

Heard Sri.NS Adv for the Appellant on I.A. Nos. 1 and 2.

Further Sri. NS Adv for Appellant on relying the decision rendered by the Hon'ble High Court of Karnataka in Crl.Petition No. 6033/2014 dt. 09.10.2014 in the case of Sri. M.C. Thippanna V/s N.Vijayakumar, contended that pending disposal of application U/S 5 of Limitation Act, the execution and operation of the Judgment of conviction can be suspended in Appeal.

On careful perusal of the appeal memo, I.A. Nos.1 and 2, the Judgment passed by the Trial Court in C.C. No. 52312/2015 dt. 08.01.2020, it is seen that the Appellant herein is convicted for the offence punishable U/S 138 of NI Act, thereby sentencing him to pay fine of Rs.1,45,000/-, in default of the same, to undergo simple imprisonment for 3 months. And further directed to pay compensation to the Complainant to the tune of Rs.1,43,000/- U/S 357(1)(b) of Cr.P.C., out of the said fine amount.

The learned counsel for the Appellant has focused on the orders passed by the Hon'ble High Court of Karnataka in Crl.P. No. 6033/2014, wherein the Hon'ble High Court of Karnataka is pleased to suspend the sentence by keeping open the disposal of I.A. No.1- application for condonation of delay.

In the present case the Trial Court has imposed only fine and in default of payment of the said fine, directed the Accused to undergo simple imprisonment for a period of 3 months. Keeping in mind the law laid down by the Hon'ble High Court of Karnataka in the case referred above, I am of opinion that by keeping open, pending adjudicate of I.A. No.1- U/S 5 of Limitation Act, the sentence passed by the trial court is required to be suspended, as the right of the Appellant to prefer an Appeal, is a Statutory Right.

At this stage the Appellant has made out prima facie case to consider the interim application at I.A.

No.2 by dispensing with notice to the Respondent-Complainant, before the Trial Court.

In the interest of justice, it is just, proper and necessary to stay the execution and operation of the judgment. Hence, I proceed to pass the following

ORDER

Acting U/S 389(1) of Cr.P.C. the execution and operation of the judgment passed in C.C.No. 52312/2015 dt. 08.01.2020 by the 17th Addl.Judge court of Small Causes, and A.C.M.M., Bangaluru, is hereby suspended for a period of 3 months, subject to the deposit of 20% of cheque amount (20% of Rs. 95,329/-) in the office of the Trial Court, within 4 weeks from today and subject to the payment of fine of Rs.2,000/-. In case of default on the part of the Appellant /Accused to deposit the said amount and fine, this order stands cancelled, forthwith.

Further, on deposit of the said amount of 20% of the cheque amount by the Appellant- Accused, the Trial Court is hereby directed to keep the said amount in fixed deposit with scheduled bank, under due intimation to this Court.

Further, the Appellant shall execute a personal bond for the sum of Rs. 50,000/-, with one surety for the likesum, before the Trial Court, within 4 weeks from today.

Call for LCR.

Issue notice of appeal memo and I.A.Nos.1 and 2 to the Respondent.

For appearance of Respondent and await LCR.

Call on 07.03.2020.

[Abdul-Rahiman. A.Nandgadi]

LXXII A.C.C.& S. Judge,
Mayohall Unit, (CCH-73) Bangaluru