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SOHAN LAL JUNEJA AND ORS.

v.

STATE OF PUNJAB

NOVEMBER 9, 2006

B

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C

Code of Criminal Procedure, 1973—Section 438—Imposition of condition of deposit of Rs.10 lacs by High Court for granting interim protection in terms of Section 438—Non-deposit of amount as directed—Interim protection denied—On appeal, held: High Court had not considered relevant aspects and also not indicated reason for imposing such condition—Hence, matter remitted back for fresh consideration.

D

Complainant filed an FIR against appellants and others for their alleged involvement in misappropriation of stock. The High Court granted interim protection in terms of Section 438 Cr.P.C. on the condition of deposit of Rs.10,00,000/- with the complainant. Subsequently because of non-deposit of the amount as directed, the protection was denied and prayer in terms of Section 438 Cr.P.C. was rejected.

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In appeal to this Court, appellant contended that in view of the decision of this Court in **Bal Kishan Das* case, the proceedings are not maintainable and the condition of depositing a huge sum of Rs.10,00,000/- as directed by the High Court cannot stand scrutiny in law.

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Disposing of the appeal and remitting the matter to High Court, the Court

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HELD: 1.1. While dealing with the matter, the High Court shall keep in view the principles indicated by this Court relating to Section 438 in ***Adri Dharan Das*' case and the relevance and applicability of the decision in **Bal Kishan Das*'s case while dealing with the application in terms of Section 438 Cr.P.C. [772-C]

Bal Kishan Das v. F.C. Nayar*, [1991] Suppl. 2 SCC 412 and *Adri Dharan Das v. State of W.B.*, [2005] 4 SCC 303, relied on.

H

1.2. The High Court has not considered the relevant aspects and has also not indicated any reason as to why it felt necessary to direct deposit of Rs.10,00,000/-. Further the ambit of Section 438 Cr.P.C. as delineated by this Court has not been kept in view. [772-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1133 of 2006.

From the Judgment and interim Order dated 8.5.2006 of the High Court of Punjab and Haryana at Chandigarh in Crl. M. No. 27303-M/2006.

R.K. Talwar and S.L. Aneja for the Appellants.

Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by:

ARIJIT PASAYAT, J. Leave granted.

Challenge in this appeal is to the orders passed by the Punjab and Haryana High Court dealing with the appellants' application in terms of Section 438 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') in Criminal Case No. 27303-M of 2006. The First Information Report (in short 'FIR') was lodged against the appellants and others for their alleged involvement in mis-appropriation of stock. According to the appellants, the dispute essentially revolves around contractual liability and is of a civil nature. In an arbitration proceeding the matter is under examination. The High Court by order dated 8th May, 2006 granted interim protection in terms of Section 438 Cr.P.C. on the condition that a sum of Rs.10,00,000/- shall be deposited with Markfed i.e. the complainant in the case. Subsequently because of non-deposit of the amount as directed, notwithstanding the issuance of notice by this Court the protection was denied and prayer in terms of Section 438 Cr.P.C. was rejected.

Learned counsel for the appellants submitted that in view of the decision of this Court in *Bal Kishan Das v. P.C. Nayar*, [1991] Suppl. 2 SCC 412 the proceedings are not maintainable and the condition of depositing a huge sum of Rs.10,00,000/- as directed by the High Court cannot stand scrutiny in law.

Learned counsel for the respondent-State on the other hand submitted that a huge loss was caused to the complainant because of the conspiracy of the appellants and other employees of the complainant. This is basically

A not a case of civil dispute and even if arbitration proceedings are in progress, that cannot stand in the way of the criminal proceedings, can be pursued.

We find that the High Court has not considered the relevant aspects and has also not indicated any reason as to why it felt necessary to direct deposit of Rs.10,00,000/-. Further the ambit of Section 438 Cr.P.C. as delineated by this Court has not been kept in view.

C In the circumstances, we set aside the orders of the High Court dated 8.5.2006 and 7.8.2006 and remit the matter to it for fresh consideration. Needless to say while dealing with the matter the High Court shall keep in view the principles indicated by this Court relating to Section 438 in *Adri Dharan Das v. State of W.B.*, [2005] 4 SCC 303] and the relevance and applicability of the decision in *Bal Kishan Das's* case (supra) while dealing with the application in terms of Section 438 Cr.P.C.

The appeal is disposed of accordingly.

D.G.

Appeal disposed of.