

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

CRIMINAL WRIT PETITION NO. 126 OF 2016

Milind s/o Shriram Patil

.... PETITIONER

V/S

Pawan s/o Amolchand Kasliwal & Anr.

.... RESPONDENTS

.....

Mr. Hemant Surve, Advocate for Petitioner.

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CORAM : M.T.JOSHI, J.

DATE : 5th FEBRUARY, 2016

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ORAL ORDER :

. Heard Mr. Hemant Surve, learned counsel for the Petitioner.

2. In the proceeding u/s 138 of the Negotiable Instruments Act, learned Judicial Magistrate First Class, Aurangabad has convicted the present petitioner. He was directed to undergo simple imprisonment for a period of one year and was further directed to pay compensation of ₹ 60,00,000/- [Rupees Sixty Lacs] to the complainant.

3. The petitioner, therefore, filed Criminal Appeal No. 192/2015 in the court of the Sessions Judge at

Aurangabad. At the time of suspension of the conviction, learned Sessions Judge suspended the same. Relying on the ratio of certain authorities, learned Sessions Judge came to the conclusion that upon deposit of 40% of the amount i.e. ₹ 24,00,000/- [Rupees Twenty Four Lacs] in two installments, the sentence shall be suspended.

4. Mr. Surve, learned counsel submits that the petitioner is suffering from illness. He would not be able to raise said fund. The petitioner would be able to deposit only ₹ 5,00,000/- [Rupees Five Lacs]. He relies on the ratio laid down in the case of Suresh Hiralal Barwal Vs. State of Maharashtra & Anr. - 2013 ALL MR (CRI) 4404 and Dilip Dahanukar Vs. Kotak Mahindra Co.Ltd. & Ors. - 2007 (2) B.Cr.C. 472 (SC).

5. The cursory look at the case would show that, according to the complainant, he has originally paid an amount of ₹ 30,00,000/- [Rupees Thirty Lacs] to the present petitioner as an earnest money for purchase of property. The present petitioner, after much persuasion, failed to perform his part of contract and ultimately issued cheque for ₹ 42,50,000/- [Rupees Forty Two Lacs Fifty Thousand] against the receipt of ₹ 30,00,000/- [Rupees Thirty Lacs], which he had received earlier.

6. Taking into consideration the over-all facts that against the compensation of ₹ 60,00,000/- [Rupees Sixty Lacs], learned Sessions Judge has directed to pay

compensation of ₹ 24,00,000/- [Rupees Twenty Four Lacs], that too within two installments, I do not find it fit to interfere in the discretion exercised by the learned Sessions Judge.

7. Mr. Surve, learned counsel submits that the period prescribed by the learned Sessions Judge for depositing the amount has already expired.

8. In the circumstances, the period that was prescribed by the learned Sessions Judge is now extended for a period of four weeks from the date of this order for depositing the entire amount as directed by the learned Sessions Judge.

9. Writ Petition is accordingly disposed of.

[M.T.JOSHI, J.]