



IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

S.B. CRIMINAL MISC. PETITION NO.1356/2009

Amarveer Singh vs. State of Rajasthan & Ors.

Date of Order: 10/09/2009

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE



Mr. Jitendra Mitrucka]
Mr. Harish Sharma], for the petitioner.
Mr. Javed Choudhary, Public Prosecutor.
Mr. Keshav Agarwal, for the respondents.

As agreed by the parties, the matter is being finally heard.

2. The petitioner has filed this criminal miscellaneous petition challenging the order dated 17.07.2009 passed by the learned Additional District and Sessions Judge (Fast Track) No.4, Jaipur City, Jaipur, whereby an application under Section 389 Cr.P.C. was decided, imposing a condition of depositing 50% of fine in the trial court. Further, it was ordered that the accused petitioner shall execute a bond of Rs. 20,000/- and one surety of the like amount, for his appearance before the Appellate Court. The said order was to be complied within 15 days. Thereupon, the sentence awarded to the petitioner was ordered to be suspended during the pendency of the appeal.

3. In short, the facts of the case are that the non-petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act. It was alleged in it that a cheque No. 000026 dated 05.04.2005 of Kotak Mahindra Bank, of a amount of Rs. 12,50,000/-, was issued in favour of the



complainant. Thereafter the petitioner, through his counsel, appeared before the learned trial court. Subsequently, on account of unavoidable circumstances and error on the part of his counsel that the bail bonds of the petitioner were forfeited on 29.05.2009. On having the knowledge of forfeiture of the bail bonds, the petitioner surrendered before the learned trial court on 08.07.2009 and he was sent to judicial custody. A bail application filed by the petitioner was rejected by the trial court on 09.07.2009. Since then, petitioner is behind bars. Thereafter, the petitioner filed another bail application under Section 439 Cr.P.C. before the learned District and Sessions Judge, Jaipur City, Jaipur which was transferred to Special Court for Fake Currency, Jaipur.

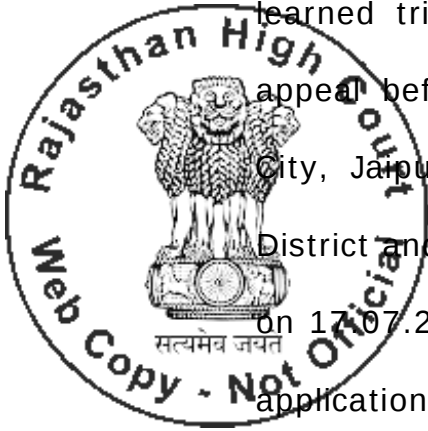


Meanwhile, the learned trial court proceeded in the matter. The petitioner had submitted an application before the learned trial court on 10.7.09, with the request that his counsel may be afforded an opportunity for submitting final arguments. Again on 15.07.2009, an application with similar prayer was filed before the learned trial court i.e. Judicial Magistrate No.23, Jaipur City, Jaipur. The learned trial court rejected the first application filed by the petitioner seeking opportunity of submitting the final arguments through counsel, on 13.07.2009. Subsequently, the second application filed on 15.07.2009 was rejected by the learned trial court, on the same day. The learned trial court, after rejecting the aforesaid applications also decided the case by its judgment dated 15.07.2009, whereby the petitioner was convicted for the offence under Section 138 of the



Negotiable Instruments Act and sentenced for two years S.I.. Furthermore, it was ordered that the accused shall pay to the complainant an amount of Rs. 15 lacs as compensation.

Feeling aggrieved of the said judgment passed by the learned trial court on 15.07.2009, the petitioner preferred an appeal before the learned District and Sessions Judge, Jaipur City, Jaipur which was transferred to the Court of Additional District and Sessions Judge (Fast Track) No.4, Jaipur City, Jaipur on 17.07.2009. Alongwith the appeal, the petitioner had filed an application under Section 389 Cr.P.C. for suspension of sentence



awarded by the learned trial court, during the pendency of the appeal. The learned Appellate Court had then decided the application for suspension by the impugned order dated 17.07.2009 (Wrongly mentioned as 15.07.2009). The sentence awarded to the petitioner was ordered to be suspended by imposing a condition on the petitioner to pay 50% of fine before the learned trial court within a period of 15 days.

