

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.745/2018

Pramod Bhaurao Pavsale

..Vs..

Nishant Multi-State Co-op. Credit Society Ltd., Akola Main Branch

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri U.J. Deshpande, Advocate for the petitioner.

CORAM : Z.A. HAQ, J.

DATE : 27.8.2018.

1. Heard.
2. By this petition under Articles 226 and 227 of the Constitution of India, the accused has challenged the order passed by the learned Sessions Judge, insofar as the condition of depositing Rs.4,00,000/- (Rs. Four Lakhs) within one month imposed for suspending the sentence imposed by the learned Magistrate.
3. In prosecution under Section 138 of the Negotiable Instruments Act 1881, the petitioner / accused is convicted and sentenced to undergo rigorous imprisonment of one year and pay fine of Rs.15,00,000/- (Rs. Fifteen Lakhs) and in default of payment of fine, it is directed that the accused shall undergo further rigorous imprisonment of three months.
4. The submission on behalf of the accused is as the learned Magistrate has directed that the entire amount of fine i.e. Rs.15,00,000/- (Rs. Fifteen Lakhs) is to be given to the complainant as compensation, the

learned Sessions Judge has no jurisdiction to impose the condition of depositing Rs.4,00,000/- (Rs. Four Lakhs) for suspending the sentence. To support this submission, reliance is placed on the provisions of Section 357(2) of the Code of Criminal Procedure and the judgment given by the Hon'ble Supreme Court in the case of *Satyendra Kumar Mehra @ Satenera Kumar Mehra V/s. The State of Jharkhand* reported in **2018 ALL SCR (Cri) 593** and the judgment given by the Punjab and Haryana High Court in the case of *Kedar Nath V/s. State of Haryana* reported in **2006(3) PLR 194**.

5. In my view, the learned Sessions Judge has shown undue indulgence by directing the petitioner to deposit only Rs.4,00,000/-(Rs. Four Lakhs) as condition for suspending the sentence. The learned Sessions Judge should have directed the accused to deposit the entire amount of Rs.15,00,000/- (Rs. Fifteen Lakhs) and should not have permitted the complainant to withdraw any amount till the disposal of the appeal, treating the entire amount of Rs.15,00,000/- (Rs. Fifteen Lakhs) as fine subject to further orders which can be passed while deciding the appeal. Even if the submissions made on behalf of the petitioner / accused relying on the provisions of Section 357(2) of the Criminal Procedure Code and above judgments are accepted, it is not being disputed that if the entire amount is treated as fine then while suspending the sentence condition of depositing the entire amount of fine can be imposed. Looked at the matter from such perspective, the following order is

passed:

(i) The sentence imposed by the learned Magistrate by the judgment given in S.C.C. No.2440/2011 on 2nd June, 2018 shall stand stayed if the accused deposits the entire amount of Rs.15,00,000/- (Rs. Fifteen Lakhs) towards fine.

(ii) On deposit of such amount, nothing should be paid to the complainant till the disposal of the appeal. While deciding the appeal it will be open for the Sessions Court to consider how much amount should be given to the complainant as compensation.

(iii) The impugned order passed by the learned Sessions Judge in Criminal Appeal No.104/2018 on 30th June, 2018 is modified in the above terms.

(iv) Writ petition is **disposed** accordingly.

At this stage, learned Advocate for the petitioner requested that effect and operation of the order be kept in abeyance for four weeks.

As the directions are only to deposit the amount of fine, the prayer made on behalf of the petitioner is rejected.

JUDGE