

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3414 of 2018

ORDER:

This Criminal Petition is filed challenging the Order dt. 28.12.2017 in CrI.M.P.No.3439 of 2017 in CrI.A.No.1409 of 2017 passed by Metropolitan Sessions Judge, Hyderabad, directing this petitioner to deposit 50% of the cheque amount while granting stay of substantive sentence.

The main contention of the learned counsel for the petitioner is that the Order is not in consonance with the judgment of the Apex Court reported in *Dilip S Dahanukar v Kotak Mahindra Company Limited*¹.

The petitioner was found guilty for the offence under Section 138 of NI Act and convicted and sentenced to undergo imprisonment for a period of one year and to pay compensation of Rs.1,03,05,000/-.

Aggrieved by the said Order, the petitioner filed Criminal Appeal No. 1409 of 2017 and along with the appeal, he filed a petition under Section 389(1) Cr.P.C. to suspend the substantive sentence while granting bail to the petitioner. The relief claimed in the petition is as follows:

“ to suspend the execution of the sentence imposed by learned XIV Special Magistrate, Hyderabad by Judgment dt. 30.11.2017 in C.C.No.368 of 2015 pending disposal of the appeal on its file”.

The appellate Court, basing on the prayer of the petitioner, passed the impugned Order. The basis for claim of this petition is the Judgment of the Apex Court in *Kotak Mahindra's case* (referred supra), wherein the Apex Court did not lay down any principle except holding that no unreasonable amount can be directed to be deposited. But, no rule of law is laid down to fix amount as deposit while granting stay. However,

¹ 2007 Law Suit (SC) 422

the claim of the petitioner is only to suspend the sentence, but not the compensation as extracted herein above. In such a case, the respondent can proceed to collect the compensation amount as per the procedure, but the Appellate Court suspended the execution of substantive sentence of one year imprisonment subject to deposit of 50% of the cheque amount in addition to the terms fixed by the trial Court. The cheque amount is Rs.83,00,000/-. Therefore, the condition to pay an amount of Rs.31,50,000/- i.e., 50% of the cheque amount, fixed by the Appellate Court, is reasonable and it is in consonance with the principle laid down by the Apex Court in *Kotak Mahindra's case* (referred supra). Hence, I find no ground to modify the Order dt.28.12.2017 in CrI.M.P.No.3439 of 2017 in CrI.A.No.1409 of 2017 passed by the Metropolitan Sessions Judge, Hyderabad.

Accordingly, this Criminal Petition is dismissed.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 29-03-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



Crl.P. No.3414 of 2018

Dt. 29-03-2018

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