

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

CRIMINAL WRIT PETITION NO. 868 OF 2013

Chandrakant s/o Madhavrao Chavan,
age 48 years, occ.business,
R/o Vijaywadi, Tq. Malshiras,
Solapur

...Petitioner

VERSUS

1] Shri Rukmini Sahakari Bank Ltd.
Srigonda, Branch-Karjat,
District Ahmednagar,
Notice to be served on
Rajendra s/o Abasaheb Gavade,
age 45 years, occ. Service,
District Ahmednagar,

2] The State of Maharashtra

...Respondents

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Shri Y.G.Soman, advocate h/f
Shri D.S.Manorkar, advocate for petitioner
Shri N.V.Gavare, advocate for respondent no.1
Shri S.A.Ambad, A.P.P. for respondent no.2

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CORAM : V.M.DESHPANDE, J.

DATED : 28th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties heard finally.

2] The present petitioner, against whom a private complaint was filed by the present respondent no.1, was convicted by the learned Judicial Magistrate, First Class, Karjat in Summary Criminal Case No. 205 of 2008, as according to the learned Magistrate, the present petitioner has committed an offence punishable under Section 138 of the Negotiable Instruments Act.

3] The learned Magistrate directed that the petitioner shall suffer simple imprisonment for one year. At the same time, the learned Magistrate has exercised powers under Section 357 of the Code of Criminal Procedure and has directed that the petitioner shall pay a compensation of Rs.Ten Lacs to the original complainant/present respondent no.1.

4] The petitioner carried appeal before the Sessions Court at Ahmednagar. The said appeal was registered as Criminal Appeal No. 92 of 2013. In the said appeal, an application for stay was filed by the present petitioner. The prayer clause of the said application reads as under :-

“A) The bail given in trial Court be continued and/or accused be released on bail And the sentence be stayed till disposal of this appeal.

(B) Any other just and equitable orders be passed in the interest of justice and equity.”

5] From the reading of prayer clauses, it is clear that the petitioner has not prayed to stay the payment of the compensation. Learned lower appellate court on 3.7.2013 exercised the discretion in favour of the present petitioner and suspended the substantive jail sentence on the condition that the petitioner shall deposit Rs.Three Lacs towards the compensation. The payment of Rs.Three Lacs was a condition precedent. The petitioner, who, according to the learned counsel for the petitioner, is a very poor person, could deposit only Rs.30,000/- resulting into passing of the order by the learned Additional Sessions Judge, Ahmednagar on 20.8.2013, thereby issuing non-bailable warrant for non-payment of compensation amount.

6] Present petition is directed against the order passed by the appellate court on 3.7.2013 below Exh.6. This court on 1.10.2013 stayed the execution of non-bailable warrant issued on 20.8.2013. The said order was in operation. Ultimately on 10.11.2014, interim order, dated 1.10.2013 passed by this court was vacated due to non-appearance of the learned counsel for the petitioner.

7] Learned counsel for the petitioner submitted that non-bailable warrant issued by the learned Additional Sessions Judge is still not executed.

8] After hearing the parties to the petition, it is clear that the appeal filed on behalf of the present petitioner questioning the correctness of the judgment holding him guilty of the commission of offence punishable under Section 138 of the Negotiable Instruments Act is pending with the learned Additional Sessions Judge, finality whereof is yet to be reached.

9] Filing of appeal is a statutory right. When the jail sentence is for a fixed period and it is for short duration, normally, the court shall grant suspension of substantive jail sentence, of course while suspending the substantive jail sentence, it is the discretion of the court to impose conditions. It appears, in the present case, the learned lower appellate court has directed that the petitioner shall deposit Rs.Three Lacs.

10] After hearing the parties to the present Writ Petition, the interest of justice can be subserved by reducing the amount of Rs.Three Lacs to Rs.Two Lacs. Learned counsel for the petitioner also agrees for the same.

11] In that view of the matter, I pass the following order.

- (i) Criminal Writ Petition is allowed.

(ii) The order, dated 3.7.2013, passed by the learned Additional Sessions Judge, Ahmednagar below Exh.6 in Criminal Appeal No. 92 of 2013 is modified only to the extent of direction given by the learned appellate court to deposit Rs.Three Lacs. Instead of Rs.Three Lacs, present petitioner shall deposit Rs.Two Lacs, within a period of six weeks from today in the appellate court without fail. While calculating amount of Rs. Two Lacs, already deposited amount of Rs.30,000/- has to be taken into consideration. Hence, the petitioner shall actually deposit an amount of Rs.1,70,000/-.

(iii) Non-bailable warrant issued by the learned Additional Sessions Judge on 20.8.2013 shall not be executed during the period of six weeks. Needless to mention, if the petitioner fails to deposit the amount as directed within a period of six weeks from today in the appellate court, the order passed by the learned Additional Sessions Judge, Ahmednagar, dated 20.8.2013 shall come into operation.

(iv) With the above directions, Criminal Writ
Petition is disposed of. Rule is made absolute.

[V.M.DESHPANDE, J.]

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