4. The counsel for the petitioner had urged before the Appellate Court that as the petitioner was behind bars since 08.07.2009 and is the only earning member of his family, he cannot arrange the amount without having an opportunity to do so, after being enlarged on bail. Therefore, it was requested that he may be released on bail so as to make arrangement of the amount, in terms of the order. The learned Appellate Court rejected the request made by the counsel for the petitioner. Therefore, the accused petitioner has preferred this



miscellaneous petition challenging the order dated 17.07.2009 passed by the learned Appellate Court by which a condition of depositing 50% of fine has been imposed on him. It has been prayed that the impugned order by which the condition of depositing 50% of fine has been imposed, while suspending the sentence, may be quashed and set aside and the petitioner may be released after furnishing the requisite bail bonds.



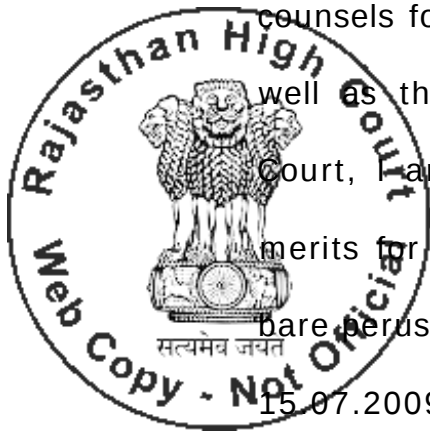
The learned counsel for the petitioner has submitted that the impugned order passed by the learned Appellate Court is a sheer abuse of process of the court because he has imposed a condition of depositing 50% of the fine while suspending the sentence during the pendency of the appeal, which is not only onerous but wholly illegal. Further, he has submitted that imposing of such condition tantamounts to depriving the petitioner from being released on bail during the pendency of the appeal because it would be difficult for him to fulfill the condition as being in jail since 08.07.2009. He has also submitted that it is extremely difficult for the petitioner to make arrangement to deposit 50% of the fine which amounts to Rs. 7,50,000/- and this would amount to refusal of suspension of sentence during the pendency of the appeal.

6. On the other hand, the learned Public Prosecutor assisted by the counsel for the complainant has supported the order impugned passed by the learned Appellate Court. They have submitted that it is the discretion of the court concerned to



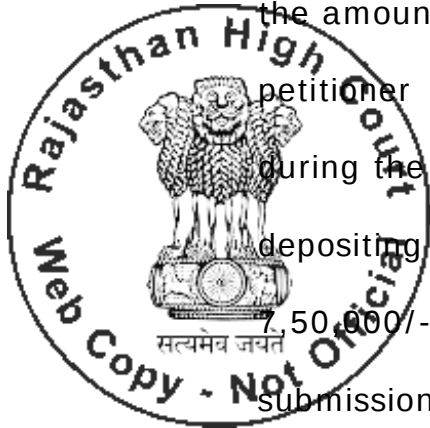
impose condition, while passing an order of bail, which it deems fit.

7. On having considered the submissions made by the counsels for the rival parties and the facts and circumstances as well as the order impugned passed by the learned Appellate Court, I am of the opinion that this miscellaneous petition has merits for the reasons more than one. It is to be noted that a bare perusal of the judgment passed by the learned trial court on 15.07.2009 goes to show that it had convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him for two years' S.I. Further, it was ordered that the accused petitioner shall pay to the complainant an amount of Rs. 15 lacs as compensation. The order impugned passed by the learned Appellate Court is a glaring example of non-application of judicious mind and having been passed in haste, so much so that the learned Appellate Court has ordered that the petitioner shall deposit 50% of the amount of fine before the learned trial court. It had also been ordered that for the appearance of the petitioner before the learned Appellate Court he shall execute bonds of Rs. 20,000/- and a surety of the like amount to the satisfaction of the learned trial court and on doing so, the sentence awarded to the petitioner was ordered to be suspended till the decision of the appeal. It is apparent from the order impugned that it is ex-facie illegal because the learned trial court vide his judgment dated 15.07.2009 had never sentenced the petitioner by way of fine.





