

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

CRIMINAL WRIT PETITION NO. 754 OF 2015

Kalika Nagri Sahakari Patsanstha Ltd,
Ahmednagar
Through Pramod Dattatraya Kand,
Age: 55 years, Occ: Recovery Officer,
R/o. 11/111, Renavikar Nagar,
Savedi, Ahmednagar.

...Petitioner

versus

Ashok Bansilal Bora,
Age: 50 years, Occ: Business,
R/o. 4037, Mahajan Galli,
Ahmednagar.

...Respondent

.....
Mr. A. C. Darandale, Advocate for petitioner
Mr. S. S. Jadhavar, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 1st APRIL, 2016

ORAL ORDER :

By an order dated 21/11/2014 passed below Exhibit-5, learned Additional Sessions Judge, Ahmednagar allowed the same application and suspended the operation of substantive sentence awarded to the respondent, subject to executing of P.R. bond of Rs.15,000/- and surety of like amount and depositing of compensation amount of Rs.50,000/- within period of 10 days.

2. Learned Counsel for the petitioner, while questioning the

legality of the order, would submit that certain incorrect statements are made, which perhaps, have prompted the learned Sessions Judge to pass an order of suspension of sentence. He would then submit that the said order of suspension is passed without hearing the present petitioner, who is original complainant.

3. Upon perusal of the order dated 21/11/2014, it is required to be noted that the cheque that was dishonoured was for an amount of Rs.9,29,000/-. The Magistrate has ordered the respondent to deposit the amount of Rs.9,29,779/-.

4. The fact remains that while ordering deposit of compensation of Rs.50,000/-, learned Sessions Judge, has perhaps lost sight of the cheque amount and as such, the amount of compensation as was directed to deposit appears to be not in proportionate to the cheque amount. The law on the said issue is required to be appreciated based on the judgment of the Apex Court and this Court in the matter of ***Dilip S. Dhanurkar vs. Kotak Mahindra Co. Ltd., and another*** reported in ***(2008) 1 Mh.L.J. 22.***

5. Apart from above, it is required to be noted that learned Sessions Judge has relied upon the receipts depicting the payment to the petitioner of Rs.4,10,000/-, to which there was no opportunity given to the petitioner to confront with.

6. In this background, in my opinion, the order dated 21/11/2014 passed by the Additional Sessions Judge below Exhibit-5 in Criminal Appeal No. 251 of 2014 is not sustainable, as such, same is quashed and set aside. The application below Exhibit-5 is restored to the file of learned Sessions Judge, Ahmednagar, who is directed to decide the same afresh, after granting opportunity of hearing to the parties, within period of six weeks from today.

7. The protection as is ordered by learned Sessions Judge, Ahmednagar in favour of the respondent shall continue till then.

8. As such, the writ petition stands disposed of in above terms.

[N.W. SAMBRE, J.]