

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Negotiable Instruments Act

Judgment reserved on: December 15, 2008

Judgment reserved on: January 06, 2009

CrI. M.C. No. 2151/2008

Sunita Jamwal ...

Petitioner
Through: Mr. Pradeep Kumar Bakshi, Advocate

versus

D.S. Marketing Pvt Ltd and Anr. ...

Respondents
Through: Mr. K.K. Manan, Ms. Anju Kataria, Mr. Ashok Dholkiya and Mr Rajiv Sharma, Advocates for Respondent NO.1
Mr. R.N. Vats, learned Additional Public Prosecutor for State.

SUNIL GAUR, J.

1. In this petition, petitioner has impugned order dated 17th May, 2008 passed by learned Additional Sessions Judge, Delhi in Criminal Revision No.163/2006 titled D.S. Marketing V. Sunita Jamwal, whereby the sentence awarded by the trial court in a case under Section 138 of Negotiable Instruments Act directing her to pay a fine of rupees one lac twenty thousand only has been enhanced to simple imprisonment of six months with a fine of rupees fifty thousand only.

2. The operative part of the impugned order dated 17th May, 2008 of the learned Additional Sessions Judge reads as under :- So far as quantum of sentence is concerned, Ld counsel for appellant submitted that she had already made payment of Rs.13 lakhs against cheque amount of Rs.1241000/- but in my opinion the offence had already been committed and payment of the amount that also in the execution proceeding before the Hon'ble High Court does not absolve the appellant of her liability for the offence punishable U/s 138 Negotiable Instrument Act. The appellant had not taken care that this cheque was issued in pursuance to the decree passed by the Hon'ble High Court and before the court. Keeping in view all these facts I am of the opinion that Ld trial court had taken a very lenient view and only awarded sentence to pay Rs.1,20,000/-. Keeping in view the conduct of the appellant, I am of the opinion that she does not deserve any such leniency therefore, sentence awarded is modified. She is sentenced to undergo 6 months SI with fine of Rs.50,000/- in default to undergo 3 months SI . If the amount is

realized the same be paid to revisionist. Both the revision and appeal are disposed of accordingly.

3. Petitioner in her statement under Section 313 of the Cr.PC recorded by the trial court, had stated as under :- I am innocent. Mr. Harpinder Singh Narula and his wife Sureena had approached me as, at that time I was in Home Furnishing business. They had approached me sometime in 1996. It was during the transaction of the other matters. They had applied for issuance of the Import Export Licence. On 8.11.96 I had transferred two of my letter of Credit in their favour from Bank of India which were in favour of M/s Surya for pounds 36,000/- from Manchester, one of my buyers. Mr. Narula had given two drafts of Rs.10 lakhs, and 20 lakhs against the supply of Pillow covers. The complainant concern had received the money (Rs.21,61,000/-). I had paid the rest of the total amount of cheque in question in the Hon'ble High Court which had been mentioned in the different order.

4. The reasoning given by the trial court for sentencing the petitioner to a fine of rupees one lac twenty thousand only, is as under :- In the totality of the circumstances and in view of the fact that the execution petition is still pending before the Hon'ble High Court and the fact that the complainant had already received a sum of Rs.3,00,000/- as interest on the loan amount, I hereby sentence the convict to pay a fine of Rs.1,20,000/- (Amount of fine is being calculated at the simple rate of interest of 5% p.a. for the last seven years at the amount of Rs.12,00,000/- which was due against the convict after deducting the interest amount of Rs.3,00,000/- which the complainant admitted to have already received by him. The default of payment of fine the convict shall undergo simple imprisonment for 3 months. The convict is permitted to deposit the amount of fine in 3 monthly instalments of Rs.40,000/- each. The first instalment be deposited by the convict within 15 days from the date of orders. The convict shall have the liberty to get the aforesaid amount of fine adjusted before the Execution petition pending before the Hon'ble High Court subject to the approval and orders of the Hon'ble High Court.

5. Both the sides have been heard and the record is perused.

6. Although the impugned order is assailed on the ground that it is an unreasoned order and the exercise of revisional jurisdiction has been undertaken in a improper manner, but I find that on this ground the petitioner cannot succeed as the revisional court has found that the cheque in question given in the proceedings for settlement before this court had bounced and, therefore, lenient view ought not to be taken. However, on merits, I find from the aforesaid statement made by the petitioner before the trial court, the bouncing of cheque was neither deliberate nor wilful and the reasoning adopted by the trial court cannot be said to be illegal or infirm as notice has been taken of the fact that the settled amount has been paid by the petitioner, though in instalments and while taking into consideration the interest component, trial court has calculated the fine amount which cannot be said to be unreasonable. Rather, the imposition of substantive sentence of imprisonment upon the petitioner by the Revisional Court appears to be harsh one as the petitioner is said to be a widow who is aged about fifty five years.

7. Considering the facts and circumstances of this case, I find that the order of the trial court, as noticed above, was perfectly justified and the impugned order of the Revisional Court is uncalled for and is indeed harsh one. Infact, impugned order, instead of securing the ends of justice, defeats it and is hence unsustainable. Consequently, the impugned order sentencing the petitioner to simple imprisonment for six months is set aside and the order of the trial court directing the petitioner to pay the fine of rupees one lac twenty thousand is restored with its default clause.

8. This petition stands allowed, in the terms indicated above.

Sd./-
SUNIL GAUR, J

January 06, 2009