

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5645 OF 2018

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal procedure, 1973 (for short 'Cr.P.C') to quash the order dated 20.12.2017 in CrI.M.P.No.3335 of 2017 in CrI.A.No.1375 of 2017 passed by Metropolitan Sessions Judge, Hyderabad, whereby the petitioner was directed to deposit an amount of Rs.5 crores on or before 11.01.2018 on the ground that the cheque amount was Rs.10 crores, though the petitioner paid fine imposed by the trial court in C.C.No.297 of 2017.

The petitioner found guilty for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 and sentenced him to undergo simple imprisonment for one year and to pay fine an amount of Rs.1,00,000/-, in default to undergo simple imprisonment for two months, without awarding any compensation under Section 357 Cr.P.C.

Aggrieved thereby, the petitioner filed an appeal before the Court of Sessions and sought for suspension of substantive sentence of imprisonment, after payment of fine amount imposed by the trial court.

The appellate court allowed the miscellaneous petition subject to deposit of 5 crores within a specified date which is now impugned in this petition on the ground that the court imposes such condition for suspension of substantive sentence, though the petitioner paid the fine amount imposed by the trial court.

Learned counsel for the petitioner contended that the imposing of such condition to deposit Rs.5 crores in lieu of

- 2 -

compensation. The same is unreasonable and illegal and prayed to quash the order.

The appellate court, while exercising discretionary power under Section 389 Cr.P.C., imposed such condition illegally. It appears that the appellate court following the principle laid down by the Bombay High Court in **Maheshwar Dattatraya Kale v. Capt. Atul Wasudeo Divekar**¹ imposed such condition, but the said judgment has no application to the present facts of the case as the question therein was payment of compensation in view of Section 357(1) Cr.P.C.

Therefore, the order passed by the appellate court is illegal and unjust and the condition imposed by the appellate court is hereby set aside, while suspending the substantive sentence imposed by the trial court for a period of six months, subject to execution of personal bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with two sureties for a like sum each to the satisfaction of the XV Special Magistrate, Hyderabad.

Accordingly, the criminal petition is allowed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:19.06.2018
BV

¹ 2005 Law Suit (Bom) 1053