

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

Criminal Writ Petition No. 1235 of 2014

Ganesh s/o. Annarao Motipawale,
Age : 51 years,
Occupation : Labour,
R/o. Gopal Nagar,
Near Railway Station,
Udgir, District : Latur.

.. Petitioner.

versus

1. The State of Maharashtra.
2. Balasaheb s/o. Vyankatrao Jadhav,
Age : 55 years,
Occupation : Labour,
R/o. Bhakaskheda,
Taluka : Udgir,
District : Latur.

.. Respondents.

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Mr. Ajinkya Reddy, Advocate, for the petitioner.

*Mr. U.S. Mote, Additional Public Prosecutor, for
respondent no.1 - State.*

Mr. S.V. Warad, Advocate, for respondent no.2.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 6TH APRIL 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. Ajinkya Reddy for the petitioner, the learned APP Mr. U.S. Mote for respondent no.1 - State, and Adv. Mr. S.V. Warad for respondent no.2.
2. Rule. Rule made returnable forthwith. By consent, heard finally.
3. The petitioner herein was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, in Summary Trial Case No. 48/2011, by the learned Judicial Magistrate (F.C.), Udgir, vide judgment and order dated 17th May 2014. The petitioner herein is sentenced to suffer simple imprisonment for one month. He is directed to deposit compensation of Rs. 3,50,000/- to the complainant, in default, to suffer simple imprisonment for one year. The petitioner is directed to deposit compensation amount within 30 days from 17th May 2014.
4. Being aggrieved by the said judgment and order, the petitioner herein had filed Criminal Appeal No. 10/2014, which is pending before Additional Sessions Judge, Udgir. The appeal filed by the present petitioner has been admitted. While considering the application below Exhibit 4, seeking suspension of substantive sentence, the appellate court vide order dated 17th June 2014, has directed the petitioner to deposit Rs. 1,00,000/- within 15 days from the date of the order.
5. The petitioner being aggrieved by the said order, had filed

Criminal Application No. 3507 of 2014 before this Court. On 8th July 2014, the learned Counsel for the applicant had prayed before this Court [*Coram : V.M. Deshpande, J.*], that he will file a fresh application before Sessions Court, expressing his inability to deposit the amount of compensation, as directed by the appellate court. The applicant was granted liberty to withdraw the application and file a fresh application seeking modification of the order.

6. Accordingly, the applicant herein had filed a fresh application before the Sessions Court and has expressed his inability to deposit the said amount. However, the applicant had prayed that he would deposit an amount of Rs. 50,000/- instead of Rs. 1,00,000/-. The learned Additional Sessions Judge vide order dated 20th September 2014, has been pleased to reject the said application on the ground that the court is not vested with the order to modify the said order.

7. The learned Counsel for the petitioner vehemently submits that only on account of inability to deposit the amount of compensation, the petitioner should not be sent to custody as it would amount to punitive detention. According to the learned Counsel for the petitioner, the discretionary powers vested with the first appellate court have to be exercised judiciously depending on facts of each case. The learned Counsel for the petitioner has placed reliance upon judgment of the Hon'ble Apex Court in the case of ***Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. & another***, reported in (2007) 6 Supreme Court Cases 528, wherein the Hon'ble Apex Court has held that while exercising appellate powers, ordinarily a person should not suffer imprisonment only because the

conditions imposed for suspending the sentence are harsh. It is further held that the amount of compensation must be a reasonable sum. The court, while fixing the amount of compensation, must have regard to all relevant factors including the one referred to in Section 357(5) of the Code of Criminal Procedure, 1973.

8. The learned Counsel for respondent no.2 submits that the observations of the Hon'ble Apex Court, in the case of ***Dilip S. Dahanukar (supra)*** are, in fact, considered as a direction while imposing sentence of compensation under Section 357(5) of the Cr.P.C. It is true, that the Hon'ble Apex Court has further held that no unreasonable amount of compensation can be directed to be paid. The quantum of compensation to be paid by the accused at the time of suspension of sentence is the discretionary power of the court concerned and the same has to be considered judiciously.

9. The applicant herein has expressed his inability to deposit the amount of compensation as directed by the court. The substantive appeal is pending consideration. According to the learned Counsel for the petitioner, the petitioner has a good case on merit and that sending him to custody, for inability to deposit the amount as directed, would amount to punitive detention. Considering the facts and circumstances of the case, this Court is inclined to allow the petition.

10. The petition is allowed.

(A) The order passed by the learned Additional Sessions Judge, Udgir,

below Exhibit 4 in Criminal Appeal No. 10/2014, dated 17th June 2014, is set aside.

(B) The petitioner shall deposit an amount of Rs. 50,000/- [Rupees fifty thousand] before the Sessions Court at Udgir, within a period of two weeks from today.

(C) Upon depositing the said amount, the learned Additional Sessions Judge, Udgir, shall consider application of the petitioner for suspending the substantive sentence.

(D) The learned Additional Sessions Judge, Udgir, shall expedite hearing of the appeal filed by the petitioner and dispose of the same on its own merits, preferably by the end of January 2016.

11. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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