

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

CRIMINAL WRIT PETITION NO. 1196 OF 2016

Sheshrao s/o Gunjaram Thorat ...Petitioner

VERSUS

Santosh s/o Keshavrao Shinde
and another ...Respondents

.....
Shri M.R.Sonawane, advocate for petitioner
.....

CORAM : N.W.SAMBRE, J.

DATED : 28th September, 2016

PER COURT :-

Heard learned counsel for the petitioner.

2. Liberty to add the State of Maharashtra as party/respondent. Amendment be carried out forthwith.

3. Service of respondent no.2 is dispensed with, as the Court is proceeding to pass an innocuous order.

4. It is informed that the present petitioner/accused was convicted under Section 138 of the Negotiable Instruments Act. It is then claimed that against such conviction, the petitioner preferred an appeal and also an application under Section 389 of the Code of Criminal Procedure for suspension of sentence and his release on bail. The petitioner was ordered to be released on bail subject to execution of P.R. bond of Rs.15,000/- with one surety and deposit of Rs.80,000/- i.e. amount of compensation. The petitioner submits that the said order came to be passed on 20.7.2016.

5. As the petitioner has failed to deposit the amount of Rs.80,000/- within a period of two weeks as ordered by the appellate Court on 20.7.2016, it is informed that he moved an application for extension of time to deposit the said amount, however, the said application came to be rejected by the learned Sessions Judge by order dated 6.9.2016.

6. Prima facie, it is required to be noted that the intention/bona fides of the petitioner are apparent as he moved an application seeking extension to deposit Rs.80,000/-. The amount of compensation, as ordered by the learned Magistrate, is required to be dealt with in accordance with the provisions of Section 421 of the Code of Criminal Procedure.

7. If the extension was granted, in my opinion, no prejudice would have been caused to the respondent/original complainant. As such, the order impugned, in my opinion, is not sustainable.

8. In view thereof, order dated 6.9.2016, passed by learned Sessions Judge is quashed and set aside. The applicant's application for grant of extension to deposit amount of Rs.80,000/- stands allowed, upon an undertaking to that effect tendered by the learned counsel for the petitioner, that the petitioner shall deposit Rs.80,000/- with the appellate Court within a

period of two weeks from today.

9. The Writ Petition is allowed in the above terms.

(N.W.SAMBRE, J.)

dbm/crwp1196.16