

(1)

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

CRIMINAL WRIT PETITION NO. 678 OF 2016

Bhalchandra s/o Venkatrao Guralhe,
Age: 45 years, Occu: Service,
R/o. Indrayani Niwas, Sadbhavana Nagar,
Rajiv Gandhi Chowk, Latur,
Tq. & Dist. Latur

..PETITIONER

VERSUS

1. Abdul Mukhit s/o Abdul Jabbar Shaikh,
Age: 40 years, Occu: Agri.,
R/o. AUSA, Tq. AUSA,
Dist. Latur

2. The State of Maharashtra

..RESPONDENTS

Mr T. M. Venjane, Advocate for petitioner;
Mr M. L. Dharashive, Advocate for respondent No. 1;
Mr N. T. Bhagat , Addl. Public Prosecutor for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 7th September, 2016

ORAL ORDER :

Learned Judicial Magistrate First Class, AUSA, convicted the petitioner for an offence punishable under section 138 of the Negotiable Instruments Act, ordering payment of Rs.14,50,000/- and to suffer simple imprisonment for six months. If the amount is recovered from the petitioner, it is ordered that amount of Rs.14,40,000/- be paid to respondent no.1 – complainant, pursuant to the provisions of sections 357 (1) (a) and (1) (b) of the Code of Criminal Procedure.

(2)

2. The petitioner, feeling aggrieved thereby, preferred Criminal Appeal No.22 of 2016 and also moved an application for suspension of sentence and grant of bail.

3. It is claimed by the present petitioner that he has already deposited an amount of Rs.1,00,000/- and the learned Additional Sessions Judge, while ordering suspension of sentence and admitting him on bail, has directed to deposit amount of Rs.3,35,000/-, which according to him, is unreasonable.

4. Learned Counsel would then invite my attention to the judgment of the Apex Court, in the matter of **Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd.**, reported in **(2007) 6 Supreme Court Cases 528** and also ad-interim order of this Court in Criminal Writ Petition No.441 of 2015, so as to canvass that the amount of fine as ordered should be reasonable and not exorbitant.

5. The claim of the petitioner is opposed by Mr M. L. Dharashive, learned Counsel appearing on behalf of respondent No. 1, on the ground that the cheque, which was the basis for ordering conviction was to the tune of Rs. 13,70,000/- and the amount of compensation ordered is Rs. 14,40,000/- out of fine amount of Rs. 14,50,000/-. According to him, in view of the law laid down by the Apex Court, in the matter of Dilip S. Dahanukar (supra), the amount of fine/compensation has to be reasonable one within the meaning of section 357 of the Code of Criminal Procedure

(3)

and as such, learned Sessions Judge has rightly reduced the amount of deposit to the tune of Rs. 3,35,000/-, in addition to Rs. 1,00,000/- already ordered.

6. Having bestowed my thoughts to the submissions made and after considering the law laid down by the Apex Court in the matter of Dilip S. Dahanukar (supra), it is required to be noted that the Court, while considering the claim for admitting the accused on bail in an appeal against conviction, has to impose reasonable conditions including that of deposit of compensation/fine amount as ordered. In this case, fine amount is Rs. 14,50,000/- and pursuant to the provisions of section 357 (1) (b) of the Code of Criminal Procedure, the amount of Rs. 14,40,000/- was further to go to the coffers of the complainant. The amount out of fine as was ordered by the learned Sessions Judge is Rs. 3,35,000/- plus Rs. 1,00,000/-, i.e. Rs. 4,35,000/-, which is about 30% of the amount of fine.

7. In my opinion, the amount of fine as is ordered to be deposited is a condition pre-requisite for ordering the release of the petitioner on bail while admitting the appeal against conviction for final hearing, appears to be reasonable one.

8. In view thereof, no interference is warranted in exercise of extraordinary writ jurisdiction. Criminal Writ Petition, as such, fails and stands dismissed.

(4)

9. The amount of Rs.1,00,000/- deposited in this Court be remitted to the Court of Sessions Judge, in Criminal Appeal No.22 of 2016, which is pending on the file of learned Additional Sessions Judge, Latur.

10. At this stage, Mr Venjane, learned Counsel appearing on behalf of petitioner prayed for extension of four weeks time for deposit of the balance amount. Extension as prayed for is granted.

(N.W. SAMBRE, J.)

amj