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

CRIMINAL WRIT PETITION NO. 1143 OF 2016

Prabhakar Sheshrao Ghuge

..PETITIONER

VERSUS

Shri. Swami Narendra Nagari
Sahakari Patsanstha Ltd.

..RESPONDENT

Mr C. R. Thorat, Advocate for petitioner;
Mr S. S. Naik, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 30th September, 2016

ORAL ORDER :

Heard learned Counsel for respective parties.

2. By judgment and order dated 20th May, 2016, passed by learned Judicial Magistrate First Class, Aurangabad in SCC No.11442 of 2014, the petitioner-accused was convicted for offence punishable under section 138 of the Negotiable Instruments Act and sentenced to suffer simple imprisonment for two months and to pay compensation of Rs.2,10,000/-, in default to suffer further simple imprisonment for one month.

3. Aggrieved by the aforesaid judgment and order of conviction, the petitioner preferred Criminal Appeal No.116 of 2016 before Sessions Court. The petitioner filed application Exh.4 in the said appeal, seeking suspension of the substantive sentence and his release on bail. By order dated 23rd June, 2016, passed below Exh.4, learned Additional Sessions

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Judge, Aurangabad ordered suspension of sentence on deposit of amount of Rs.2,10,000/-.

4. The petitioner preferred application Exh.15 for modification of the order dated 23rd June, 2016, to the extent of deposit of compensation amount of Rs.2,10,000/-. Upon hearing the parties, learned Additional Sessions Judge, Aurangabad, rejected application Exh.15, by order dated 18th August, 2016. Being aggrieved by the orders passed below Exhs.4 and 15, the petitioner has preferred the present writ petition.

5. On perusal of the record, it is noted that the dishonoured cheque was for Rs.2,10,000/-.

6. In view of law laid down by the Apex Court, in the matter of **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd., & anr.**, reported in **2008 (1) Mh.L.J. (S.C.) 22**, as the petitioner herein has already deposited amount of Rs.1,05,000/- before the learned Additional Sessions Judge, in my opinion, the order passed below Exh.4, incorporating a condition of deposit of amount of Rs.2,10,000/- is not sustainable. In view thereof, I pass following order :-

Condition no.2 incorporated in the order dated 23rd June, 2016, passed by learned Additional Sessions Judge, Aurangabad, below Exh.4, In Criminal Appeal No.116 of 2016, to the extent of deposit of amount of Rs.2,10,000/-, is quashed and set aside.

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Upon joint request of the parties, hearing of the appeal is expedited.

Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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