8. Moreover, apart from the request made before the learned Appellate Court that as the petitioner is in custody since 08.07.2009 and being only earning member of his family, it would be difficult for him to make arrangement for depositing the amount ordered for, it was also urged by the counsel for the petitioner that while suspending the sentence of the petitioner during the pendency of the appeal, such an onerous condition of depositing 50% of the amount of fine, which comes to Rs. 7,50,000/-, is not permissible under law. In support of his submission, the learned counsel for the petitioner had submitted some case law which has been mentioned in the order impugned. But, not only the aforesaid submission made by the counsel for the petitioner was brushed aside but even the case law cited before the learned Appellate Court was ignored in a cursory manner without considering the ratio and the principle laid down in the said judgments.

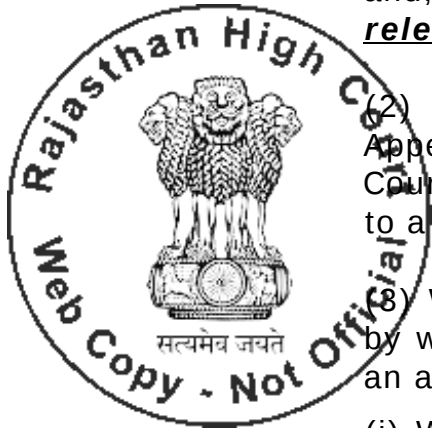


9. An important aspect of the present matter and noticed by this Court is **that a trend has been developed by the learned courts below where onerous conditions are being imposed while suspending the sentence and releasing the accused on bail during pendency of the appeal. Therefore, it is considered necessary that the issue be taken up in detail by this Court.** It would be relevant to refer the provisions of law with regard to release on bail of an accused under Sections 389, 437, and 439 Cr.P.C., which read as under:-



“389. Suspension of sentence pending the appeal; release of appellant on bail.-(1)

Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.



(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a court subordinate thereto.

(3) Where the convicted person satisfies the court by which he is convicted that he intends to present an appeal, the court shall, -

(i) Where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) Where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of 'imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

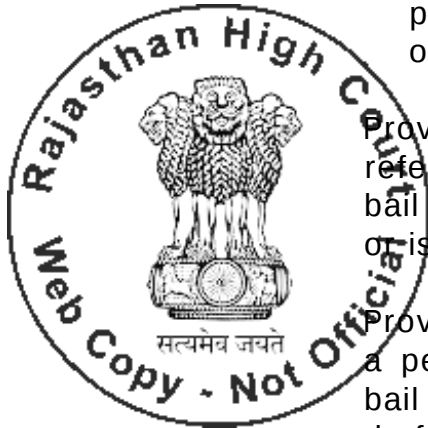
“437. When bail may be taken in case of non-bailable offence.

¹[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but-

(i) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;



(ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:



Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court.]

[Provided also that no persons shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, ²[the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code 45 of



1860 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the court may impose any condition which the court considers necessary-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) Otherwise in the interests of justice.

(4) An officer or a court releasing any person on bail under sub-section (1), or sub- section (2), shall record in writing his or its ³ [reasons or special reasons] for so doing.

(5) Any court which has released a person on bail under sub-section (1), or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to Custody.

(6) If, any case triable by a Magistrate, the trial of a person accused of any non bailable offence is not Concluded within a period of sixty days from the first date fixed for - taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non bailable offence and before Judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

439. Special powers of High Court or Court of Session regarding bail.(1) A High Court or Court of Session may direct.

(a) That any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any





condition, which it considers necessary for the purposes mentioned in that sub-section;

(b) That any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."



10. The suspension of sentence is to release the accused on bail. In fact, the very heading of Section 389 Cr.P.C., states that "**suspension of sentence pending the appeal; release of appellant on bail.**" Furthermore, the said provision has empowers the appellate Court to see that the execution of sentence or order appealed against, be suspended and also if he is in confinement that he be released on bail. Similarly, the said provision, in different eventuality, mentions about release of the accused on bail.

11. When a matter is considered fit for hearing and the substantive sentence of the petitioner is ordered to be suspended then imposition of condition of payment of amount, out of fine or compensation, is not at all justified. This would mean that if a person who is not in a position to make payment



of the said amount, his sentence would not be suspended and he would be deprived of hearing of appeal and will have to undergo sentence, although ultimately he may be acquitted. Poverty of the accused should not come in the way of hearing the appeal or suspension of sentence in case the appeal is found to be worth hearing.



