SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.406 OF 2018

CRIMINAL APPLICATION NO.407 OF 2018

CRIMINAL APPLICATION NO.408 OF 2018

M/s. Sai Sharan Enterprises & Ors. ..Applicants.

V/s.

Shankar Menharamal Chugh & Anr. ..Respondents.

Mr.Sagar Rupawate i/b. Ateet Shiradkar for the applicants.

Mr.Mohammed Umar Kazi for respondent No.1.

Mrs.M.R.Tidke, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : APRIL 5, 2018

P.C.:-

Heard respective parties.

2. All these writ petitions involve common question of law, as such, are being heard together finally with the consent of the parties.

3. The petitioners-accused were convicted by the Judicial

Magistrate First Class, Ulhasnagar for offences punishable under sections 138 and 141 of the Negotiable Instruments Act, 1881 ('the N.I. Act' for short) which was the suject matter of the appeals before the learned Additional Sessions Judge. Vide order dated March 8, 2018 (2017) passed below Exhibit-4, the learned Sessions Judge ordered suspension of sentence and release of the applicants on bail upon depositing 50% of amount of compensation ordered by the learned Magistrate. The order to the extent of issuing directions to the applicants-accused to deposit 50% of the compensation is questioned in the present applications by invoking the judgment of Apex Court in the matter of *Dilip S.Dhanukar V/s. Kotak Mahindra Co.*[1] According to the learned counsel for applicants-accused, the applicants are ready and willing to deposit reasonable amount.

4. P*er contra*, the learned counsel for the respondent-complainant and the learned APP support the impugned order.

5. The learned counsel for the respondent-complainant tried to take exception to the judgment of the Apex Court in *Dilip*

1 **(2007) 6 S.C.C. 528**

*S.Dhanukar V/s. Kotak Mahindra Co. (cited supra) a*s according to him, the condition of deposit of 50% of compensation amount is based on peculiar facts and circumstances of the case in hand. He would try to substantiate the order of the learned Additional Sessions Judge based on the reasoning given by the learned Additional Sessions Judge.

6. Considered rival submissions.

7. It is not in dispute that the Apex Court while dealing with similar eventuality in *Dilip S.Dhanukar V/s. Kotak Mahindra Co. (cited supra)* has considered that right to file an appeal is a substantial statutory right of an accused as his liberty is under cloud. While exercising the said statutory right, when the accused approaches the Court for suspension of sentence and grant of bail, such accused cannot be put to unreasonable condition.

8. In the wake of above, particularly having regard to the law laid down by the Apex Court in the matter of *Dilip S.Dhanukar V/s. Kotak Mahindra Co. (cited supra),* this Court has no hesitation in holding that the condition of deposit of 50% of compensation

ordered by the learned Additional Sessions Judge is unreasonable.

9. Though the learned counsel for the respondent-complainant has tried to justify the same based on peculiar circumstances as set out in the order by the learned Magistrate, however, upon perusal of the order passed by the learned Magistrate, no particular equitable or exception could be noticed in conviction of the present applicants on the case that was made out by the respondent-complainant. In that view of the matter, the condition of deposit of 50% of the compensation is hereby modified and the applicants are directed to deposit compensation of 25% of the amount as ordered by the Magistrate within a period of four weeks from today.

10. The respondent-complainant will be at liberty to withdraw the same upon furnishing an undertaking that in case the appeals are allowed, the amount of compensation will be re-deposited in the Sessions Court within a period of four weeks of such order in the appeal.

11. All the applications are disposed of in the above terms.

(NITIN W.SAMBRE, J.)