

CA 232/2023

ANUPAMA SACHDVA Vs. STATE (NCT of DELHI) & ANR.

26.07.2023

Fresh Criminal Appeal received by way of assignment. It be checked and registered as per rules.

Present: Sh. Murari Tiwari, Sh. Suryakant Vyas, Sh. Sarthak Singh
& Sh. Narender Hooda, Ld. Counsels for appellants.

1 Criminal Appeal u/s 374 (3) of Cr.P.C has been filed by the appellants against the impugned judgment dated 04.02.2023 and order on sentence dated 26.06.2023, passed by Ld. MM, SED, Saket Courts, New Delhi in CT Case No. 6964 of 2018 titled as 'Raj Kumar Khanna Vs. Anupama Sachdeva'.

2 Heard. Record perused.

3 At this juncture. it would be apt to peruse the following extracts of *Colonel SS Deswal Vs. Virender Gandhi (2019) 11 SCC 341* :

“8Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI Act as amended, the Appellate Court “may” order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the Trial Court and the word used is not “shall” and therefore the discretion is vested with the first Appellate Court to direct the appellant/accused to deposit such sum and the Appellate Court has construed it as mandatory, which according to the Ld. Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it

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is true that in the amended Section 148 of the NI Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the Appellate Court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the NI Act confers power upon the Appellate Court to pass an order pending appeal to direct the appellant/accused to deposit the sum which shall not be less than 20% of the fine/compensation either on an application filed by the original complainant or even on the application filed by the appellant/accused u/s 389 Cr.PC to suspend the sentence”.

4 Thus, impugned judgment dated judgment dated 04.02.2023 and order on sentence dated 26.06.2023, shall remain stayed till the pendency of present Criminal Appeal, subject to depositing of 20% of the compensation/fine amount (in the name of respondent) in the form of DD, within 60 days from today.

5 The appellant is directed to deposit the aforementioned 20% amount of fine/compensation to the respondent within 60 days from today. There is no requirement of making an order of depositing the same before this Court or before the Ld. Trial Court. The order of deposit in Court needlessly makes it difficult for the respondent/complainant to withdraw the sums from the registry of the concerned Court, apart from adding unnecessarily to the burden on the Court's registry. Further, the time consuming process of deposit in the Court's account and subsequent withdrawal by the respondent/complainant can be avoided by making payment directly to the respondent/complainant, especially after a concrete finding of competent Court that the respondent/complainant is entitled to the

above specified sum.

6 Appellant is hereby admitted to bail, upon his furnishing bail bond with surety bond of Rs. 20,000/-. Bail bond is furnished and accepted.

7 Copy of this order be sent to Ld. Trial Court for information and compliance.

8 **Issue notice to respondent, on filing of PF/RC & AD etc on 19.10.2023.**

Order be given dasti.

**(ARUL VARMA)
ASJ-04 + Spl. Judge (NDPS),
South East District, Saket Court,
New Delhi / 26.07.2023**