

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.3415 OF 2018

ORDER:

This criminal petition is filed under Section 389(2) Cr.P.C. to relax the condition imposed on 19.02.2018 by the Metropolitan Sessions Judge, Hyderabad in Crl.M.P.No.177 of 2018 in Crl.A.No.36 of 2018, whereunder the sentence imposed on 18.12.2017 by the XIX Special Magistrate, Hyderabad in C.C.No.193 of 2017 including compensation granted is suspended subject to deposit of 50% of the cheque amount within the time stipulated.

As the petitioner failed to comply with the direction issued by the Sessions Judge, the petition was dismissed on 19.02.2018 and that the suspension order has been set aside.

Now the petitioner sought for relaxation of the condition to deposit 50% of the cheque amount on the ground that the condition imposed by the Sessions Judge is unreasonable, which amounts to denial of relief.

Learned counsel for the petitioner requested the Court to relax the condition on the strength of decision of the Apex Court in **Dilip S.Dahanukar v Kotak Mahindra Co. Ltd. And another**¹.

Learned counsel for the 1st respondent contended that the petitioner entered into Agreement of Sale-cum-General Power of Attorney on 8th December, 2017, wherein he received substantial amount as advance. Therefore, the principle laid down in **Dilip S.Dahanukar's case** cannot be applied and supported the impugned order.

The 1st respondent filed private complaint, which is registered as C.C.No.193 of 2017 for the offence punishable under Section 138 of the Negotiable Instruments Act and after full-fledged trial, XIX Special

¹ (2007) 6 SCC 528

Magistrate found the petitioner guilty and sentenced him to undergo simple imprisonment for a period of six months and also to pay compensation of Rs.10,00,000/- and in default to suffer simple imprisonment for three months. Aggrieved by the said order, the petitioner preferred CrI.A.No.36 of 2018 before the Metropolitan Sessions Judge along with CrI.M.P.No.177 of 2018 for suspension of substantive sentence and payment of compensation and that the Metropolitan Sessions Judge was pleased to pass impugned order.

The Apex Court in **Dilip S.Dahanukar's case** while deciding an identical issue held that the Court can impose reasonable conditions to suspend the substantive sentence and order of compensation, but what are the reasonable conditions were not stated. However, it varies from case to case and the Court has to take into consideration the totality of the circumstances and financial capacity of the accused to exercise such discretionary power and impose reasonable condition.

It is brought to the notice of this Court by learned counsel for the 1st respondent that the Agreement of Sale-cum-General Power of Attorney was executed on 08.12.2017, wherein the petitioner agreed to sell the property for Rs.31,30,000/- and received some amounts on different dates and balance consideration of Rs.16,30,000/- is to be paid within 12 months from the date of agreement to obtain registered sale deed in the name of the vendor or his nominee. It appears from condition No.2, the petitioner received Rs.5,00,000/- as advance and earnest money i.e. by way of account payee cheque Bearing No.204075, dated 07.02.2017 for Rs.2,00,000/-, cheque bearing No.688460, dated 07.02.2017 for Rs.2,00,000/- and cheque bearing No.009896, dated 07.02.2017 for Rs.1,00,000/-. As per clause (3), the vendor paid Rs.10,00,000/- by way of account payee cheque bearing No.264999, dated 05.12.2017 drawn on the

Agrasen Co-operative Urban Bank Ltd., Siddiamber Bazar Branch, Hyderabad. Thus, the petitioner received substantial amount of Rs.15,00,000/- on different dates as advance and the impugned order is pronounced on 18.12.2017, which is just before 13 days from the date of pronouncement of judgment.

Therefore, the petitioner is financially sound on the date of pronouncement of impugned order and that the petitioner has not produced any material to accept the contention that he is penniless. As such the impugned order is not unreasonable and does not amount to denial of relief. On the other hand, the petitioner approached the Court with lame excuse of lack of no funds. The amount, if any, deposited by the petitioner shall not be allowed to be withdrawn by the 1st respondent and that the Sessions Judge is directed to keep the deposited amount in fixed deposit in any nationalized bank initially for a period of two years subject to periodical renewal.

With the above direction the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

03.04.2018
kvrn

M.SATYANARAYANA MURTHY,J