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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.561 OF 2016

Sumeet Gupta	]	
age: 33 years, residing at: House NO.40/B	]	.. <u>Petitioner</u>
Pine Homes, Dhakoli, Zirakpur Near, Panchula	]	(Original
Sector 20, Punjab 134 109	]	Accused)

Versus

1. The State of Maharashtra	]	
	]	<u>Respondents</u>
2. Bharat Nariman,	]	(Respondent
r/o. 22, Bharat Mahal, 4 th floor,	]	No.2 Original
86, Marine Drive, F road, A wing,	]	complainant)
Mumbai 400 020.	]	

Mr. Q. M. Ashfaq with Mr. Arvind Taral, for the petitioner.
Mr. Abbas Kazmi, for respondent No.2.
Mr. A.S. Shitole, APP for the respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH FEBRUARY 2016.

Oral order. :

1. Heard learned counsel for the petitioner.
2. With the consent of parties, petition is taken up for final hearing.
3. The petitioner herein is appellant in Criminal Appeal No.757 of 2015, which he has preferred against his conviction for the offence

punishable under Section 138 of the Negotiable Instruments Act. In the said appeal, he has preferred Misc. Application No.2333 of 2015, for suspension of imprisonment of three months. While allowing said application, learned Sessions Judge after hearing both counsel, directed the petitioner to deposit an amount of Rs.10 lacs before the trial Court, within a period of six weeks from the date of order. Subject to this condition the sentence of the appellant came to be suspended.

4. Now the submission of learned counsel for petitioner is that amount which Sessions Court has directed the petitioner to deposit that of Rs.10 lacs is quite exorbitant. It is as good as depriving the petitioner from his right of appeal. Total amount as directed by the trial Court is Rs.16,07,000/- with interest at the rate of 9% per annum and therefore, it is urged that some amount is required to be reduced, as regards to deposit of the said amount. To substantiate his submission, learned counsel for petitioner has relied upon the judgment of this Court in Krishshankat Laddha -vs- Ghanashyam Khobrekar and an (Writ Petition No.36 of 2007), wherein similar question was raised. The appellant before the Sessions Court, was directed to deposit 50% of the cheque amount while suspending his substantive sentence of imprisonment.

When said order was challenged before this Court, it was held that the direction to deposit 50% of the compensation amount virtually defeats the statutory right of appeal and thus, the law laid down by Apex Court in *Dilip S. Dahanukar -vs- Kotak Mahindra Co. Ltd (2007 (1) Bom.C.R.(Cri. 769)* was not followed. In the said petition, this Court directed the appellant accused to deposit 10% of the compensation amount as condition precedent to suspend the order of imprisonment.

5. Learned counsel for the respondent submits that the petitioner in this case is resident of Panchkula, Punjab and therefore, it is always been difficult for respondent to secure presence of petitioner before the trial Court. The matter is pending since last 3 to 4 years. Hence having regard to this fact and also fact that an amount of Rs.16,07,000/- was to be paid with interest at the rate of 9% per annum from the date of dishonour of cheque which comes to total amount of Rs.20 lacs approximately, the appellate Court has rightly directed the petitioner to deposit 50% of the total amount which comes to Rs.10,000/-.

6. As regards the authority relied upon by learned counsel for the petitioner, learned counsel for respondent has submitted that the judgment of our High Court is of the year 2007. The facts of said judgment

are also different because in the instant case, the petitioner is residing out of State at Punjab. Moreover, it is submitted that as per recent practice while admitting appeal and suspending the substantive sentence of imprisonment, the appellate Court necessarily imposes condition of depositing 50% of the cheque amount. Hence according to him, no interference is warranted in the impugned order of the trial Court.

7. It is true that the facts of this case are to some extent different from the facts of the reported authority as in the reported authority the appellant accused was not residing out of the State as in the present case. He is resident of Punjab. Matter is also pending for recovery since last 4 years from the date of complaint. Hence at the same time, this Court also cannot lose sight of the dictum of law laid down by the Apex Court in case of *Dilip S Dahanukar -vs- Kotak Mahindra Ltd I(Supra)* and also in the above said order of this Court that direction to deposit 50% of compensation amount virtually defeats statutory right of appeal available to the accused. Therefore, though the quantum of amount is in the discretion of appellate Court, at the same time it has to be reasonable. Learned counsel for the petitioner submits that he is ready to deposit amount of Rs.6,00,000/-. In view of thereof, Writ Petition is allowed partly.

The impugned order of the Sessions Court directing the petitioner to deposit amount of Rs.10,00,000/- is set aside. Instead thereof, the petitioner is directed to deposit amount of Rs.6,00,000/- within four weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]