

In the 1st Court of Additional Sessions Judge, Durgapur, Paschim Bardhaman

Present – Sri Bimal Kanti Bera
Additional Sessions Judge,
1st Court, Durgapur

Criminal Appeal No.13/2022
CNR-WBBD090010962022

(Arising out of C.R. Case no.289/2014 `u/s-138 of the Negotiable Instrument Act)

Sri Ashutosh Kumar Tiwari
..... Appellant/Petitioner

V/s

1. Sri Bijoya Banerjee @ Bijaya
2. The State of West Bengal

.....Respondents/Ops

Order No.01 dt.27/07/2022

The Learned Advocate for the appellant presents the petition of appeal with copy of the judgment of conviction and the order of sentence appealed against and vokalatnama. Register as a Criminal Appeal.

Heard the Learned Advocate for the appellant.

Perused the petition of appeal, copy of the judgment and the order of sentence.

The instant appeal has been preferred challenging the judgment of conviction u/s-138 of the Negotiable Instrument Act and the order of sentence passed by the Learned Judicial Magistrate, 2nd Court at Durgapur in connection with C.R. Case No.289/2014. The Learned trial court has convicted the appellant for the offence u/s-138 of the Negotiable Instrument Act and sentenced him to simple imprisonment for 03 months and to pay compensation of Rs.1,15,000/-. It does not appear that the appeal is frivolous one and as such cannot be summarily disposed of u/s-384 of the Cr.P.C. Let the appeal be admitted. Issue notice. Call for LCR. Requisites at once.

The Learned Advocate for the appellant files and moves an application u/s-389 of the Cr.P.C.

Heard the Learned Advocate for the appellant.

The Learned Advocate submits that there is merit in the appeal and the appellant has fair chance of success. Unless the sentence is suspended purpose of preferring the appeal will be frustrated.

The Learned Advocate also files an application for confirmation of the bail granted by the Learned trial court.

Section 148 of the Negotiable Instrument Act has been inserted in the Negotiable Instruments Act by the Amendment Act of 2018 to the effect that the appellate court may order the appellant to deposit a minimum of 20% of the fine or compensation awarded by the trial court.

The Hon'ble Supreme Court in the case of Surender Singh Deswal Vs. Virender Gandhi reported in (2019) 11 SCC 341 has held that the word 'may' in section 148 of the Negotiable Instruments Act has to be read as 'shall' and the appellate court must ordinarily order deposit of minimum 20% of compensation or fine amount imposed by the trial court and not to direct to deposit, is an exception for which special reasons are to be assigned. The Hon'ble Supreme Court in the case of Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd. reported in (2001) 2 SCC 416 has held that while suspending the sentence for the offence u/s-138 of the Negotiable Instruments Act the appellate court should impose the condition that the fine or a part of it is to be deposited within a certain period.

In view of the above decisions of the Hon'ble Supreme Court the order of sentence is suspended subject to payment of 25% of the compensation amount in the Learned trial court within 60 days from this date of order and subject to such condition prayer for continuation with the same bail bonds is allowed.

To **21/09/2022** for SR, LCR and filing documents showing deposit of the said amount.

Let a copy of this order be sent to the Learned Judicial Magistrate, 2nd Court at Durgapur for information.

D/c by me

Sd/-

Additional Sessions Judge,
1st Court, Durgapur
J.O. Code-WB00681

Sd/-

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1st Court, Durgapur
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