

Anand

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

WRIT PETITION NO. 5354 OF 2017

Pradip Kumar Dugar

.Petitioner

Vs.

The State of Maharashtra & anr.

.Respondents

Mr. A. M. Saraogi, Advocate, for the Petitioner

Mr. V. Chate, APP, for the Respondent No. 1 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2018

P.C.

. Heard learned counsel for the Petitioner and the learned
APP.

2. By this Petition, the Petitioner has impugned the Order dated 11.12.2017 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai in M. A. No. 2212 of 2017 only to the extent, that the Petitioner has been directed to deposit Rs. 8,00,000/- by 15.01.2018.

3. Learned counsel for the Petitioner submits that the said condition directing the Petitioner to deposit Rs. 8,00,000/- is onerous

and unreasonable. He relied on the Judgment of the Apex Court in the case of *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. And State*, reported in *2007 Cri.L.J. 2417*. He submitted that the amount directing the Petitioner to deposit Rs. 8,00,000/- out of the fine amount of Rs. 23,50,000/- amounts to almost 30% of the compensation amount.

4. Perused the papers. The Petitioner has been convicted by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai vide Judgment and Order dated 08.11.2017 and has been sentenced to suffer S. I. for six months and to pay fine of Rs. 23,50,000/-, in default to suffer further S. I. for six months. Out of the said amount, the learned Judge directed the Petitioner to pay the Complainant compensation of Rs. 23,40,000/-.

5. Being aggrieved by the Judgment and Order of conviction and sentence, the Petitioner herein, filed an Appeal in the Sessions Court, being Cri. Appeal No. 765 of 2017. The learned Sessions Judge vide Order dated 11.12.2017 passed in M. A. No. 2212 of 2017 (for suspension of sentence) was pleased to allow the same. The learned Sessions Judge was pleased to pass the following order.

“ ORDER

1. Misc. application no. 2212/2017 is allowed.
2. The execution and implementation of order dated 8/11/2017 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, in Case no. 1349/SS/2016 is hereby stayed during the pendency of appeal, subject to deposit of an amount of Rs. 8,00,000/- (Rs. Eight Lacs) till 15/1/2018.
3. Concerned Magistrate be informed accordingly.
4. Thus, Misc. Application no. 2212/17 stands disposed of.”

The direction to deposit Rs. 8,00,000/- in the facts, is an onerous condition and is about 30% of the compensation amount. Having regard to the same and the Judgment of the Apex Court in the case of ***Dilip S. Dahanukar (Supra)***, in the interest of justice, the said condition directing the Petitioner to deposit Rs. 8,00,000/- is modified. The Petitioner shall, now, deposit Rs. 6,00,000/-. The said amount of Rs. 6,00,000/- shall be deposited by the Petitioner in the Sessions Court within four weeks from today. Accordingly, the Order dated 11.12.2017 stands modified as aforesaid.

6. Accordingly, the Petition is allowed and disposed of in the aforesaid terms.

7. It is made clear, that no further extension will be granted.

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

(REVATI MOHITE DERE, J.)