12. It is to be noted that the Hon'ble Supreme Court had observed in the case of ***Gudikanti Narasimhulu & ors. Vs. Public Prosecutor, High Court of Andhra Pradesh, AIR 1978 SC 429*** that “Bail or jail?” at the pre-trial or post-conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. Further, it observed:

“personal liberty, deprived when bail is refused is too precious a value of our constitutional system recognised under Art.21 of the Constitution that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community.”

13. Later, in the celebrated judgment of the Hon'ble Supreme Court in ***Moti Ram & ors. Vs. State of Madhya Pradesh, AIR 1978 SC 1594***, it has considered the aspect of poverty while dealing with the cases of bail. It observed that:

“the reality of this caricature of equal justice under the law, whereby the power are prized out of the liberty in the justice market is the grievance of the petitioner. He has filed the criminal appeal in this court and he has



obtained an order for bail in his favour, to the satisfaction of the Chief Judicial Magistrate. The directions of this Court did not spell out the details of the bail, and so, the Magistrate ordered that a surety in a sum of Rs. 10,000/- be produced. The petitioner could not afford to procure that huge sum or manage a surety of sufficient prosperity. Further, the Magistrate demanded sureties from his own district. He refused to accept the suretyship of the petitioner's brother because he and his assets were in another district."



Further, in Para 30 and 31 of the judgment, the

Hon'ble Supreme Court has observed as under:-

"30. Even so, poor men -Indians are, in monetary terms, indigents -young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances -put whatever reasonable conditions you may.

31. It shocks one's conscience to ask, a mason like the petitioner to furnish sureties for Rs. 10,000. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by "We, the People of India", is meant for the butcher, the baker and the candle-stick maker- shall we add, the bonded labour and pavement dweller."

14. In the case of **Hussainara Khatoon & ors. Vs.**

Home Secretary, State of Bihar, Patna, AIR 1979 SC 1360,

it was held thus:

"Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre trial detention is highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code



enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family. It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor."

Further, it observed in Para 4 that:



“But even under the law as it stands today the courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good.”

It also observed as under:-



“But even while releasing the accused on personal bond it is necessary to caution the court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond.”

15. In the light of the question involved in this matter, it is significant to notice the observations made by the Hon'ble Supreme Court in the case of **Jolly George Varghese Vs. Bank of Cochin, (1980) 2 SCC 360**, wherein in Para 10 reads as under:

"Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi's case [1978] 1 S.C.R. 248 as developed further in Sunil Batra v. Delhi Administration, Sita Ram and Ors. v. State of U.P. and Sunil Batra v. Delhi Administration lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is



appalling. To be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to Section 51 C.P.C. and the lethal blow of Article 21 cannot strike down the provision, as now interpreted."



16. Subsequently, in the case of **Keshab Narayan Banerjee & Anr. Vs. State of Bihar, AIR 1985 SC 1666**, the

Hon'ble Supreme Court has held that:-

"The condition imposed by the High Court for enlarging Keshab Narayan Banerjee, appellant No.1 on bail, namely, that he should furnish security for rupees one lakh in cash or in fixed deposit of any nationalised bank in Bihar with two sureties residing in the State of Bihar each for a like amount appears to be excessively onerous. In the circumstances of this case, it virtually amounts to denial of bail itself. "

17. Again, in the later case of **Sheikh Ayub Vs. State of M.P., (2004) 13 SCC 457**, the Hon'ble Apex Court held, in Para 3 and 4, as under:

"By the impugned order the appellant was granted bail and directed to deposit Rs. 2,50,000 which is alleged to be the amount misappropriated by the appellant. There was also condition for furnishing surety bond for Rs. 50,000. In the circumstances of the case, direction to deposit Rs. 2,50,000 was not warranted, as part of the conditions for grant bail.

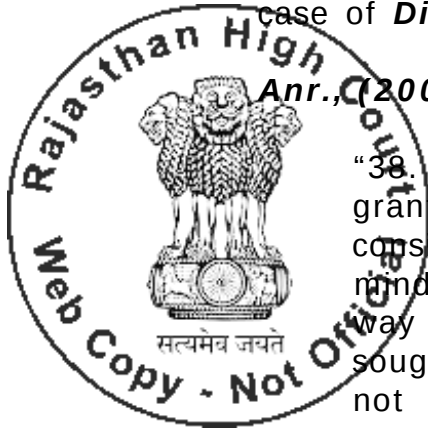
Hence, the direction to deposit Rs. 2,50,000 is deleted and subject to this modification the order passed by the learned Single Judge granting bail is confirmed."



