

SUPREME COURT OF INDIA

REPORTABLE

Bench: Justice Vikram Nath and Justice Rajesh Bindal

Date of Decision: January 03, 2024

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024

(@ SPECIAL LEAVE PETITION (CRL.) NO.7433 OF 2019)

SATISH P. BHATT

...APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ANR

...RESPONDENTS

J U D G M E N T

VIKRAM NATH, J.

1. The facts of this case bring to light a situation marked by a persistent disregard for judicial directives and a lackadaisical approach to legal and financial obligations. The behaviour of the Petitioner stands as a testament to how an individual's nonchalant attitude towards financial responsibilities and court orders can undermine the essence of judicial efficacy.
2. The High Court took a firm stance against the appellant's continued failure to fulfil his financial obligations, culminating in the cancellation of his bail and suspension of sentence. This decision, reflecting the frustration of the legal system with repeated non-compliance, sets the stage for our deliberation.
3. Leave granted.
4. The present appeal assails the correctness of the judgment and order dated 23.07.2019 passed by the High Court of Judicature at Bombay cancelling the order of suspension of sentence and bail granted to the appellant as

also the intervenor (petitioner before the High Court) vide order dated 03.07.2018 as they violated the undertaking given before the High Court on 03.07.2018 and recorded in the order of even date and further violated the condition contained in paragraph 3 of the order dated 20.03.2019 granting extension of time to comply.

5. The appellant-Satish P.Bhatt and the intervenor Vishwanath Ramakrishna Nayak were Chairman-cum-Managing Director and ViceChairman of a company by the name of M/s.Astral Glass Private Limited (in short the AGPL). The company AGPL as also the appellant and the intervenor were convicted for offence under Section 138 of the Negotiable Instruments Act, 1881¹ vide judgment and order of the Trial Court dated 26.08.2011 in three separate cases and were awarded sentence of ten months with total liability of Rs.5 crores cumulatively in all the three cases. The operative portion of the conviction and sentence as recorded by the Trial Court in one of the cases is reproduced hereunder:

“I) Accused No.2 Mr.Satish Padamanath Bhat, aged 54 years and accused no.3 Mr.Vishwanath Ramakrsishna Nayak, aged 50 years both r/o.Borivali (E), Mumbai-400 066 are hereby convicted vide provisions under Section 255(2) of Cr.P.C. for offence under Section 138 of Negotiable Instruments Act and they are sentenced to suffer Simple Imprisonment for 10 (ten) months each.

II) Both accused shall also to pay in total Rs.1,10,00,000/- (Rupees one crore and ten lakhs only) as compensation to Complainant vide provisions under Section 357(3) of Cr.P.C. within 3 months. In default to suffer further Simple imprisonment for 6 (six) months each. III) Cash security of Rs.3000/- of accused no.2 shall stand continued till appeal period is over and P.R. bond of accused no.3 stands cancelled....”

6. Three appeals jointly filed by the appellant, the intervenor as also AGPL were dismissed by the Sessions Court vide common judgment and order dated 30.01.2014. The Sessions Court granted a month’s time to surrender in order to undergo the sentence.
7. Aggrieved by the same, they preferred three revisions before the High Court as originally there were three complaints. Before the High Court the appellant and the intervenor filed an undertaking based on a settlement on 03.07.2018 according to which it was agreed that a total sum of Rs.4,63,50,000/- would

¹ NI Act

- be paid to the complainant-respondent no.2. Out of the said amount Rs.73,50,000/- had already been paid before the appeal Court. As such, the remaining amount of Rs.3,90,00,000/- was to be paid in installments. The payment schedule was also laid down in paragraphs 6 and 7 whereas paragraph 5 mentioned amount of settlement. Paragraph 8 of the settlement mentioned that the said amount would be paid equally by the appellant and the intervenor. However, in default of payment by either of them as per their agreed share in the settlement they would be held liable and would be prosecuted as per law.
8. Based on the undertaking, the learned Single Judge of the High Court passed an order on the same day i.e. 03.07.2018 and granted interim protection by suspending the sentence of imprisonment and they were directed to be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one or more sureties in the like amount. The Court further directed that no further extension shall be granted for payment of the settled amount and fixed 8th October, 2018 for reporting compliance.
 9. As per the undertaking, Rs.2 crores was to be paid on or before 30th September, 2018, in addition to Rs.25 lakhs which was paid on the date of passing of the order. Remaining amount of Rs. 1 crore 65 lakhs was to be paid on or before 15th March, 2019. Thereafter the matter was taken up by the High Court on 20th March, 2019 by which time they had paid only Rs.82 lakhs. Further time was sought to pay the balance amount till 20th April, 2019. The counsel for the complainant pointed out that the amount due was Rs.1,69,10,000/-. The High Court on 20.03.2019 extended the time for payment of Rs.1,69,10,000/- till 20th April, 2019 and further provided that if the said amount was not paid then the order granting bail and also suspending the sentence shall stand cancelled forthwith without further reference to Court.
 10. Thereafter it appears that the present appellant Satish P.Bhatt filed a criminal application in the pending revision on 16th April, 2019 stating that he had paid his share of Rs.1,95,00,000/- being 50% of Rs.3,90,00,000/- as mentioned in the order dated 3rd July, 2018 and, therefore, he may be absolved of the charges and acquitted. On the said application, notice was issued to the complainant on 19th June, 2019 fixing 10th July, 2019. On that date, it was adjourned to 16th July, 2019. Thereafter on 16th July it was adjourned to 23rd July, 2019. On 23rd July, 2019, the High Court passed the impugned order cancelling the suspension of sentence and bail granted vide order dated 3rd

July, 2018 for non-compliance of the undertaking and in view of the order dated 20th March, 2019 wherein while extending the time it was observed that in case of default, the bail order and the suspension of sentence order would stand automatically withdrawn without reference to the Court.

