

**(2018) 3 Supreme Court Cases 249**

(BEFORE DIPAK MISRA, C.J. AND A.M.

KHANWILKAR AND DR D.Y. CHANDRACHUD, JJ.)

PRIYANKA NAGPAL

.. Appellant;

*Versus*

STATE (NCT OF DELHI) AND ANOTHER

.. Respondents.

Criminal Appeal No. 116 of 2018<sup>†</sup>, decided on January 8, 2018

*b*

**Debt, Financial and Monetary Laws — Negotiable Instruments — Negotiable Instruments Act, 1881 — S. 138 — Sentence and compensation — Waiver of imprisonment in lieu of payment of additional compensation — Permissibility of, under exceptional circumstances**

*c*

— Appellant-accused was convicted for offence under S. 138 — Trial court imposed sentence of 2 months' simple imprisonment, fine of Rs 10,000 and compensation of Rs 6 lakhs to be paid within one month — If appellant-accused failed to pay this sum, then she would undergo simple imprisonment for 3 more months — This order was challenged before Sessions Court wherein it was dismissed — She preferred revision petition before High Court — Initially she withdrew her petition but later she filed application for restoration and exemption from surrender that was also dismissed — Later, she filed petition under S. 482 CrPC questioning validity of conviction and sentence and this was also dismissed — She deposited amount towards fine and compensation as ordered by trial court

*d*

— In SLP, her main contention was relating to two months' simple imprisonment as ordered by trial court — Appellant-accused contended that:

*e*

(i) she was sole earning member of family; (ii) she is just 24 yrs of age and victim of circumstances; (iii) her father is unwell and physically incapable of doing any work; (iv) if she is sent to serve imprisonment then she would lose her job and her entire family would suffer penury situation

*f*

— On facts held, there was concurrent findings of fact regarding guilt of accused and therefore Supreme Court declined to interfere with conviction of appellant-accused — However, courts below failed to notice condition of appellant-accused (as urged before Supreme Court) while passing imprisonment order — Taking overall view of matter, simple imprisonment of two months modified — In lieu of imprisonment, additional compensation of Rs 50,000 directed to be paid to R-2 complainant within three months — If she failed to pay additional compensation within specified time, then order of simple imprisonment would stand revived (Paras 5 to 8)

*g*

*Priyanka Nagpal v. State (NCT of Delhi)*, 2017 SCC OnLine Del 12741, *modified*

*Priyanka Nagpal v. State (NCT of Delhi)*, MA No. 1297 of 2017 in SLP (Cri) No. 4195 of 2017, order dated 17-11-2017 (SC); *Priyanka Nagpal v. Anil Kumar Sharma*, 2015 SCC

*h*

<sup>†</sup> Arising out of SLP (Cri.) No. 4195 of 2017. Arising from the Order in *Priyanka Nagpal v. State (NCT of Delhi)*, 2017 SCC OnLine Del 12741 (Delhi High Court, Crl. MC No. 1267 of 2017, dt. 27-3-2017)

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OnLine Del 14513; *Priyanka Nagpal v. Anil Kumar Sharma*, 2016 SCC OnLine Del 6588; *Priyanka Nagpal v. Anil Kumar Sharma*, 2016 SCC OnLine Del 2989; *Priyanka Nagpal v. State (NCT of Delhi)*, SLP (Cri) No. 4195 of 2017, order dated 21-8-2017 (SC), *cited*

Appeal partly allowed G-D/59800/CVR a

Advocates who appeared in this case :

Sunil Kr. Jha, Amrendra Kr. Choubey, Rakesh Kumar and Ms Seita Vaidyalingam, Advocates, for the Appellant.

**Chronological list of cases cited**

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1. 2017 SCC OnLine Del 12741, <i>Priyanka Nagpal v. State (NCT of Delhi)</i>	250d-e	b
2. MA No. 1297 of 2017 in SLP (Cri) No. 4195 of 2017, order dated 17-11-2017 (SC), <i>Priyanka Nagpal v. State (NCT of Delhi)</i>	250c-d, 251c, 251c-d	
3. SLP (Cri) No. 4195 of 2017, order dated 21-8-2017 (SC), <i>Priyanka Nagpal v. State (NCT of Delhi)</i>	251c	
4. 2016 SCC OnLine Del 6588, <i>Priyanka Nagpal v. Anil Kumar Sharma</i>	251a-b	
5. 2016 SCC OnLine Del 2989, <i>Priyanka Nagpal v. Anil Kumar Sharma</i>	251a-b	c
6. 2015 SCC OnLine Del 14513, <i>Priyanka Nagpal v. Anil Kumar Sharma</i>	251a	

