

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 272 OF 2017

Virendra Feku Yadav & Anr. ...	Petitioners
Vs.	
The State of Maharashtra & Anr. ...	Respondents

Mr. Satyaram R. Gaud, Advocate for the petitioners.
Mr. Vinay J. Bhanushali, for respondent No.2.
Mr. V.V. Gangurde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 20th April, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioners herein are convicted for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code and have been sentenced to R.I. for one year each and pay fine of Rs.5,000/- in default S.I. for 15 days each. The petitioners are also directed to pay an amount of Rs.5 lakhs each to the original complainant through Hiralal Vishwanath Gupta by way of compensation by the learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai in C.C. No.1500285/PW/2010 vide judgment and order dated 14.2.2014.

3. Being aggrieved by the said order, the petitioners herein have filed

Criminal Appeal No.961 of 2015 pending before the Sessions Court, Mumbai. The learned Sessions Court by an order dated 14.8.2014 was pleased to suspend the substantive sentence on depositing the fine amount as well as sureties of Rs.5 lakhs which was awarded towards compensation. The petitioners herein have deposited the fine amount.

4. The petitioners herein had filed Criminal Writ Petition No.72 of 2015 challenging the operative order passed by the Metropolitan Magistrate. This Court (Coram:M.L. Tahiliani, J.) by an order dated 18.4.2015 was pleased to dismiss the Writ Petition upon holding that the petitioners shall pay the surety of Rs.5 lakhs each.

5. Today, the petitioners are seeking limited modification of the operative order and it is submitted that the petitioners were tried for the offence punishable under Section 420 read with Section 34 as well as for the offence punishable under Section 138 of the Negotiable Instruments Act. That according to the petitioners, a substantial amount has been paid under 138 proceedings. The amount is deposited in the Sessions Court. Today, the limited issue before this Court is about furnishing sureties of Rs.5 lakhs each.

6. The learned counsel for the petitioners submits that since the condition is onerous, it is difficult to abide by the said condition. In the

alternative, the learned counsel for the petitioners submits, upon instructions, that the petitioners would deposit cash surety of Rs.1 lakh each in the Sessions Court since the appeal is pending before the Sessions Court. The learned Sessions Court shall expedite the hearing of the appeal. The submissions of the learned counsel are accepted. Hence, the orders dated 14.8.2014 and 18.4.2015 stand modified as follows :-

ORDER

- (i) The petitioners shall deposit cash surety of Rs.1 lakh (Rupees one lakh) each in the Sessions Court within three weeks from today.
- (ii) The complainant shall not be permitted to withdraw the said amount till the final decision of the appeal.
- (iii) The learned Sessions Court shall expedite the hearing of the appeal.
- (iv) The order dated 14.8.2014 passed in Misc. Application No.1858 of 2014 stands modified to the limited extent.

7. Writ Petition stands disposed of. Rule is made absolute in the above terms.

(SMT. SADHANA S.JADHAV, J.)