

(2005) 05 DEL CK 0128

In the Delhi High Court

Case No : Criminal R.P. 219, 220, 221 and 222-24 of 2005

Vishnu Promoters Pvt. Ltd. and Others

APPELLANT

Vs

Smt. Sushila Singhal and Others

RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

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

Citation : (2006) 2 ALD(Cri) 3 : (2006) 130 CompCas 631 : (2005) 120 DLT 339 : (2005) 82 DRJ 261 : (2005) 141 PLR 55 : (2005) 3 RCR(Criminal) 905

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Chetan Sharma, Sanjeev Tiwari and Amit Ojha, for the Appellant;
G.D. Chopra and Om Prakash Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Malhotra, J.—By this order, two revision petitions filed by the petitioners are being disposed of together, impugned order being common in both the revision petitions.

2. Petitioners in this case stand convicted for commission of offence punishable u/s 138 of Negotiable Instruments Act. The Metropolitan Magistrate while recording conviction, sentenced the petitioners to pay fine of Rs.5,000/- besides directing them to pay compensation of Rs.2,50,000/- and Rs.6,00,000/- respectively in each case, as provided u/s 138 where Magistrate has been empowered to impose fine which may extend twice the amount of the cheque. The conviction and sentence part was assailed by the petitioners by way of preferring appeal before Additional Sessions Judge. The petitioners also made application u/s 389 Cr.P.C. seeking suspension of sentence and grant of bail till the disposal of the appeal.

The learned Additional Sessions Judge while dealing with that application ordered for their release with the condition that the petitioners shall deposit the cheque amount in the court and simultaneously ordered that the amount so deposited by

them shall not be disbursed to the respondents till final decision. The order passed by the Additional Sessions Judge is being challenged in this court only to the extent of the order of deposit of the cheque amount.

3. It is urged by learned counsel for the petitioners that this part of the order is contrary to law as the learned Additional Sessions Judge in fact acted as a civil court for effecting recovery of the cheque amount and thus made it impossible for the petitioners to seek their release because of the stringent condition which even otherwise, according to learned counsel for the petitioner could not have been imposed while making an order for grant of bail. To support such contention, he placed reliance on an authority reported in Sandeep Jain Vs. National Capital Territory of Delhi Rep. by Secretary, Home Deptt., where too, a question had arisen if such onerous condition could be imposed at the time of dealing with the bail application. I have looked into that authority. Facts of that case are completely different from the one in hand. In that case during the course of investigation, the accused was ordered to pay a sum of Rs.2,00,000/- as a condition for bail whereas in the present case, the petitioners have since been found guilty for commission of offence punishable u/s 138 of the Negotiable Instruments Act which provision otherwise provides and empowers the Magistrate to impose fine which may extend twice the amount of the cheque. The Magistrate while recording conviction and warding sentence had slapped that fine on the petitioners. The Additional Sessions Judge before whom appeal was assigned had only ordered for deposit of the cheque amount and not double the amount of the cheque.

4. Learned counsel for the respondent while justifying the order of the Additional Sessions Judge placed reliance on a judgment of Supreme Court reported in AIR (2001) SCC 416 where exactly similar question as mooted here in this case had arisen for consideration of the Apex Court. There too petitioners were found guilty under the provision of Section 138 of the Negotiable Instruments Act and had applied for suspension of sentence and grant of bail. The high court while entertaining his revision ordered suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time. Petitioner being dissatisfied with that order approached the Supreme Court. Their Lordships Hon'ble Mr. Justice K.T. Thomas and Hon'ble Mr. Justice R.P. Sethi while dealing with that aspect of the matter observed as under:-

"We feel that while suspending the sentence for the offence u/s 138 of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal."

5. The authority cited by learned counsel for the respondent aptly applies to the case in hand. Even otherwise, Additional Sessions Judge did not order for deposit of fine as awarded by Metropolitan Magistrate, Additional Sessions Judge only ordered for deposit of cheque amount and that too was to remain in the court

and not to be paid to the respondent till the disposal of appeal. The learned Additional Sessions Judge at best could say that such amount be kept in fixed deposit receipt so that interest could be accrued on that amount and winning party could have had the benefit of that.

6. There is no impropriety, illegality or infirmity found in the impugned order and thus there is no reason to interfere while exercising the revisional jurisdiction of this court. However, it is ordered that the amount when deposited shall be kept in FDR as observed above.

7. Both the revision petitions are accordingly dismissed.