The Order of the Court was delivered by

**A.M. KHANWILKAR, J.**— This special leave petition stood dismissed for want of prosecution, in view of the conditional order dated 17-11-2017<sup>1</sup> passed by this Court. For the reasons mentioned in the accompanying application, we restore this petition and proceed to hear the same forthwith. d

2. Leave granted. This appeal, by special leave, arises from an order dated 27-3-2017 passed by the High Court of Delhi at New Delhi in *Priyanka Nagpal v. State (NCT of Delhi)*<sup>2</sup>. The appellant has been convicted by the learned Metropolitan Magistrate, Karkardooma, Delhi for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, vide judgment dated 27-8-2014 in CC No. 429 of 2013 and vide order dated 1-9-2014 sentenced her to undergo simple imprisonment for 2 months, to pay a fine of Rs 10,000 and a compensation of Rs 6 lakhs 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 e  
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1 *Priyanka Nagpal v. State (NCT of Delhi)*, MA No. 1297 of 2017 in SLP (Cri) No. 4195 of 2017, order dated 17-11-2017 (SC), wherein it was directed:

“This is an application for restoration. Having heard the learned counsel for the petitioner, the order dated 21-8-2017 [*Priyanka Nagpal v. State (NCT of Delhi)*, SLP (Cri) No. 4195 of 2017] dismissing the special leave petition stands recalled and the special leave petition stands restored to file in its original number. The application for restoration stands allowed. Issue notice on the special leave petition subject to the petitioner depositing a sum of Rs 5 lakhs before the Registry of this Court within four weeks hence failing which the special leave petition stand dismissed without further reference to this Court. The petitioner shall not be taken into custody during the aforesaid period.” g

2 2017 SCC OnLine Del 12741 h

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a in turn dismissed the appeal vide order dated 29-4-2015. Feeling aggrieved, the appellant approached the High Court by way of criminal revision petition, being Criminal Revision Petition No. 284 of 2015. Initially, interim relief was granted<sup>3</sup> in favour of the appellant which, however, was not extended further. The appellant finally withdrew the said revision petition on 28-4-2016<sup>4</sup>. The appellant then filed application for restoration and exemption from surrendering before the High Court, which was also dismissed on 9-5-2016<sup>5</sup>.

b 3. 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 CrPC, has approached this Court by way of this special leave petition. Initially, the petition was dismissed for want of prosecution vide order dated 21-8-2017<sup>6</sup>. However, the same came to  
c be restored on 17-11-2017<sup>1</sup>. This Court then issued notice to the respondents vide order dated 17-11-2017<sup>1</sup> on the condition that the appellant shall deposit a sum of Rs 5 lakhs before the Registry of this Court. The appellant has, however, filed an application on 14-12-2017 praying for modification of the conditional order dated 17-11-2017<sup>1</sup>, inter alia, on the ground that the financial condition of  
d 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 lakhs towards compensation and is not in a position to pay any further amount. The appellant further submits that she has become a victim  
e 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 4000. 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.

f 4. 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,

g <sup>3</sup> *Priyanka Nagpal v. Anil Kumar Sharma*, 2015 SCC OnLine Del 14513

<sup>4</sup> *Priyanka Nagpal v. Anil Kumar Sharma*, 2016 SCC OnLine Del 6588

<sup>5</sup> *Priyanka Nagpal v. Anil Kumar Sharma*, 2016 SCC OnLine Del 2989

<sup>6</sup> *Priyanka Nagpal v. State (NCT of Delhi)*, SLP (Cri) No. 4195 of 2017, order dated 21-8-2017 (SC), wherein it was directed:

“None appears for the petitioner. The special leave petition is dismissed for want of prosecution.”

h <sup>1</sup> *Priyanka Nagpal v. State (NCT of Delhi)*, MA No. 1297 of 2017 in SLP (Cri) No. 4195 of 2017, order dated 17-11-2017 (SC)

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.

**5.** Having regard to the fact that the appellant has already deposited the compensation amount of Rs 6 lakhs 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. a

**6.** 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 Respondent 2 within a period of three months. Accordingly, the appellant is directed to pay an additional compensation amount of Rs 50,000 to Respondent 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. b

**7.** 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 Respondent 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. c

**8.** Accordingly, we partly allow this appeal in the aforementioned terms. Resultantly, the order of sentence passed by the Metropolitan Magistrate dated 1-9-2014 stands modified to the extent that the appellant shall pay an additional compensation amount of Rs 50,000 to Respondent 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. MPs Nos. 138116 and 118102 of 2017 are disposed of in the aforementioned terms. d

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