

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

CRIMINAL APPLICATION NO. 6933 OF 2015

Shri Mohan Bandu Jadhav,
R/o Dabharul, Tq. Paithan,
Dist. Aurangabad

...Applicant

versus

The State of Maharashtra & anr.

...Respondents

.....
Mr. D. K. Dagadkhair, Advocate for applicant
Mr. A. S. Shinde, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 15th FEBRUARY, 2016

ORAL ORDER :

This application is filed under the provisions of Section 439 (2) of Negotiable Instruments Act, 1881 for relaxation of the conditions.

2. The applicant came to be convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 pursuant to Section 255 (2) of the Code of Criminal Procedure for a period of 6 months. The applicant was directed to pay compensation of Rs. 11,50,000/- to the complainant within period of one month, failing which the conviction of one month to be awarded.

3. The present applicant thereafter preferred appeal before the learned Sessions Court, Aurangabad. The Sessions Court directed to deposit 40% of the amount i.e. Rs. 4,60,000/-, that too in four installments. Learned Counsel for the applicant submits that, such condition cannot be imposed on the applicant as Supreme Court has termed such condition as onerous and has sought to place reliance in the matter of **Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. & anr.** reported in **2008(1) M.H.L.J. (S.C.) 22.**

4. At the time of hearing of present application for relaxation, the applicant was called upon to deposit cheque amount, that too in installments, which is around Rs. 5,75,000/-, however, the applicant has shown his inability to do so. In my opinion, it will be inappropriate to consider the equity in favour of such party, who is unable to deposit principal amount, particularly, in the light of presumption under Section 139 of Negotiable Instruments Act. As such, the application for relaxation, in my opinion, does not need any consideration, hence stands rejected.

[N.W. SAMBRE, J.]