

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3851 OF 2015

Baburao Namdeo Kharat. ... Petitioner.

Versus

Sagar Dattatrey Raut & anr. ... Respondents.

Mr. D.S. Patil, advocate for petitioner.

Mrs. A.A. Mane, APP for State.

CORAM : RAVINDRA V.GHUGE, J
DATE : JULY 5, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State.

2 The Petitioner is aggrieved by the order dated 4th August, 2015 passed by the learned Additional Sessions Judge, Pune below Exh. 5 in Criminal Appeal No. 308 of 2015.

3 It is pointed out that the notice was issued by this Court on 23/11/2015. Office remark dated 5/12/2015 indicates that the notice has been served upon respondent No. 1. On 12/1/2016 respondent No. 1 caused appearance through advocate and at his request the matter was adjourned.

4 Considering that the none appeared for the first respondent on 25/4/2016 and 6/6/2016, the matter was adjourned in order to enable the first respondent to participate in the hearing of this petition.

5 None appears for the first respondent even today.

6 The Petitioner has raised a short issue for the consideration of this Court. His grievance is that though the first respondent has purchased high costs properties, the impugned order passed by the learned Additional Sessions Judge with regard to the deposit of compensation, after the first respondent was convicted in Criminal Case No. 16628 of 2013, is on the basis that the first respondent does not have the financial strength to pay compensation amount.

7 The learned Advocate for the Petitioner has therefore, pointed out that the impugned order is specifically passed on the prima facie conclusion that the first respondent is not in a position to deposit the entire amount of compensation and merely because, he showed his willingness to deposit 10% of the compensation, that the impugned order has been passed.

8 The Petitioner has entered an affidavit dated 5/12/2015 alongwith certain documents to indicate that respondent No. 1 has,

prior to the passing of the impugned order, purchased land admeasuring 1 H 10 R situated at Tandulwadi, Taluka Baramati for an amount of Rs. 24 Lakhs. Similarly, he has purchased a land admeasuring 1 H and 3 R situated at Tandulwadi on 9/1/2015 for an amount of Rs. 20 Lakhs. He therefore, submits that respondent No. 1 has misled the Court below in contending that he is not in a position to deposit the entire amount of compensation.

9 It is further submitted that considering that respondent No. 1 was convicted by the Judgment dated 5/5/2015 under Section 138 of the Negotiable Instruments Act, 1881, the learned Additional Sessions Judge ought not to have showed any sympathy towards the first respondent since it amounts to depriving the Petitioner of his right to receive the amount of compensation. It is therefore, prayed that the impugned order be modified and the first respondent be directed to deposit atleast 50% of the compensation amount, and issue further direction that the pending appeal be decided expeditiously.

10 Having considered the submissions of the learned Advocate for the Petitioner and having gone through the affidavit placed on record, it is apparent that the Petitioner has made a solemn statement on oath and has also supported the said statement with certain documents to indicate that the first respondent has purchased high value properties on 7/1/2015 and 9/1/2015. This aspect though may not have been before the learned Additional Sessions Judge when the impugned order was passed, nevertheless, indicates that the first respondent has made the appeal court believe that he has no money and as if he was making a fair gesture that he is depositing 10% of the compensation amount. Considering the above, I am of this opinion that the impugned order deserves to be modified.

11 As such, this Petition is partly allowed. The impugned order dated 4/8/2015 is modified and respondent No. 1 is therefore, directed to deposit in all 20% of the compensation amount. It is

informed that he has already deposited 10% of the compensation amount as is directed by the appeal court. He shall therefore, deposit the remainder 10% of the amount within 6 weeks from today.

12 The Appeal Court is at liberty to decide the pending appeal as expeditiously as possible.

(RAVINDRA V. GHUGE, J)