

Rane

* 1/5 *

WP-1742-2016 (SR. 31)
Monday, 30.10.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1742 OF 2016

Shri. Mohsin Ulfat Mulla

....Petitioner

V/s.

Shri. Malik Allauddin Sharikmaslat
and Ors.

....Respondents

* * * * *

Mr. Sandeep S. Koregave, Advocate for the petitioner.

None for the respondents.

CORAM :-

SANDEEP K. SHINDE, J.

DATE :-

30TH OCTOBER, 2017.

P.C. :-

1. This writ petition is preferred against the order dated 10th March, 2016 passed by the Learned Additional Sessions Judge, Sangli below Exhibit-5 in Criminal Appeal No.60 of 2016.

2. The petitioner accused has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act in S.C.C. No. 214 of 2015 wherein by judgment and order dated 11th February, 2016 the petitioner was directed to suffer rigorous imprisonment of six months with fine of Rs.1,60,000/-.

3. Aggrieved by the order passed by the Learned Judicial Magistrate First Class, Criminal Appeal No. 60 of 2016 was preferred with an application for suspension of sentence. The said application was heard by the Learned Additional Sessions Judge who was pleased to suspend the same subject to condition whereby the appellant, petitioner was directed to deposit fine amount of Rs.1,60,000/- in ten equal installments and every such installment of Rs.60,000/- would be due on/or before eleventh of every month.

4. Aggrieved by the said order dated 10th March, 2016 this writ petition is preferred.

5. That on 11th July, 2016 this Court was pleased

to issue the notice to respondent no.2 and direct the petitioner to deposit Rs.30,000/- on/or before 6th August, 2016 in the Court of Additional Sessions Judge, Sangli and subject to such deposit the conviction recorded by the Learned Judicial Magistrate First Class was stayed.

6. Heard Learned Counsel for the petitioner. None appears for respondent no.1.

7. The Learned Counsel for the petitioner submits that he has complied with the order passed by this Court by depositing Rs.30,000/- in the Court of Learned Sessions Judge, Sangli. A copy of receipt is taken on record and marked 'X' for identification.

8. It is the petitioner's case that, he had obtained an handloan of Rs.1,00,000/- from the complainant and had repaid the same in ten installments. It is his case that, he had given four blank cheques as security but the said cheques were not returned by the complainant though the handloan was repaid by him. It is the petitioners case that, those cheques given as a security

were misused for initiating the proceedings under Section 138 of the Negotiable Instruments Act.

9. It appears from the order dated 11th July, 2016 passed by this Court that the petitioner draws gross salary of Rs.24,000/- per month and post deductions, he receives Rs.5,199/- in hand. That upon considering such circumstance, the petitioner was directed to deposit Rs.30,000/- to show his bonafides. The receipt placed on record shows that, the petitioner has deposited Rs.30,000/- as directed by this Court vide order dated 11th July, 2016.

10. That since substantive Appeal No. 60 of 2016 is pending, before the Learned Additional Sessions Judge, Sangli arising out of the conviction in S.C.C. No. 214 of 2015 I do not find any propriety or reason to keep the writ petition pending before this court. Suffice to say that, the petitioner has complied with the order of this Court by depositing the amount as aforesaid, and having found his means to deposit Rs.1,60,000/- are falling too short, the

Writ Petition is allowed and disposed off accordingly. The condition imposed by the Learned Sessions Judge directing the petitioner to deposit Rs.1,60,000/0 in ten equal installments is hereby quashed and set aside. The substantive sentence passed by the JMFC, Miraj in Summary Criminal Case No. 214 of 2015 dated 11th February, 2016 stands suspended during the pendency of Criminal Appeal. It is clarified that, this Court has not adjudicated or quantified financial ability/capacity of the petitioner. Observation about his earnings is prima-facie.

11. The Learned Appellate Court is directed to hear the Appeal as expeditiously as possible and preferably on/or before 30th April, 2018. With the aforesaid directions, the writ petition is disposed off.

(SANDEEP K. SHINDE, J)