

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.116 OF 2018
(Arising out of SLP(Crl.) No.4195 of 2017)

MS. PRIYANKA NAGPAL

.....APPELLANT(S)

:Versus:

THE STATE (GOVT. OF NCT OF DELHI)
AND ANR.

.....RESPONDENT(S)

ORDER

A.M. Khanwilkar, J.

1. This special leave petition stood dismissed for want of prosecution, in view of the conditional order dated 17th November, 2017 passed by this Court. For the reasons mentioned in the accompanying application, we restore this petition and proceed to hear the same forthwith.
2. Leave granted.
3. This appeal, by special leave, arises from an order dated 27th March, 2017 passed by the High Court of Delhi at New Delhi in Criminal M.C. No.1267/2017. The appellant has been convicted by the learned Metropolitan Magistrate, Karkardooma, Delhi for offence punishable under Section 138 of the Negotiable Instruments Act,

1881, vide judgment dated 27th August, 2014 in CC No.429/2013 and vide order dated 1st September, 2014 sentenced her to undergo simple imprisonment for 2 months, to pay a fine of Rs.10,000/- and a compensation of Rs.6 lacs within one month and on failure thereof, to further undergo simple imprisonment for a period of 3 months. Assailing the judgment of conviction and order of sentence, the appellant filed an appeal before the learned Additional Sessions Judge, who in turn dismissed the appeal vide order dated 29th April, 2015. Feeling aggrieved, the appellant approached the High Court by way of criminal revision petition, being CrI. Rev. Petition No.284/2015. Initially, interim relief was granted in favour of the appellant which, however, was not extended further. The appellant finally withdrew the said revision petition on 28th April, 2016. Appellant then filed application for restoration and exemption from surrendering before the High Court, which was also dismissed on 9th May, 2016.

4. The appellant was then advised to file a petition under Section 482 of the Code of Criminal Procedure for assailing the orders of conviction and sentence. The appellant has already deposited the amount towards fine and compensation as ordered by the Trial Court. The appellant, upon being unsuccessful before the High Court in the petition under Section 482 of Cr.P.C., has approached this Court by way of this special leave petition. Initially, the petition was dismissed

for want of prosecution vide order dated 21st August, 2017. However, the same came to be restored on 17th November, 2017. This Court then issued notice to the respondents vide order dated 17th November, 2017 on the condition that the appellant shall deposit a sum of Rs.5 lacs before the Registry of this Court. The appellant has, however, filed an application on 14th December, 2017 praying for modification of the conditional order dated 17th November, 2017, inter alia, on the ground that the financial condition of the appellant is not good and that even after several attempts, the appellant was unable to arrange such huge amount from her close friends and relatives. For they refused to extend any further financial assistance to the appellant. Further, the appellant has already complied with the order passed by the Trial Court to deposit Rs.6 lacs towards compensation and is not in a position to pay any further amount. The appellant further submits that she has become a victim of circumstances, is just 24 years of age and is the only earning member in her family. Her father is unwell and physically incapable of doing any work. Moreover, the appellant is serving as a teacher and her monthly income is around Rs.4,000/-. She submits that if she is compelled to undergo the sentence period of 2 months, she would lose her job and as such her entire family would suffer penury situation.

5. After considering the submissions and going through the record

of the case, we are of the opinion that it is not possible to interfere with the concurrent finding of fact regarding finding of guilt recorded against the appellant. Thus, no interference is warranted against the order of conviction. The only question that must receive our attention is about the sentence awarded to the appellant.

6. Having regard to the fact that the appellant has already deposited the compensation amount of Rs.6 lacs and also the fine amount of Rs.10,000/-, what remains is to undergo simple imprisonment for 2 months. We find that the Trial Court while awarding the sentence of 2 months has not considered the plea which has been urged before this Court as adverted to in the preceding paragraphs of this order. Neither the Revisional Court nor the High Court has considered the same. The appellant is the only earning member in the family and her source of income is also very nominal, barely enough to maintain herself and her family members and if she undergoes simple imprisonment for a period of two months, then she may end up losing her service, which is the only source of income for the family.

7. Taking overall view of the matter, we think that interest of justice would be subserved if the order regarding simple imprisonment of two months is modified and in lieu thereof, additional compensation amount of Rs.50,000/- (Rupees Fifty Thousand Only) is directed to be paid to the respondent No.2 within a period of three months.

Accordingly, the appellant is directed to pay an additional compensation amount of Rs.50,000/- to the respondent No.2 within a period of three months, failing which the order of simple imprisonment for two months passed by the trial court shall stand revived.

8. We are conscious of the fact that the complainant has not appeared before this Court so far, but the order which we propose to pass is to his advantage and in all probability the same would be acceptable to him. We make it clear that if the respondent No.2 – original complainant is not satisfied with this order, he will be free to apply for recall of the same, which request can be considered appropriately.

9. Accordingly, we partly allow this appeal in the aforementioned terms. Resultantly, the order of sentence passed by the Metropolitan Magistrate dated 1st September, 2014 stands modified to the extent that the appellant shall pay an additional compensation amount of Rs.50,000/- to respondent No.2 - original complainant, within three months, in lieu of simple imprisonment for two months, failing which the order of simple imprisonment shall stand revived. The appeal as

well as the accompanying Crl.M.P. Nos.138116/2017 and 118102/2017 are disposed of in the aforementioned terms.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(D.Y. Chandrachud)

**New Delhi;
January 08, 2018.**