

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

**CRIMINAL WRIT PETITION NO.902 OF 2015
WITH
CRIMINAL WRIT PETITION NO.909 OF 2015**

1. Surendra Nathmalji Lunkad,
Age: 63 years, Occ: Business,
R/o. Lunkad Towers, Jilha Peth,
Jalgaon, Tq. & Dist. Jalgaon.
2. Subhash Sagarmalji Sankhala,
Age: 58 years, Occ: Business,
R/o. Sankhala Building, Jilha Peth,
Jalgaon, Tq. & Dist. Jalgaon. ...Petitioners

versus

1. The State of Maharashtra.
2. The Jalgaon District Central
Co-operative Bank Ltd., Jalgaon,
R/o. J.D.C.C. Bank Building,
27, Ring Road, Jalgaon,
Tq. & Dist. Jalgaon. ...Respondents

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Mr. U.N. Shete, Advocate for petitioners
Mrs. B.B. Gunjal, A.P.P. for respondent No. 1
Mr. V.D. Salunke, Advocate for respondent No. 2
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CORAM : N.W. SAMBRE, J.

**Reserved on : 08/09/2015
Pronounced on: 11/09/2015**

ORAL ORDER :

The petitioners, office bearers of the Managing Committee of one Mahavir Urban Society Limited, are convicted for an offence punishable under Section 138 of the Negotiable Instruments Act by learned Judicial Magistrate, First Class, Jalgaon

on 08/06/2015 ordering the payment of fine of Rs.25,000/- and compensation of Rs.4 crores in Criminal Writ Petition No.902 of 2015 and in Criminal Writ Petition No. 909 of 2015 payment of fine of Rs.25,000/- and compensation of Rs. 7 crores. In Criminal Writ Petition No. 902 of 2015, the cheque amount is Rs.3 crores and in Criminal Writ Petition No. 909 of 2015 the cheque amount is Rs.5,28,33,000/-.

2. The petitioners then preferred criminal appeal which came to be entertained along with the application for suspension of sentence Exhibit-4 and for grant of bail.

3. While dealing with the application Exhibit-4 for suspension of sentence and grant of bail, the Additional Sessions Judge, Jalgaon has directed the present petitioners to deposit sum of Rs.10,00,000/- each within period of 15 days, which condition is impugned in the present petitions.

4. Amongst other, the ground raised was an amount of Rs.50,00,000/-, that part of the amount was already deposited with the respondent bank pursuant to the order dated 06/07/2011 passed in Writ Petition No. 4830 of 2011. It is also claimed that the condition of depositing of Rs.10,00,000/- is harsh and no such condition can be

imposed while entertaining the appeal as the criminal appeal against the conviction is a fundamental right. Apart from above, the petitioners would urge that in case if the appeal is allowed, it will be difficult to recover the amount of compensation.

5. In support of the contentions, learned Counsel for the petitioners, has relied upon the judgment of the Apex Court in the matter of ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd., and another*** reported in ***AIR 2007 SC (Supp) 1345***.

6. While opposing the above referred contentions, learned A.P.P., supports the order, whereas learned Counsel for respondent No. 2 would urge that dishonour of cheque of Rs.3 crores is not in dispute. According to learned Counsel for respondent No.2, the said amount is held by respondent as a banker in public trust and also required to refund the amount to their depositors. Apart from above, according to him, the present petitioners lacks bonafide, as criminal complaint case was initiated on 27/11/2003 and present petitioners have not shown made any efforts since then to deposit the amount, even though the present proceedings cannot be used for recovery of the cheque amount. He would further urge that the inability of the present petitioners to deposit the amount is not established, at least neither any evidence nor any material is placed on record. He has

placed reliance upon the judgment of this Court in Writ Petition No. 4830 of 2011 so as to demonstrate the deposit that deposit of Rs.40,00,000/- is lame excuse.

7. Having considered the rival contentions, it is required to be noted that the appeal of the present petitioners was duly entertained by learned Additional Sessions Judge and upon considering the application Exhibit-4 for suspension of sentence and grant of bail, has imposed condition of deposit of Rs.10,00,000/- by each of the appellants.

8. This Court is required to be examined whether the condition imposed is reasonable one while suspending sentence and grant of bail. It is not in dispute that the appeal of the petitioners is entertained by learned Additional Sessions Judge, Jalgaon. The outstanding amount qua cheque of 2003 which was dishonoured is around Rs.3 crores. From the record, it appears that the petitioners have not taken any steps or have shown bonafide to settle the matter even though the offence in question is compoundable.

9. In view of the conviction of the present petitioners, in my opinion, the condition imposed of deposit of Rs.10,00,000/-by each of the appellants, for suspension of sentence and grant of bail, appears

to be just and proper. The petitioners herein have failed to demonstrate on record their inability to pay said amount. As such, the reliance placed by the petitioners on the judgment of the Apex Court in the matter of ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd., and another***, cited supra, was of hardly any assistance.

10. In the back ground of above, the writ petitions fail, same stand dismissed.

[N.W. SAMBRE, J.]