11. Learned counsel for the appellant has sought to argue that out of Rs.3,90,00,000/- his half share would amount to Rs.1,95,00,000/- which has duly been paid and, therefore, the order of the High Court cancelling his bail and suspension of sentence was not warranted and deserves to be set aside.

12. On the other hand, learned counsel for the complainant has submitted that as of date there is still an outstanding amount of Rs.83,10,000/- and has, therefore, claimed that the complainant would be entitled to receive Rs.83,10,000/- along with compound interest @ 12% p.a. from 15th March, 2019 till actual payment is made along with costs against the appellant as also the intervenor.

13. The intervenor has also filed his response and according to him the partnership between the appellant and the intervenor was in the ratio of 60:40 and that they had actually agreed to pay the settled amount of Rs.4,63,50,000/- in that proportion as per their shares in the firm. It is also his case that the amount of Rs.73,50,000 had been paid by him alone prior to 03.07.2018 during the time when the appeal was pending before the Sessions Court and, therefore, he was entitled to adjustment of the said amount. Further his case is that out of the settled amount to be paid to the complainant i.e. Rs.4,63,50,000/- his share being 40%, the amount liable to be paid by him would be Rs.1,85,00,000/-. As he had paid Rs.73,50,000 earlier he was liable to pay a further amount of Rs.1,11,90,000/-. According to him, he has paid the said amount of Rs.1,11,90,000/- after the order dated 03.07.2018. The outstanding amount of Rs.83,10,000/- falls in the share of the appellant whose total liability being 60% of the settled amount would come to Rs.2,78,10,000/- and he having paid only Rs.1,95,00,000/- there is a shortfall of Rs.83,10,000/- which the appellant should pay.

14. It is further submitted that the intervenor is being unnecessarily suffering because of remaining amount not being paid by the appellant. It is also the case of the intervenor that as per the e-mails exchanged between them which have been duly placed on record prior to the undertaking dated 03.07.2018, it was decided and agreed between them that the amount would be paid as per their respective shares i.e. in the ratio of 60:40. The said exchange of e-mails and the draft settlement was also shared with the lawyer

- and the same was duly accepted. The intervenor was not dealing with the lawyer directly and it was the appellant who was dealing with the lawyer. The appellant has mischievously and fraudulently altered the words “as per the respective shares” by substituting it with “equally”. The intervenor was hurriedly made to sign the undertaking on the date it was being filed i.e. 03.07.2018 and he trusted the appellant and the lawyer who was appearing for both of them. It is further stated that the intervenor has also filed before the High Court by way of a modification application to deal with this aspect of the matter, which application is still pending.
15. We have perused the undertaking dated 03.07.2018 as also the order dated 03.07.2018 and also the subsequent orders passed by the High Court. It is apparent from the same that the complainant was entitled to receive a total amount of Rs.4,63,50,000/-. The undertaking as also the order dated 03.07.2018 clearly mention that both of them will pay the amount equally as agreed by and between them and it further contains a stipulation that in default of the payment by either of them as per their agreed share in the settlement, they shall be held liable and prosecuted as per law.
16. The settlement between the two directors i.e. the appellant and the intervenor is *inter se* these two only and the complainant is not bound by the same. Complainant’s agreement or consent was only to the extent of accepting Rs.4,63,50,000/- only. He was not a signatory to the agreement which was signed by the two parties. Admittedly, both the appellant and the intervenor were Chairman and Vice-Chairman of the company AGPL and, therefore, were convicted by the Trial Court and their conviction was affirmed by the Appellate Court.
17. We are not inclined to go into this question as to who is to pay how much amount. The fact remains that the total amount agreed to be paid has not been paid and as per the order of the High Court dated 20.03.2019 the revisionists being in default in payment of the agreed amount, the interim protection granted by way of bail and suspension of sentence, would stand withdrawn without reference to the Court. We find no infirmity in the impugned order.
18. There is a protection provided by this Court vide order dated 26.08.2019 regarding stay of arrest, as a result of which the appellant and the intervenor have still not undergone the sentence. On the other hand, the complainant has still not reaped not only the fruits of the order dated 03.07.2018 but also of the order of the Trial Court dated 26.08.2011. He agreed to receive a much

lesser amount than he was entitled to under the order of the Trial Court. He has been litigating since 2007 almost 16 years by now.

19. We, accordingly, do not find any illegality in the order passed by the High Court. The appeal is accordingly dismissed with costs quantified at Rs. 5 lakhs to be paid to the respondent No. 2 (Complainant) within four weeks from today. It is clarified that this amount of costs will not be adjusted against the compensation awarded to the respondent No.2 but will be in addition to it.
20. It is further directed that the appellant and the intervenor to surrender within a period of four weeks from today to undergo the sentence. If they do not surrender, the High Court to take appropriate coercive measures to get the sentence executed. The revisions before the High Court are still pending. The High Court will proceed to decide the revisions as also pending applications if any and ensure that the undertaking is fully complied with and the complainant is suitably compensated for the further harassment caused.
21. Pending application(s), if any, stand disposed of.

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