

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL WRIT PETITION NO. 259 OF 2015

Jitendra Ramkisan Mundhada

...Petitioner

VERSUS

Annasaheb Sagarmal Shankhla Urban
Co-op. Credit Society Ltd.

...Respondent

.....
Shri B.S.Deshmukh, advocate for petitioner
.....

CORAM : V.M.DESHPANDE, J.

DATED : 24th February, 2015

PER COURT : -

1] Present petition is directed against the order, passed by the Additional Sessions Judge, Jalgaon, dated 11.2.2015, below Exh.4 in Criminal Appeal No. 15 of 2015, whereby the learned Appellate Court has suspended the substantive jail sentence on a condition that the present petitioner shall deposit Rs.1,25,000/- which was the amount granted by the learned trial Magistrate by way of compensation.

2] The petitioner questions the said wisdom of the learned appellate court in imposing said condition. According to the learned counsel for the petitioner, the condition is onerous, and therefore, the right of appeal itself is greatly affected by

putting such condition. He further submitted that no power was vested with the learned Magistrate under Section 138 of the Negotiable Instruments Act and the learned Magistrate has committed an error in granting compensation in favour of the original complainant.

In order to buttress his submission, he placed reliance on unreported decision of the Apex Court in Criminal Appeal No. 1651 of 2013 and also the decision of the Apex Court reported in 2008 (1) Mh.L.J. 22 [Dilip S. Dahanukar vs Kotak Mahindra Co.Ltd. And Anr.] to point out that the condition is onerous.

3] In the present case, the cheque, which was issued by the present petitioner in favour of complainant, for which he was convicted, was for Rs.1,02,000/-. The learned Magistrate found that the complainant has proved the ingredients securing the conviction of the present petitioner, and therefore, has rightly convicted the present petitioner. It was within the jurisdiction of the learned Magistrate to award compensation and the learned Magistrate, in my view, has correctly exercised his discretion in granting compensation to the tune of Rs.1,25,000/-. Appeal is a statutory right. The said statutory right is availed by the present petitioner. Grant of bail is always discretion of the court granting bail. The only caveat upon the court to grant or reject the bail is that the court must exercise its discretion judiciously.

4] In the present case, the learned lower appellate court while admitting the appeal has considered the bail application filed on behalf of the present petitioner and has released the petitioner on bail subject to the condition that the petitioner deposits Rs.1,25,000/- within a period of 15 days. The said discretion cannot be said to be arbitrary or capricious exercise by the learned lower appellate court.

5] In that view of the matter, present Writ Petition is dismissed.

[V.M.DESHPANDE, J.]

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