

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 4001 OF 2014

Choksi Tube Co.Ltd. & Ors. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. Aabad Ponda & Srisabari Rajaji i/b Phoenix Legal, Advocate for the petitioners

Mr. V.B. Konde-Deshmukh, APP for the respondent-State.

Mr. Amit P. Ghag, Advocate for the respondent No. 2.

CORAM:-M.L. TAHALIYANI, J.

DATED : -16/01/2015

P.C.

Heard learned counsel for the parties.

2 The petitioners are aggrieved by the order of the appellate Court directing them to pay 25% of the compensation amount to be paid to the respondent No. 2. The respondent No. 2 is the original complainant in a criminal complaint filed by him against the petitioners for the offence punishable u/s 138 of the Negotiable Instruments Act. The petitioners have been convicted

by the trial Court. They have filed the appeal before the appellate court against the judgment and order of the trial Court.

3 The appeal has been admitted by the appellate Court, however the appellate Court while suspending the substantive sentence, it was directed that the petitioners should pay 25% of the compensation amount imposed by the trial Magistrate.

4 The learned counsel Mr. Ponda, for the petitioners has submitted that the order is unreasonable and unfair, keeping in view of the judgment of the Hon'ble Supreme reported at **(2007) 6 SCC 528 (Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr.** My attention was drawn to the order of the sessions Court in which the learned Addl. Session Judge has stated that particular judgment will be considered at the time of final hearing. The learned Addl. Sessions Judge probably failed to notice that the judgment cited by the petitioners before the said Court had nothing to do with the final hearing. It was particularly on the point of payment of compensation and the stay on payment.

5 The learned counsel Mr. Amit Ghag has vehemently opposed the prayer for grant of any relief to the petitioners. It is

submitted by him that the complaints are of the year 2008. After hearing both the sides, in this regard, it may be noted here that since the appeal has been admitted, the guilt or otherwise of the petitioners will have to be decided at the time of final hearing of the appeal. Therefore, the direction of the appellate Court to pay part of compensation has always to be reasonable and not unfair. It is possible that in the ultimate analysis the petitioners may succeed and may get acquittal from the appellate Court. Keeping in view of all these aspects the order of the learned appellate court is modified by me as under:

The substantive sentence imposed on the petitioners No. 2 and 3 shall remain suspended until the final hearing of the appeal of petitioners No. 1 to 3 on paying 15% of the compensation amount within four weeks from today in the appellate Court.

The hearing of the appeal is expedited. It shall be finally decided within two months from the date of receipt of this order.

The petition stands disposed of accordingly.

(JUDGE)

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