
(2012) 03 CAL CK 0037
In the Calcutta High Court
Case No : C.R.R. No. 1429 of 2011

Soumen Mallick @ Bappa

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 357(3), 389
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2012) 4 BC 191 : (2012) 2 CALLT 653 : (2012) 3 CHN 342

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Debabrata Acharyya, for the Appellant; Manjit Singh, Anand Keshari and Mr. Pawan Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of a convict and is directed against the order dated April 18, 2011 passed by the learned Sessions Judge, Alipore in Criminal Appeal No.44 of 2011 thereby suspending the operation of sentence upon condition that the convict shall deposit a sum of Rs.50,000/- in the Court of the learned Judicial Magistrate within a period of 15 days in default the order of stay shall stand automatically vacated. The convict/petitioner herein was sentenced to suffer simple imprisonment of 20 days and to pay a compensation of Rs.1 lakh only in a complaint case being Case No.3063 of 2004 u/s 138 of the Negotiable Instruments Act. He preferred an appeal being the Criminal Appeal No.44 of 2011 and while admitting the appeal, the learned Sessions Judge imposed a condition as indicated above. Being aggrieved, this application has been preferred.

2. Upon hearing the learned Counsel for the parties and on going through the materials-on-record, I find that the criminal case was started at the initiation of the private opposite party on the allegation that the convict was to pay a sum of

Rs.64,000/- to the private opposite party as such a cheque was issued and the said cheque was bounced. Thereafter, after observing formalities as required under the provisions of the said Act, the said criminal case was lodged.

3. Upon considering the evidence on record, the concerned learned Magistrate convicted and sentenced the petitioner to suffer simple imprisonment of 20 days and to pay compensation of Rs.1 lakh only as indicated above. Being aggrieved by the conditional order of stay of the operation of the sentence as passed by the learned Sessions Judge, this application has been preferred.

4. Mr. Debabrata Acharyya appearing on behalf of the convict submits that since the cheque was to the extent of Rs.64,000/- only and the order of deposit of Rs.50,000/- as directed almost covers the most part of the amount mentioned in the cheque and the amount to be deposited as condition for stay becomes excessive and not at all reasonable and so, the impugned order should be set aside. He has also contended that as per Article 21 of the Constitution, since the offence is bailable, the convict is entitled to prefer an appeal and if any unreasonable amount is to be paid as a condition for stay, then the convict may be frustrated because of inability to deposit such an amount. He has also referred to the decision of Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. reported in (2007) 3 SCC (Cri) 209 and thus, he submits that as per Paragraph No.s 65, 66 and 69, the amount of compensation to be paid must be a reasonable one and the condition for suspending the sentence should also be reasonable. Since, in the instant case, the convict was directed to pay most of the amount mentioned in the cheque, the impugned order cannot be said to be reasonable. If the Magistrate would have directed the convict to deposit 50 per cent of the cheque amount, it could be said reasonable.

5. With due respect to Mr. Acharyya appearing for the petitioner, I hold that the submissions referred to above cannot be accepted. While granting an order of stay of the operation of sentence, the Appellate Court is at liberty to impose conditions as per Section 389 of the Code of Criminal Procedure and he has exercised such power in the instant case. The learned Sessions Judge, simply directed the convict to deposit 50 per cent of the compensation of Rs.1 lakh only as a condition for stay. It may be noted herein that the compensation has been awarded u/s 357(3) of the Code of Criminal Procedure, 1973. Such amount of Rs.50,000/- is less than the amount mentioned in the cheque and the amounts shall be kept as deposit only in the Court and is not being paid to the complainant of the case. So, if anyway he is acquitted of the charge, he may be directed to withdraw the money. Anyway, it is a matter of hearing of an appeal and so, the quantum of deposit as directed by the learned Sessions Judge cannot be said to be excessive. So far as the decision of Dilip S. Dahanukar (Supra) is concerned, I find that in that decision the concerned accused persons were directed to pay a sum of Rs.15 lakhs as compensation beside the sentence and the Appellate Court, while admitting the appeal, directed the two accused persons to deposit a sum of Rs.5 lakhs each within 4 weeks from date. It was

held that the amount was excessive and both the accused persons were directed to deposit a sum of Rs.1 lakh within a period of 4 weeks from the date. So, it was held that the amount was excessive. Again their liability was vicarious u/s 141 of the Negotiable Instruments Act.

6. In the instant case, the amount of money to be deposited as part of the compensation cannot be stated to be excessive at all and there is no question of vicarious liability. So, the ratio of the decision, I hold, is not applicable in the instant situation. The impugned order does not suffer from incorrectness, impropriety or illegality.

7. In that view of the matter, I am of the opinion that there is no scope of interference with the impugned order.

8. The criminal revisional application is, therefore, devoid of merits and is dismissed.

9. Considering the circumstance, there will be no order as to costs.

10. However, time to make deposit as per order of the learned Sessions Judge is extended to 10 days from date. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.