

Heaven Lounge Pvt Ltd & Ors vs State Of Gndt Of Delhi & Anr on 19 September, 2022

Author: Anoop Kumar Mendiratta

Bench: Anoop Kumar Mendiratta

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 615/2022

HEAVEN LOUNGE PVT LTD & ORS.

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Through: Mr. Sundeep Sehgal and Mr. Tush
Pahadia, Advocates.

versus

STATE OF GNCT OF DELHI & ANR.

..... Respo

Through: Mr. D.S. Dagar, APP for State

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 19.09.2022 Crl. M.A. No.19016/2022 Allowed, subject to all just exceptions.

Application is accordingly disposed of.

1. Criminal Revision Petition has been preferred on behalf of the petitioners under Section 397/401 Cr.PC against the impugned order dated 09.09.2022 passed by learned ASJ, South-East District, Saket Courts, New Delhi in C.A. No.492/2019.

2. Issue notice. Learned APP for the State/respondent No.1 and Mr. Alok Bajawat, learned counsel for respondent No. 2 appear on advance notice and accept notice.

3. Learned counsel for the petitioners submits that the petitioners stand convicted for offence punishable under Section 138 of the Negotiable Instruments Act by the learned MM vide judgment dated 10.07.2019. Further, vide order dated 26.08.2019, the petitioners were sentenced to undergo SI for two years and to pay a fine of Rs.6,66,154/- (in default of payment of fine, to undergo SI for 06 months). The petitioners were directed to pay Rs.4,66,154/- as compensation to respondent No.2 and the remaining amount of Rs.2,00,000/- was to be deposited in the Army Relief Fund.

4. Aggrieved by the aforesaid judgment of conviction and order on sentence, petitioner preferred an appeal before the learned Additional Sessions Judge. Vide order dated 17.05.2022, learned Appellate Court directed the petitioners to deposit 20% of the fine/compensation amount to be eventually given to respondent No. 2 within sixty days, in terms of Section 148 (2) of the Negotiable Instruments Act.

5. The present petition has been preferred against the order dated 09.09.2022 passed by the learned ASJ whereby the appeal preferred by the appellants has been "dismissed" for non-compliance of order dated 17.05.2022 whereby the petitioners were directed to deposit 20% of the fine/compensation amount. The petitioner was further directed to be taken into custody to serve the remaining sentence.

6. It is urged by the learned counsel for the petitioners that the petitioners are willing to deposit 20% of the fine/amount in terms of the order dated 17.05.2022 passed by learned Appellate Court and the appeal be directed to be heard on merits. It is further submitted that the appeal preferred by the petitioners could not have been dismissed for non-payment of fine/compensation. Reliance is placed upon judgment dated 06.07.2022 passed by the High Court of Punjab and Haryana in Amit Kumar (Deceased) through his LRs mother Smt. Sushila Devi v. State of Haryana, Vijay D. Salve v. State of Maharashtra (2007) 5 SCC 741, Adesh Prakashchand Jain v. Harish Punamchand Une, 2020 SCC OnLine Bom 96 and judgment dated 13.05.2022 passed by Hon'ble Mr. Justice Chandra Dhari Singh in Harsh Sehgal v. State, Crl. MC 702/2022 in support of the contentions.

7. Learned counsel for respondent No. 2 submits that he has no objection for consideration of the appeal on merits but subject to compliance of order dated 17.05.2022 by the petitioners.

8. I have given considered thought to the contentions raised.

It may be observed that sub-section (1) of Section 148 of the Negotiable Instruments Act, 1881 provides that notwithstanding anything contained in the Code of Criminal Procedure 1973, in an appeal by the drawer against conviction under Section 138 of Negotiable Instruments Act, the Appellate Court may order the appellant to deposit such sum which shall be minimum 20% of the fine or compensation awarded by the Trial Court. The same was inserted to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation, which would save time and money. However, the amended Section 148 of Negotiable Instruments Act does not take away or affect the vested right of appeal of accused/appellant, in case of non-deposit of the amount and the appeal cannot be dismissed in case of non-compliance of deposit of amount under Section 148(1) of Negotiable Instruments Act.

In criminal matters, convicts must be heard in case an appeal is maintainable and preferred as per the scheme under the Code of Criminal Procedure, 1973. The law does not envisage the dismissal of the appeal even for default or non-prosecution but only contemplates disposal on merits, after perusal of the record.

Reliance may be placed upon Vijay D. Salvi v. State of Maharashtra (2007) 5 SCC 741, wherein it has been held that criminal appeal cannot be dismissed for non-payment of fine and will have to be disposed of on merits. Reference may also be made to Bani Singh & Others v. State of UP, (1996) 4 SCC 720 wherein it was observed that dismissal of appeal for default or non-prosecution without going into merits of the case is improper.

9. In view of the position of law explained above, learned Additional Sessions Judge erred in dismissing the appeal on account of non-deposit of fine amount, after the appeal was admitted. The order dated 09.09.2022 passed by the learned Appellate Court is accordingly set aside.

Considering the totality of the facts and circumstances and also since the petitioners are willing to deposit 20% of the amount in compliance of order dated 17.05.2022, the appeal shall be heard on merits. Accordingly petitioner No. 3 shall be released from custody in case the order dated 17.05.2022 passed by learned Trial Court stands complied with. Further, the NBWs issued against petitioner No. 2 are also stayed till the matter is further considered by the learned Appellate Court. Also, on compliance of order dated 17.05.2022, NBWs against petitioner No.2 shall be cancelled in accordance with law.

Parties are directed to appear before the learned Appellate Court on 23.09.2022. In order to ensure that proceedings are not further delayed on behalf of the petitioners herein, appeal shall be disposed of in a time bound manner by the learned Appellate Court.

Revision petition is accordingly allowed.

A copy of this order be forwarded to the learned Appellate Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 19, 2022/A