

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2700 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 2701 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 2702 OF 2015

Ramniklal Devchand Shah

..Petitioner

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Ashok Gade for the Petitioner/Applicant

Ms. Roshani Bafna present in person.

Mrs. R.V.Newton, APP for the Respondent/State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : AUGUST 24, 2015
DATED : OCTOBER 12, 2015.**

P.C.

1. The petitioner accused has challenged the order dated 22.6.2015 passed by the Addl. Sessions Judge, Palghar, in Criminal Appeal No.7 of 2015, Criminal Appeal No.8 of 2015 and Criminal Appeal No.9 of 2015 whereby the learned Sessions Judge has

directed the petitioner to deposit 50% compensation awarded by the trial court.

2. The respondent no.2 complainant had lodged the following three complaints against the petitioner accused before the learned JMFC, Dahanu, for offences under Section 138 of the Negotiable Instruments Act :

(1) SCC No.1066 of 2011 in respect of cheque dated 1.4.2008 for Rs.60000/-

(2) SCC NO.1067 of 2011 in respect of three cheques all dated 1.7.2008 for Rs.1,40,000/- and

(3) SCC No. 1068 of 2011 in respect of nine cheques, seven dated 31.12.2007, one dated 1.4.2008 and one dated 1.4.2008 for total sum of Rs. 10,90,000/-

3. By judgment dated 5.2.2015 the learned trial Judge held the petitioner accused guilty of offence under Section 138 of the Negotiable Instruments Act in all the aforesaid three cases and sentenced him as under:

(1). R.I. for one month and compensation of Rs.70,000/-i.d.

s.i. for two months in SCC/1066/2011 .

(2) S.I. for one month and compensation of Rs.1,60,000/-

I.d. S.I. for the period of two months In SCC/1067/2011.

(3) S.I.for one month and compensation of Rs.11 lakhs i.d. S.I.

for two months In SCC NO.1068/2011.

3. Aggrieved by the said conviction and sentence, the petitioner had filed three appeals being Criminal Appeal No. 7 of 2015, Criminal Appeal No.8 of 2015 and Criminal Appeal No.9 of 2015. The petitioner accused had also filed application for suspension of substantive sentence and order of payment of compensation. By order dated 11th February, 2015 the learned Addl. Sessions Judge suspended the substantive sentence in each of these cases on furnishing P.R. and Surety Bond of Rs.15,000/- each. By the impugned order dated 22.8.2015 the learned Addl. Sessions Judge, after hearing the respective parties, suspended the order of payment of compensation subject to the petitioner depositing the compensation as under :

(1) Rs.80,000/- in Criminal Appeal 7 of 2015 arising from C.C.No.1067 of 2011.

(2) Rs.35,000/- in Criminal Appeal No. 8 of 2015 arising from S.C.C. 1066 of 2011, and

(3) Rs.5.50.000/- in Criminal Appeal No.9 of 2015 arising out of SCC 1068 of 2011.

4. Being aggrieved by the said condition to deposit 50% of the compensation, the petitioner has filed these three petitions. Mr. Gade, learned Counsel for the petitioner relying upon the judgment of the Apex Court in the case of ***Dilip Dahanukar vs. Kotak Mahindra Co. Ltd., 2007 (3) SCC 379*** has contended that the learned Addl. Sessions Judge had no jurisdiction to impose such condition while suspending the order of payment of compensation. He submitted that the said directions are unreasonable and contrary to the provisions of law. He further submitted that the applicant is a senior citizen aged 77 years, suffering from serious ailments and is not in a financial position to deposit such a huge amount of

compensation as ordered by the learned Addl. Sessions Judge. He has further submitted that the learned Addl. Sessions Judge has issued the said direction without inquiring into the capacity of the petitioner to pay the said amount. He therefore contends that the order is unjust , erroneous and is liable to be set aside.

5. The respondent no.2 is present in person. She states that the petitioner accused has been rightly convicted for offence punishable under Section 138 of the Negotiable Instruments Act. However, though the Section empowers the Magistrate to impose fine which is double the cheque amount, the learned Magistrate has only sentenced the petitioner to undergo imprisonment for one month and has awarded compensation which is equivalent to the cheque amount. She has further stated that the Additional Sessions Judge has directed the petitioner to deposit only 50% of the compensation. She claims that she has taken loan from several financial institutions and that the prolonged litigation as well as the dilatory tactics of the accused is causing undue hardship to her.

6. I have considered the submissions made on behalf of the petitioner, respondent. At the outset it is may be mentioned that in the case of Dilip Dahanukar vs. Kotak Mahindra 2007 (3) Supreme 379 the Honourble Apex Court has held that the Appellate Court while suspending the sentence under Section 138 of the said Act was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right. The Apex Court held that the appellate court can direct only a reasonable amount out of the compensation amount to be deposited. The Apex Court held that as a condition for suspension of sentence, the appellant cannot be called upon to deposit unreasonable amount. While exercising the appellate power, ordinarily, a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh.

7. In the instant case the learned Addl. Sessions Judge by order dated 11th February, 2015 had suspended the execution of substantive sentence of imprisonment on execution of personal bond of

Rs.15,000/- with one surety in the like amount. The learned Addl. Sessions Judge had directed the petitioner to deposit 50% of the compensation for the purpose of suspending the order of payment of compensation. The said direction was not a condition precedent for entertaining the appeal.

8. It is to be noted that in cases under Section 138 of the N.I.Act the learned Magistrate is empowered to impose fine which could extend to twice the amount of cheque. Whenever the fine does not form part of the sentence, the Magistrate is also empowered to award compensation under Section 357 (3) for which there is no limit. In the instant case the Magistrate has not imposed fine, but the Magistrate has awarded compensation which is equivalent to the cheque amount. While directing the petitioner to deposit 50% of the compensation, the learned Sessions Judge has taken into consideration, the need of the respondent-complainant as well as the age of the accused and other circumstances. In the facts and circumstances of the case, particularly the fact that the compensation awarded is equivalent to the cheque amount, the order is neither

illegal nor unreasonable. I do not find any merit in the petitions. Hence the petitions are dismissed. The petitioner is however given four weeks time to comply with the impugned order.

(ANUJA PRABHUDESSAI, J.)