

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL REVISION CASE No.3126 of 2018****ORDER :**

This Criminal Revision Case is arising out of the Order dt.23.10.2018 passed in CrI.M.P.No.316 of 2018 by VII Additional Sessions Judge, Gudur, for enlarging the petitioner on bail by suspending the sentence of imprisonment imposed against him by the learned Special Judicial Magistrate of First Class, Venkatagiri, in C.C.No.99 of 2014 dt. 24.09.2018, for the offence under Section 138 of Negotiable Instruments Act. The learned Sessions Judge, Gudur, however, has suspended the sentence of imprisonment alone, on the same terms and conditions imposed by the trial Court till disposal of Appeal No.297 of 2018, without suspending the payment of compensation in C.C.No.99 of 2014.

02. Aggrieved thereby, the present Revision is referred on various grounds.

03. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for respondent No.1.

04. Respondent No.2 is a formal party and therefore, there is no need to issue notice to her since the petition is arising out of the

Order passed under Section 389(1) Cr.P.C., to suspend the sentence.

05. Learned Counsel for the petitioner submits that the petitioner has got good grounds to succeed in the appeal filed before VII Additional Sessions Judge, Gudur, but the Appellate Court, has suspended the sentence of imprisonment alone, without suspending the compensation amount of Rs.3,12,000/-. The learned counsel for the petitioner, while placing reliance on a judgment reported in *Bilip S. Dahanukar v Kotak Mahindra Company Limited and another*¹, submits that in view of the judgment of the Apex Court, the condition of depositing 20% of the compensation amount is sufficient for maintaining an appeal. Hence, sought for relaxation of the condition imposed by the trial Court for suspension of sentence.

06. Ordinarily, this Court do not entertain Interlocutory applications, in view of the provisions of Section 397(2) Cr.P.C. but, in the facts and circumstances of the case, in view of the judgment of the Apex Court in *Dilip S. Dahanukar's* case referred supra, since the petitioner has preferred an appeal before the Appellate Court challenging the impugned Order passed by the trial Court, it is appropriate for the trial Court to pass orders of

¹ (2007) 6 SCC 528

suspension of sentence of imprisonment as well as compensation by taking into consideration the judgment of the Apex Court referred supra. In para No.71 of the Judgment, it was held as under:

“We are prima facie of the opinion (without going into the merit of the appeal) that the direction of the learned Trial Judge appears to be somewhat unreasonable. Appellant herein has been sentenced to imprisonment. Only fine has been imposed on the Company. Thus, for all intent and purpose, the learned Trial Judge has invoked both Sub-sections (1) and (3) of [Section 357](#) of the Code. The liability of the appellant herein was a vicarious one in terms of [Section 141](#) of the Negotiable Instruments Act. The question may also have to be considered from the angle that the learned Trial Judge thought it fit to impose a fine of Rs. 25,000/- only upon the Company. If that be so, a question would arise as to whether an amount of compensation for a sum of Rs. 15 lakhs should have been directed to be paid by the Chairman of the Company. We feel that it is not.”

07. The appeal is a constitutional and a statutory right. The amount of compensation must be a reasonable sum. The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. No such terms could be put as a condition precedent for entertaining appeal. As the Appeal is a constitutional and statutory right, the Court while fixing such amount must have regard to all relevant factors. No unreasonable amount of compensation can be directed to be paid.

08. In view of the aforesaid judgment, the condition imposed by trial Court is relaxed by directing the petitioner to deposit Rs.80,000/- (Rupees Eighty Thousand only) towards compensation within one month from the date of receipt of this Order and on

such deposit, the sentence of imprisonment imposed against the petitioner shall stand suspended. Accordingly, the Order of the learned VII Additional Sessions Court, Guntur, is modified.

09. With the above direction, this Civil Revision Case is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Dt. 16.11.2018.

Note: **C.C. by 23.11.2018**

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