

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1190 OF 2017**

Kavita Yogesh Sarda
Director of Silver Oak Solutions Pvt. Ltd. ...Applicant
Versus
State of Maharashtra & Anr. ...Respondents

Mr. D. N. Nalawade I/b Mr. Sathyanarayanan for the Applicant

Mr. Vinod Chate, A.P.P for the Respondent No.1-State

Mr. Niranjan Shrikant Mundargi for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 18th JANUARY, 2018

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant has impugned the order dated 23rd June, 2017 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, below Exhibit 2 in Criminal Appeal No. 150 of 2017, by which the learned Judge was pleased to suspend the sentence of the applicant, subject to the applicant depositing 30% of the compensation

amount of Rs. 1 crore i.e. Rs. 30 lakhs, within 1½ months, pending the disposal of the appeal.

3 Learned counsel for the applicant submits that the said direction to deposit Rs. 30 lakhs was onerous, harsh and unreasonable, in the facts of the case. Learned counsel relied on the decision of the Apex Court in the case of *Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr.*¹. He submitted that the applicant has a good case on merits and as such prays for relaxation of the said condition. He further submits that the respondent No. 2 had lodged separate complaints with respect to the same transaction i.e. as against the company and as against the individual directors, as guarantors although only one transaction had taken place. According to the learned counsel, no amount was payable to the respondent No.2. He submitted that the applicant has already deposited Rs. 15 lakhs in the appellate Court on 29th September, 2017.

4 Learned counsel for the respondent No. 2 opposes the application. He submitted that no interference is warranted in the impugned order.

1 (2007) 6 SCC 528

5 Perused the papers, including the impugned order. Admittedly, the applicant has already deposited a sum of Rs. 15 lakhs in the appellate Court in the appeal filed by the applicant in the Sessions Court. The learned Additional Sessions Judge vide order dated 23rd June, 2017, was pleased to suspend the sentence of the applicant, subject to the applicant depositing 30% of the compensation amount of Rs. 1 crore i.e. Rs. 30 lakhs. The said condition is an onerous condition. It is informed that the applicant has already deposited Rs. 15 lakhs.

6 Accordingly, the application is partly allowed and the impugned order dated 23rd June, 2017 passed by the learned Additional Sessions Judge, directing the applicant to deposit Rs. 30 lakhs is modified. As the applicant has already deposited Rs. 15 lakhs, the applicant is now not required to deposit the balance Rs. 15 lakhs, till the final disposal of his appeal.

7 It is made clear that this Court has not gone into the merits of the case and that all contentions of all parties are kept open.

8 Learned counsel for the applicant also submits that the applicant Nos. 2 and 3 will remain present before the Court on 16th March, 2018. The said statement is accepted.

9 In view of the said statement made by the learned counsel for the applicant Nos. 2 and 3, that the applicant Nos. 2 and 3 will remain present before the appellate Court on 16th March, 2018, learned counsel for the respondent No. 2 states that they will not take any steps to execute the conviction warrant issued by the learned trial Court till the next date i.e. 16th March, 2018. Learned counsel for the respondent No. 2 also states that he will inform the concerned police station about the same. Statement accepted.

10 Both, learned counsel for the applicant and respondent No. 2 state that the appeal filed by the applicant be expedited. Accordingly, the hearing of the appeal pending before the learned Sessions Judge, is expedited.

11 The application is allowed on the aforesaid terms and is accordingly disposed of.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.