

2. The petitioner herein is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, in SCC No. 38 of 2013 by Judicial Magistrate First Class, Hingoli (in short “JMFC”) vide judgment and order dated 3rd March

2015. Being aggrieved by the said judgment and order, the petitioner herein filed Criminal Appeal No. 12 of 2015 before the Sessions Court, Hingoli. The learned Appellate Court has suspended the substantive sentence imposed upon the petitioner by JMFC upon a condition that he shall deposit Rs. 2.00 Lakhs within two weeks. The petitioner herein seeks modification of the said order dt. 1st April, 2015.

3. The learned Counsel for the petitioner submits that in fact, the petitioner has a good case on merits in appeal. That, the complainant has not been able to establish that the petitioner was liable to pay legally dis-chargeable debt. It is further submitted that, at present, the economic condition of the petitioner is not fair enough to enable him to deposit an amount of Rs. 2.00 Lakhs as a condition precedent for the hearing of the appeal. It is further submitted that, the appellant would lose the statutory right of the appeal being heard on merits only because of his inability to deposit an amount of Rs. 2.00 Lakhs as a condition precedent. The disputed cheque was of an amount Rs. 4.00 Lakhs. Petitioner has fairly shown his willingness to deposit 1/4th amount of the disputed cheque as a condition precedent for the hearing of the appeal. The learned Counsel for the petitioner has placed implicit reliance upon the

judgment of the Hon'ble Apex Court in the case of **Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. & Anr.** reported in **2007 ALL MR (Cri) 1775 (S.C.)**. The Hon'ble Apex Court has held that the amount of compensation must be a reasonable sum and that the Court while fixing such amount must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of Criminal Procedure. The learned JMFC had directed the petitioner herein to deposit an amount of Rs. 4.00 Lakhs towards compensation. The appellate Court has directed the appellant to deposit half of the compensation amount. The learned Counsel for the petitioner submits that, it is beyond the reach of the petitioner to deposit half of the amount of compensation and, therefore, seeks leniency.

4. Taking into consideration the facts of the case and the submissions advanced across the bar, this Court is inclined to modify the order dt. 1st April, 2015 passed by learned Additional Sessions Judge, Hingoli. The order stands modified as under.

“The petitioner shall deposit an amount of Rs. 1,00,000/- (Rupees One Lakh only) in the Court of Additional Sessions Judge, Hingoli by 8th June, 2015.”

5. Upon failure to deposit the said amount, the appellate Court shall not extend the time and shall decide the matter in accordance with law. The order dated 1st April, 2015 passed by learned Additional Sessions Judge, Hingoli, stands quashed and set aside as is being modified. Rule is made absolute in above terms. Petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)

sgp