

ABC 2016 (I) 523 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(G.B. Shah , J.)
Criminal Revision Application (Against Conviction Negotiable
Instrument Act) No. 256 of 2016
With Criminal Revision Application No. 258 of 2016
Decided on 19 April, 2016

ASHOKBHAI JAYANTIBHAI PATEL - Appellant(s).
Versus
STATE OF GUJARAT & ANR. - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 439 – Negotiable Instruments Act, 1881 – Section 138 – Imposition of Short sentence & compensation by the Courts below – Relying on ratio of judgment in Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another – the applicant was directed to deposit a sum of Rs.5 lakh – without prejudice to his rights and contentions and subject to final outcome of the revision applications – if the appeal succeeds original complainant is bound to return the aforesaid amount to the applicant – Sentence suspended – Bail granted. (Para 6)

(B) Criminal Jurisprudence – Constitution of India – Article 21 r/w Sec. 374, CrPC – A right of appeal – Code of Criminal Procedure, 1973 – Section 357(2) – Direction for compensation – Staying of – the application thereof should ordinarily be directed to be stayed – It will, therefore, be for the court to stay the operation of that part of the judgment whereby & whereunder compensation has been directed to be paid – which would necessarily mean that some conditions therefor may also be imposed – A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount – Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another – Relied. (Para 3.2)

Law of relief:- As a convicted person can be released on bail, the application of order of compensation should ordinarily be directed to be stayed.

Held:- Accordingly, I have heard the learned advocates appearing for the respective parties. Ms. Megha Jani placed reliance upon a decision of the Hon'ble Apex Court in the case of Dilip S.

Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another, reported in (2007) 6 SCC 528, more particularly, para 55, which reads as under:

"Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinabove that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the court can release a person on bail having regard to the nature of offence but as also the other relevant factors including its effect on society. A person upon arrest may have to remain in jail as an undertrial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to subsection (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount." (Para 3.2)

Having heard the learned advocates for the parties and taking into consideration the aforesaid decision of the Hon'ble Apex Court in the case of Dilip S. Dahanukar (supra) and in the facts and circumstances of the case, I am of the opinion that ends of justice would meet if the applicant is directed to deposit a sum of Rs.5 lakh, on or before, 30th April 2016 before the trial Court concerned without prejudice to his rights and contentions and subject to final outcome of the present revision applications and the trial Court concerned, shall release the said amount in favour of the respondent No. 2 herein - original complainant by way of an A/c. Payee Cheque, following due procedure, on the respondent No. 2 furnishing a solvent surety of the like amount and accordingly, the substantive sentence of imprisonment, imposed by the trial Court and confirmed by the first Appellate Court, is suspended during the pendency of the

3. Direct service today, is permitted."

3. On 18/04/2016, Mr. C. B. Gupta, learned advocate, put in appearance on behalf of respondent No. 2 - original complainant . a

3.1 Ms. Jani, the learned advocate for the applicant, drew my attention towards the amended prayer para 10(DD) and requested to hear the matter on the said amended prayer, which reads as under:

"That pending the hearing and final disposal of this petition, the Honorable court be pleased to suspend the sentence and order of conviction passed in order dated February 16, 2015 passed by the 31st Additional Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 647 of 2013 and common order dated March 31, 2016 passed by the City Sessions Court, Ahmedabad in Criminal Appeal No. 77 of 2015 and Criminal Appeal No. 100; &" b c

3.2 Accordingly, I have heard the learned advocates appearing for the respective parties. Ms. Megha Jani placed reliance upon a decision of the Hon'ble Apex Court in the case of *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another, reported in (2007) 6 SCC 528*, more particularly, para 55, which reads as under: d

"Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinabove that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the court can release a person on bail having regard to the nature of offence but as also the other relevant factors including its effect on society. A person upon arrest may have to remain in jail as an undertrial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to sub-section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori e f g h

a a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount."

b 4. Mr. Gupta, the learned advocate for the respondent No. 2 - original complainant, submitted that in the aforesaid decision, relied upon by the learned advocate for the applicant, while admitting the appeal by the High Court, direction was given to deposit a sum of Rs.5 lakh each within four weeks, which was challenged before the Hon'ble Apex Court. So far as the case on hand is concerned, there are concurrent findings of two learned Courts below based on due appreciation of evidence on record and hence, the said ratio cannot be applied in the present revision applications. He further, showed his willingness to hear the matter finally.

c 5. It is pertinent to note that present Criminal Revision Applications assail the judgment and order dated 16/02/2015, passed by the learned Additional Chief Metropolitan Magistrate, Court No. 31, Ahmedabad in Criminal Case No. 647 of 2013 by which, the present applicant was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the Act') and sentenced to undergo simple imprisonment for one year and compensation of Rs.15 lakh, which was confirmed by the learned Additional Sessions Judge, Court No. 14, City Sessions Court, Ahmedabad by common judgment and order dated 31/03/2016, passed in Criminal Appeal Nos. 77 and 100 of 2015. However, while confirming the aforesaid order of the trial Court, the learned Sessions Judge increased the compensation to Rs.30 lakh from that of Rs.15 lakh. The applicant herein - original accused is sentenced to undergo a short sentence of imprisonment as aforesaid and as submitted by the learned advocate for the applicant, the applicant, at present, is behind the bar. She has further submitted that it is not likely that present revision applications would be heard finally within short time. She further states, upon instructions, that the applicant is ready to pay a sum of Rs.5 lakh to the respondent No. 2 - original complainant, without prejudice to his rights and contentions, however, some time may be given to pay the said amount and accordingly, the sentence imposed upon the applicant may be suspended.

h 6. Having heard the learned advocates for the parties and taking into consideration the aforesaid decision of the Hon'ble Apex Court in the case of Dilip S. Dahanukar (supra) and in the facts and

circumstances of the case, I am of the opinion that ends of justice would meet if the applicant is directed to deposit a sum of Rs.5 lakh, on or before, 30th April 2016 before the trial Court concerned without prejudice to his rights and contentions and subject to final outcome of the present revision applications and the trial Court concerned, shall release the said amount in favour of the respondent No. 2 herein - original complainant by way of an A/c. Payee Cheque, following due procedure, on the respondent No. 2 furnishing a solvent surety of the like amount and accordingly, the substantive sentence of imprisonment, imposed by the trial Court and confirmed by the first Appellate Court, is suspended during the pendency of the present revision applications and the applicant is ordered to be released on bail on his executing a personal bond of Rs.5,000/- and a surety of the like amount with further conditions that the applicant shall:

- (a) surrender passport, if any, to the trial Court within a week;
- (b) not leave India without prior permission of the Trial Court;
- (c) furnish the present address of residence before the trial Court concerned at the time of execution of the bond and shall not change the residence without prior permission of this Court;

6.1 Order accordingly.

6.2 It is clarified that this order would govern by the ultimate outcome of the present revision applications and in case, the present applicant succeeds, the respondent No. 2 - original complainant is bound to return the aforesaid amount to the applicant.

6.3 List on 2nd May 2016.

6.4 Direct service today is permitted.

Result:- Appeal dismissed.

END OF VOLUME