

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7749 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'), is filed by the petitioner/accused to modify the order, dated 29.05.2018, in CrI.M.P. No.195 of 2018 in Criminal Appeal No.446 of 2018, insofar as the condition to deposit 25% of the compensation amount before the XII Special Magistrate Court, Cyberabad at Hasthinapuram (for short, 'the trial Court') within two (2) months therefrom.

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor appearing for the 2nd respondent-State, and perused the record.

3. The facts of the case, in brief, are that the petitioner is the accused in C.C. No.150 of 2017, registered for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). After completion of full-fledged trial in C.C. No.150 of 2017, the trial Court found the petitioner guilty for the aforesaid offence, convicted and sentenced him to undergo Simple Imprisonment for six (6) months under Section 255(2) Cr.P.C. and to pay compensation of Rs.6,50,000/- to the 1st respondent/complainant in default to undergo Simple Imprisonment for one (1) month.

4. Aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner/accused preferred Criminal Appeal No.446 of 2018 before the XIII Additional Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, Ranga Reddy District (for short, 'the appellate Court') including CrI.M.P. No.195 of 2018, under Section 389(1) of Cr.P.C., for suspension

of operation of sentence including payment of the compensation imposed by the trial Court in C.C. No.150 of 2017.

5. Upon hearing argument of both sides and perusing the material on record, the appellate Court in Crl.M.P. No.195 of 2018 suspended the conviction and sentence imposed in C.C. No.150 of 2017, till disposal of the Appeal, on condition of his depositing 25% of the compensation amount before the trial Court within two (2) months therefrom and on executing a bond for Rs.10,000/- with two sureties each for like sum to the satisfaction of the trial Court.

6. Further aggrieved, the petitioner filed this Petition contending that the total amount equivalent to 25% of the compensation amount of Rs.6,50,000/- is Rs.1,62,500/-, it is impossible for him to comply with the said condition, issuing such a direction in Crl.M.P. No.195 of 2018 is contrary to the law laid down by the Apex Court and finally prayed to quash the order under challenge.

7. During course of hearing, learned counsel for the petitioner/accused, submits that though the statutory Appeal is preferred, the direction issued by the appellate Court in Crl.M.P. No.195 of 2018 amounts to denial of relief under Section 389(1) of Cr.P.C. and against the principles of natural justice and finally prayed to modify the said amount to 10% of the compensation amount.

8. It is not in dispute that the trial Court found the petitioner/accused guilty for the offence under Section 138 of the Act, convicted and sentenced him as referred *supra*. This order is virtually an order under Section 357(1) Cr.P.C. but not an order under Section 357(3) Cr.P.C. and an identical issue came up for consideration before this Court in **Mannam**

Ravi Kumar Vs. State of A.P¹, wherein the trial Court therein directed the petitioner to pay compensation under Section 357(1) Cr.P.C. but not under Section 357(3) Cr.P.C. Even otherwise, in **Dilip S.Dahanukar Vs. Kotak Mahindra Company Limited and another**², the Apex Court held that the Courts 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 conditions.

9. Here, in this case, except making a bald allegation in the Petition, nothing has been placed on record to establish what is the difficulty of the petitioner in securing the amount of Rs.1,62,500/-, what is his monthly income and the annual income being earned from his business *etc.*, Moreover, the petitioner has failed to produce any material in support of his contention that he is penniless and callously filed the petition on a lame excuse that he has no funds. In the absence of any such details, as to the source of his income, it is difficult to reduce the amount directed to be deposited before the trial Court as ordered by the appellate Court. Even by applying the law laid down by the Apex Court in **Dilip S.Dahanuka**², the appellate Court rightly exercised its discretion in directing the petitioner to pay an amount of Rs.1,62,500/-, which warrants no interference by this Court. However, the time for deposit of Rs.1,62,500/- by the petitioner is extended by another two (2) months from today.

¹ 2018 (2) ALT (Crl.) 298 (AP)

² 2007 (3) ALT (Crl.) 13 (SC)

Accordingly, with the above directions, the Criminal Petition is dismissed.

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

M.SATYANARAYANA MURTHY, J

Date: 26.07.2018.
Dsh



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date. 26.07.2018

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