

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2925 OF 2017
WITH
CRIMINAL WRIT PETITION NO.2926 OF 2017
WITH
CRIMINAL WRIT PETITION NO.2927 OF 2017
WITH
CRIMINAL WRIT PETITION NO.2928 OF 2017
WITH
CRIMINAL WRIT PETITION NO.2929 OF 2017

Purushothaman Jambukesan	..Petitioner.
V/s.	
M/s. Patel Engineering Ltd. & Anr.	..Respondents.

Mr.Bhavesh Thakur with Mr.Karl Rustomkhan for the petitioner.

Mr.Chaitanya Malgamta i/b. G.M.S. Legal for respondent No.1.

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

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 23, 2018

PC.:-

Heard respective parties.

2. Since all these petitions involve similar question, are being heard together with the consent of the parties. For deciding the matters, the facts of Writ Petition No.2925 of 2017 are taken into

consideration.

3. The present petitioner-accused was convicted for an offence punishable under sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 ('the N.I. Act' for short) by the learned Metropolitan Magistrate, which conviction is the subject matter of appeal before the learned Sessions Judge, Greater Mumbai.

4. The learned Sessions Judge while dealing with the bail application has made observations that the petitioner-accused shall deposit amount to the extent of 5% of compensation being one of the 9 directors of the accused-company vide the impugned order dated June 28, 2017 passed in Appeal No.171/2017 with other connected matters.

5. The learned counsel for the petitioner makes two-fold submission :-

(a) Other 8 directors who preferred appeals against the conviction were directed to deposit 20% of the amount out of compensation ordered i.e. around 2.5% compensation by each directors. As such, the direction to the petitioner to deposit amount i.e. around 5% of the compensation amount is unreasonable and

contrary to the law laid down by the Apex Court in the matter of *Dilip S.Dhanukar V/s. Kotak Mahindra Co.*¹

(b) The next contention of the learned counsel for the applicant is, before issuance of cheque in question, the petitioner had resigned from the said company and as such, no vicarious liability can be fastened on him.

5. The learned counsel for the respondents opposed the claim and submitted that the condition imposed is reasonable and at interlocutory stage this Court should be slow in causing interference.

6. From the submissions, it can be gathered that the petitioner-accused claims to have resigned before the cheque came to be issued. The learned Magistrate while dealing with the said contention observed in para 47 of the judgment that the petitioner-accused has failed to discharge his burden of establishing the said fact that he has resigned from the company prior to the issuance of cheque though the petitioner has produced on record certain documents. However, in absence of specific details as to certificate submitted to the Registrar of Companies, in my opinion, the

¹ (2007) 6 S.C.C. 528

observations made by the learned Magistrate at this stage does not call for any re-visit. Let the Appellate Court appreciate the same while deciding the appeal.

7. So far as the next contention of the petitioner about disproportionate amount of compensation to be deposited is concerned, it will be appropriate to direct the petitioner to deposit amount to the extent of 3% of compensation, keeping in mind the fact that other 8 directors were put to similar condition, which order I am informed is confirmed upto the Apex Court.

8. As such, the order of suspension of sentence subject to deposit of 5% amount of compensation is modified to the extent of directing the petitioner to deposit amount to the extent of 3% of the compensation amount, ordered by the learned Magistrate within a period of 8 weeks from today with an understanding that no further extension on any count will be granted.

9. With the above observations, the petition stands partly allowed.

(NITIN W.SAMBRE, J.)