

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 341 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 1352 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 1351 OF 2024**

Suresh G. Motwani and Ors. ...Appellants

vs.

Securities and Exchange Board of India
and Anr.

...Respondents

Mr. Kapil Dave a/w Mr. Manish Bora i/by Mr. Santosh Thakur	Advocate for the Appellant
Mr. Omprakash Jha i/by Sabiha Ansari	Advocate for the Respondent No. 1 (SEBI)
Mr. Y. Y. Dabke	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 10th APRIL 2024

P. C. :-

1. Heard learned Advocate for the Appellants/Convicted accused and learned Advocate for SEBI.
2. In fact this appeal pertains to an assignment of Justice M. S. Karnik. As he has said 'not before me', this appeal is placed before me as per standing order. The Appellants have been convicted by Special

Court under the Securities and Exchange Board of India for the offence punishable under **Section 207 of the Companies Act, 1956.**

The sentence is as follows:-

- a) Every Appellant was directed to pay fine of Rs. 5,00,000/- each.
- b) In case of their default, they are directed to undergo Simple imprisonment for six months.
- c) After depositing, the amount is to be paid to the Complainant by way of compensation.

The trial Court has granted them time to pay fine till 30/03/2024.

3. The prosecution was for contravention of the provision of Section 207 of the Companies Act for not paying dividend to shareholders in spite of its declaration. There were six accused persons. Out of them, the trial against accused nos. 3, 4 and 6 was separated. Accused Nos. 1, 2 and 5 are the Directors of Roofit Industries Limited. Both the sides have adduced oral as well as documentary evidence. The submission made on behalf of the Appellants is as follows:-

- (a) His clients have paid 15% by way of interim dividend from the declared dividend and only 5% is remained to be paid.

(b) His contention is, 'his case falls within the exception clause(a) and clause (e) to the proviso of Section 207 of the Companies Act'.

4. His contention is the trial Court has not properly appreciated the evidence and in fact it ought to have come to conclusion, there is no intentional default in not paying the dividend. Out of the accused, Appellant No. 1-Suresh has given evidence and audit report is also tendered before the trial Court and it is also referred in the impugned judgment.

5. All these contentions can be considered, when the appeal will be heard. Let appeal be admitted.

6. Admit the appeal.

7. Call the record and proceedings.

8. Learned Advocate for the Appellants submitted that the sentence of fine be stayed during the pendency of the appeal. He invited my attention to the provision of the Sub-Section (2) to Section 357 of the Criminal Procedure Code. He made following submissions:-

(a) That provision lays down the contingency wherein the payment should not be made to the Complainant.

(b) This issue is considered by learned Single Judge of this Court in case of *Ashwin Chinubhai Shah V/s The State of Maharashtra and Anr.*, in Interim Application No. 744 of 2019 in Criminal Appeal No. 1392 of 2019, dated 08/06/2023 (Coram : Bharati Dangre, J.). My attention is invited to the concluding paragraph in the said Order which says that payment of the fine deserve to be deferred till the appeal is decided.

(c) He also placed reliance on the observation in case of *Satendra Kumar Mehra @ Satendera Kumar Mehra Vs. The State of Jharkhand¹*.

9. Whereas the contention of learned Advocate for the SEBI is as follows :-

- (i) There is difference in between suspension of the sentence of fine amount and secondly, disbursal of the deposited amount of fine to the Complainant.
- (ii) He submitted that facts before the Hon'ble Supreme Court in case of *Satendra Kumar Mehra* (supra) are different.
- (iii) In that case fine was part of the sentence and there was no

1 AIR 2018 SC 1587

direction to disburse that amount to the Complainant by way of compensation. Whereas in case before us the facts are different.

(iv) He invited my attention to para no. 33 of the said judgment.

There is interpretation of the provision of sub-section (2) of Section 357 of the Code.

(v) He invited my attention to the observations in case of para no. 34, power of the Appellate Court to suspend the sentence is reiterated and it was held that it is the discretion of the Appellate Court. It is submitted that ultimately it is discretion of the Court the Appellant has to make out the case for exercise of the discretion in their favour.

10. By way of reply he submitted that the trial Court has not appreciated the evidence properly and there is audit report mentions about loss sustained by the Company and it has not been considered in their favour. That is why it is submitted that such sentence of the fine is without appreciation. It needs to be stayed.

11. When query is made to the learned Advocate for the Appellants have you filed copy of the evidence given by the accused no. 1-Suresh, he submitted that it is not filed.

12. It is true that the suspension of the sentence and on which condition, is discretion of the Appellate Court. So also, it is true that suspension of the sentence subject to the condition and disbursal of the amount to the Complainant are two different things. It is true that in Section 357 of the Code, there are two provisions dealing with disbursal of the compensation to the Complainant. They are as follows :-

(i) Under Section 357 (1) – when fine is part of the sentence.

(ii) As per Section 357 (3) when the fine is not part of the sentence and then how compensation is to be disbursed to the Complainant.

13. On prima-facie reading, it is clear that the case of *Satendra Kumar Mehra* (supra) involves the facts wherein the fine was part of the sentence. The imprisonment as well as imposing of the fine should be stayed and not order to disburse it to the Complainant. It is true that sub-Section (2) to Section 357 of the Criminal Procedure Code says about deferring the payment of the compensation in two contingencies they are :-

(i) When the period of the appeal has not elapsed.

(ii) When the appeal is filed and it is pending.

14. I have read the observations in case of *Ashwin Chinubhai Shah* (supra). In that case also there was only sentence of the fine and default sentence.

15. In view of the submissions made above today, I am not inclined to make any observations about the contentions raised before me in not imposing the condition of the deposit of fine, I am keeping it open. At the same time, it is true that the trial Court has issued conviction warrant asking the Appellant to undergo the imprisonment sentence as fine is not paid. This can be stayed till next date.

16. In view of that following order is passed:-

ORDER

(i) The conviction warrant is stayed till next date.

(ii) Let the Appellants to file copy of the evidence given by the Appellant No. 1.

17. Matter be kept on **08th May 2024**.

[S. M. MODAK, J.]