

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

**CRIMINAL APPLICATION No.1066 of 2015
WITH
CRIMINAL APPLICATION NO.1067 OF 2015
WITH
CRIMINAL APPLICATION NO.1068 OF 2015
WITH
CRIMINAL APPLICATION NO.1069 OF 2015
WITH
CRIMINAL APPLICATION NO.1070 OF 2015
WITH
CRIMINAL APPLICATION NO.1071 OF 2015
WITH
CRIMINAL APPLICATION NO.1072 OF 2015
WITH
CRIMINAL APPLICATION NO.1073 OF 2015
WITH
CRIMINAL APPLICATION NO.1074 OF 2015
WITH
CRIMINAL APPLICATION NO.1075 OF 2015
WITH
CRIMINAL APPLICATION NO.1076 OF 2015
WITH
CRIMINAL APPLICATION NO.1077 OF 2015**

Shree Siddhivinayak Developers &
Anr.

...Applicants

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Ms Mallika A. Ingale for the Applicants.

Mr. Harshad Bhadbhade for the Respondent No.2.

Mr. Rajesh More, APP for Respondent No.1- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :8th OCTOBER, 2015.

P. C. :

Rule. By consent of the parties rule made returnable forthwith.

2. Heard the learned counsel for the Applicant-accused and Respondent No.2. By these applications filed under section 482 of the Cr.P.C., the Applicant, who is an accused in 12 separate complaints filed under section 138 of the Negotiable Instruments Act, has challenged the order dated 25th August, 2015 whereby the learned Sessions Judge has directed the Applicant-accused to deposit 10% of the total compensation within one month from the date of the order.

3. The Applicant-accused was facing prosecution in 12 separate complaints under section 138 of the Negotiable Instruments Act. It is not in dispute that the Respondent No.2-complainant had filed his affidavit-in-evidence and on the date of cross-examination the Applicant-accused was absent and his cross-examination was closed. It is also not in dispute that the learned Magistrate had not made any attempt to secure the presence of the Applicant-accused and that the

statement under section 313 of the Cr.P.C. was not recorded. No arguments were advanced on behalf of the Applicant-accused and finally he came to be convicted by judgment dated 14th August, 2014 and sentenced to undergo for one year and to pay fine of Rs.5,000/- , in default simple imprisonment for one month and furthermore compensation of Rs.10,00,000/- in each of these 12 cases.

4. The Applicant-accused has challenged his conviction by filing 12 separate appeals before the Sessions Court at Bombay. By order dated 25-8-2015 the learned Sessions Judge directed the Applicant-accused to deposit fine of Rs.5,000/- and 10% of total compensation awarded in each of the cases. The Applicant-accused has challenged the direction to deposit 10% of the total compensation.

5. The learned counsel for the Applicant-accused has submitted that in terms of section 357 sub sections (1) and (3) of the Cr.P.C. the learned Magistrate was not justified in imposing fine as well as the compensation. The learned counsel for the Applicant-accused submits that the impugned order is illegal and cannot be sustained.

6. It may be mentioned that the legality and propriety of the conviction and sentence will be decided in the appeals which are

pending adjudication before the Sessions Court and thus, need not be commented upon by this court. The only question which arises in these applications is about the validity of the direction to deposit the 10% of the compensation awarded in each of the cases.

7. Before delving into the merits of the case, it would be apt to refer to the relevant provisions of section 357 of the Cr.P.C. which read as under:

“section 357 Order to pay compensation- (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) ...

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) ...

(d) ...

(2) ...

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any

loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

8. A plain reading of this provision makes it clear that compensation under sub section (3) of section 357 of Cr.P.C. can be awarded only when fine does not form part of the sentence. In the case of **R.Vijayan Vs. Baby and Anr. (2012) 1 SCC 260** the Hon'ble Supreme Court has held as under :

“It is evident from Sub-Section (3) of section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. The reason for this is obvious. Sub-section (1) of section 357 provides

that where the court imposes a sentence of fine or a sentence of which fine forms a part, the Court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court. Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. Only where the sentence does not include fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act of the accused person, requires to be compensated, it is permitted to award compensation under compensation under section 357(3).”

9. In the case of Dilip Dahanukar Vs.. Kotak Mahindra Company Limited and another ([2007]6-SCC-521) the Apex Court 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.

10. In the instant case, the learned Magistrate had sentenced the Applicant-accused to imprisonment and has also levied fine of Rs.5,000/- and further directed the Applicant-accused to pay compensation of Rs.10,00,000/- in each of the cases. Needless to say that since the fine forms the part of the sentence, the Magistrate could not have directed payment of compensation under sub Section (3) of section 357 of the Cr.P.C. When the legality of such direction to pay the compensation was itself in question, the learned Sessions Judge was not justified in directing the Applicant-accused to deposit 10% of total compensation as a condition for suspending the substantive sentence. The said direction is therefore, unjust and improper.

11. Under the circumstances and in view of discussion supra the applications are allowed. The impugned order to deposit 10% of total compensation in each of the appeals is hereby set aside.

12. At this stage the learned counsel for the Applicant -accused has submitted that in order to show his bonafides the Applicant-accused is ready to deposit fine of Rs.5,000/- and sum of Rs.25,000/- in each of these 12 cases. In the light of the said statement, the Applicant-accused is permitted to deposit before the learned Metropolitan Magistrate, 71st Court, Mazgaon a fine of Rs.5000/- and cash of Rs.25,000/- in each of the criminal cases within a period of one week from the date of the receipt of the order.

(ANUJA PRABHUDESSAI, J.)