. There is no averment in the application that the petitioner No. 2 is not being treated properly in jail or any specific treatment is declined to the petitioner No. 2.

30. In the facts and circumstances of the present case, this Court is not inclined to grant interim bail to the petitioner No. 2, at this stage.

31. However, considering the medical condition of the petitioner No. 2 and in the interest of justice, this Court is of the opinion that the purpose of petitioner No. 2 would be served if the Jail Superintendent is directed to ensure the appropriate and proper treatment of the petitioner No. 2. It is ordered accordingly. Petitioner

No. 2 shall also be at liberty to take the treatment from a doctor of his own choice and after taking prior appointment of the doctor of his choice, the Jail Superintendent shall ensure that the petitioner No. 2 is taken to such doctor in custody, in civil cloths, for his treatment.

32. With aforesaid directions, the present application stands disposed of.

Crl. M.A. No. 2783/2016 (for directions)

33. By this application filed under Section 427 of Cr. P.C., the petitioner seeks directions with regard to the sentence imposed upon petitioner No. 2 in 18 separate criminal complaints to undergo simple imprisonment for a period of one year, in each case, may be ordered to run concurrently.

34. The argument advanced by the learned Senior Counsel for the petitioners is that though the petitioner No. 2 has been convicted in 18 separate cases but all the orders sentencing him to undergo simple imprisonment for a term of one year be directed to run concurrently. In support of his submission, learned Senior Counsel for the petitioners relied upon the judgment in Pankaj Kumar vs. Sunil Kumar Vaid, , 2011 (125) DRJ 343.

35. I have heard the submissions made by learned Senior Counsel for the petitioners and gone through the contents of the present application and this Court is of the opinion that the petitioner No. 2 may raise his contentions with regard to the present application, at the time of final hearing of the revision petition.

36. With aforesaid directions, the application stands disposed of.

Crl. Rev. P. No. 141/2016

37. The facts and circumstances of the case culminated into not entitling the petitioner for suspension of sentence as discussed above, at this stage. However, the interest of justice would be secured, if the final hearing of the matter is expedited.

38. In view of the discussions made above, the case is ordered to be listed for final hearing on 5th May 2016, to secure the ends of justice.

39. List all other 17 revision petitions and the present revision petition for final disposal on 5th May 2016.

40. A copy of this order be given dasti.