

CA 301/2024

RAGHUBIR CHAUHAN Vs. KAMAL SHARMA AND ANR

19.09.2024

Present : Sh. L. K. Verma, Mukesh Bala Chauhan and Hritik Verma, Ld. Counsel for the appellant.

The present criminal appeal has been filed on behalf of appellant against the impugned judgment dated 27.07.2024 and order on sentence dated 12.08.2024, passed by Ld. JMFC, NI Act, SED, Saket Courts, whereby the appellant was convicted and sentenced to pay a fine of Rs. 75,000/- as compensation within one month and in default of payment, he would undergo simple imprisonment for a period of 3 months.

Heard. Record perused.

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 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”.

Thus, impugned judgment dated 27.07.2024 and order on sentence dated 12.08.2024, 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/NEFT/RTGS within 60 days from today.

The appellant is directed to deposit the aforementioned 20% amount of total fine/compensation directly to the respondent within 60 days from today.

Appellant is hereby admitted to bail, upon his furnishing personal bond with surety bond of Rs. 25,000/- before the Ld. Trial Court.

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

Issue notice of this criminal appeal to respondent through all permitted modes including whatsapp & e-mail on filing of PF/RC & AD etc on 05.11.2024.

Copy of this order be given dasti.

**(Dr. TARUN SAHRAWAT)
ASJ-04 + Spl. Judge (NDPS),
South East District, Saket Court,
New Delhi /19.09.2024**