

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION No. 4465 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4466 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4467 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4468 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4469 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4470 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4471 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4472 OF 2018
WITH
CRIMINAL WRIT PETITION No. 4473 OF 2018**

Alpesh Ashok Mehta ... Petitioner

vs.

Heenaben Shailesh Chheda & Anr. ... Respondents

Mr. Kripashankar Pandey, Advocate for the petitioner.

Mr. Jatin Shah a/w. Ms. Snehankita Munj, Advocate for respondent no. 1.

Mr. A.R. Patil, APP for respondent no. 2/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 30th November, 2018

P.C. :

Rule. Rule made returnable forthwith. By consent, all these Writ Petitions are heard finally and disposed of at the stage of admission.

2. In all these Writ Petitions, the order dated 7th September, 2018 passed by the learned Additional Sessions Judge, Greater Bombay in various Criminal Appeals directing the petitioner to deposit 40% of the compensation amount is challenged.

3. By the judgment and order dated 28th June, 2018 passed by the learned Metropolitan Magistrate, 33rd Court, Mumbai in criminal cases, the petitioner is convicted for the offences punishable under section 138 of Negotiable Instruments Act. The total amount of cheques in all the 9 cases comes to Rs.55,00,000/-. The trial Court has directed to pay compensation, which comes to the tune of Rs.1,10,00,000/-. Thus, overall 40% of compensation amount comes to Rs.44,00,000/-.

4. The learned counsel for the petitioner submitted that the petitioner has filed Criminal Appeals against the conviction given by the Metropolitan Magistrate. He submitted that the petitioner has no issue in depositing 20% of the amount, but 40% amount will be as good as depositing the entire amount of the original debt amount. The learned counsel submitted that the petitioner has good case on merit, as there is illegality in recording of plea and

also giving details before the learned Magistrate about the cheques, which were dishonoured.

5. The learned counsel for the respondent/original complainant, while opposing this Petition, has relied on the amended provision of Section 143A and 148 wherein the power to deposit minimum 20% of the amount of fine or compensation is introduced. He has submitted that the complaints are filed in July, 2009 and the complainant is waiting for the amount since then.

6. Considered the submissions of the learned counsel so also the provisions under sections 143A and 148 are taken into account. Under section 148(1) it is specifically stated that the Appellate Court may order the appellant to deposit such sum which shall be minimum of 20% of the fine or compensation awarded by the trial Court. It means if the Court decides to order, then that sum shall be minimum of 20%. The statement and object of this amendment is taken into account, therefore, though the word “may” is used in Section 148(1), it appears obligatory on the Appellate Court to direct minimum 20% of compensation or fine amount awarded by the trial Court.

7. In the present matters, the complaints are filed in 2009. Nearly 10 years have lapsed and till today, the petitioner has not deposited any amount of compensation with the trial Court or the Sessions Court. In view of this, amount of 40% can be modified and the total amount of Rs.40,00,000/- towards the compensation is to be deposited by the petitioner in the trial Court in two instalments, Rs.20,00,000/- is to be deposited on or before 15th December, 2018 and remaining Rs.20,00,000/- is to be deposited on or before 10th January, 2019.

8. Writ Petitions are disposed of.

(MRIDULA BHATKAR, J.)