18. While considering the question of imposition of fine, and grant of compensation, the Hon'ble Supreme Court in the

case of *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. &*

Anr., (2007) 6 SCC 528 observed in Para 38 and 39 as under:



“38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.”

“39. If a fine is to be imposed under the Act, the amount of which in the opinion of the Parliament would be more than sufficient to compensate the complainant; can it be said, that an unreasonable amount should be directed to be paid by the Court while exercising its power under sub-Section (3) of Section 357? The answer thereto must be rendered in the negative. Sub-Section (5) of Section 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a Civil Court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the Civil Court, in this behalf, for realization of the amount in question must also be borne in mind. **A criminal case is not a substitution for a civil suit, far less execution of a decree which may be passed.**”

Further, it held in Para 43 that :



“It does not appeal to us that although a compensation payable out of the quantum of fine would remain stayed under sub-Section (2) of Section 357 of the Code, if a compensation is directed to be paid under sub-Section (3) thereof, the same would not attract the said provision. [See *P. Suresh Kumar v. R. Shankar*, 2007 (4) SCALE 143]”



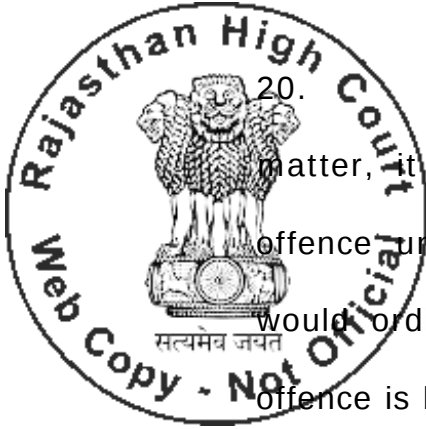
In the said case of Dilip S. Dahanukar (supra), the Hon'ble Supreme Court had taken note of the observations made in the case of ***Stanny Felix Pinto Vs. Jangid Builders (P) Ltd.***, (2001) 2 SCC 416 and observed in Para 49, thus:

“49. We are, however, not oblivious of the fact that in *Stanny Felix Pinto vs. Jangid Builders Pvt. Ltd. & Anr.* [(2001) 2 SCC 416], Thomas, J. opined that while entertaining revision applications, a part of the fine should be directed to be deposited but therein this Court had no occasion to consider the provisions of Section 357 of the Code in details.”

Even in cases where the condition of the nature that the accused should furnish local sureties, it has been consistently held to be onerous and contrary to principle of law. As back as in the year 1986, the High Court in the case of ***Parej Khan Vs. State***, 1986 Cr.LR (Raj.) 611 had held that rider of local surety is in contrvention of settled principle of law. The said view was followed in the case of ***Sahzed & Anr. Vs. State of Raj.***, 1992 RCC 56. Later on another Bench of the High Court had taken a similar view in the case of ***Prahalad Vs. State*** (2006) 1 RCC 214. The same view was taken by this Court in the case of ***Dashrath Singh Vs. State*** 2009 (2) RLW 1416. In other words, the learned courts below are not to



impose condition of any nature while suspending the sentence/ granting bail to an accused which amounts to be onerous. Such imposition is virtually denial of bail to the accused even though he is entitled for the same, otherwise.



20. Therefore, in view of the question involved in this matter, it is to be noted that an accused for commission of offence under Section 138 of the Negotiable Instrument Act would ordinarily be granted bail in view of the fact that the offence is bailable one. Therefore, an accused is not to be taken in custody during trial. Likewise, while exercising appellate powers, a person should not be made to suffer imprisonment only because the conditions imposed for suspending the sentence are harsh.

Consequently, this Misc. Petition is allowed. The impugned order dated 17.7.09 to the extent of imposing condition of depositing 50% of fine, is quashed and set aside.

The Registrar General of this Court is directed to circulate a copy of this order to all the appellate courts in respect of an offence under Section 138 of the Negotiable Instruments Act, 1881.

(RAGHUVENDRA S. RATHORE),J.

Gandhi/-P.A.