

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3623 OF 2018

Rahul Kisan Khande,
Age: 38 years, Occu. Business,
R/o : Near Admane Grocery Shop,
Sanjay Nagar Ward No.2, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar. ...APPLICANT

VERSUS

Samir Salim Shaikh (Dead)
Through Salim Bakshu Shaikh,
Age: 61 years Occu.- Business,
R/o: Shirdi, Tq. Rahata,
District Ahmednagar. ...RESPONDENT

...

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicant
Mr. M.L. Sangeet, Advocate for respondent

...
CORAM : K.K. SONAWANE, J.

DATE : 2nd APRIL, 2019.

JUDGMENT :-

Heard. **Rule.** Rule made returnable forthwith. The present Criminal Application is taken up for final hearing on merit with the consent of both sides.

2. The applicant, by invoking remedy under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C."), preferred present Criminal Application seeking relief to quash and set aside the impugned Order (below Exhibit-1) dated 22-11-2018, passed by learned Additional Sessions Judge, Kopergaon, in the proceeding bearing Criminal Appeal No. 46 of 2018, thereby

directing the applicant to deposit amount of Rs. 2,00,000/- (Rs. Two Lakhs Only) towards part of compensation awarded by the learned Magistrate, First Class, Rahata, District Ahmednagar, by the next date.

3. The applicant was the accused in private complaint bearing Summary Criminal Case No. 1294 of 2015 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short "NI Act"). The respondent-original complainant initiated penal proceedings against the applicant for the charge of dishonour of cheque. The respondent-complainant, in order to bring home the guilt of applicant-accused, adduced evidence on record. The learned Magistrate appreciated the evidence and held applicant-accused guilty for the offence punishable under Section 138 of the NI Act. Learned Magistrate sentenced the applicant-accused to suffer simple imprisonment for one year and to deposit an amount of Rs. 6,50,000/- (Rs. Six Lakhs Fifty Thousands Only) in the Court, within a period of 30 days, from the date of order, towards compensation as prescribed under Section 357 of Cr.P.C.

4. Being dissatisfied with the impugned Judgment and order of conviction and resultant sentence of compensation, the applicant preferred an appeal before the learned Additional Sessions Judge, Kopergaon, to redress his grievance. The appeal filed on behalf of applicant came to be admitted and learned

Additional Sessions Judge was also pleased to suspend the substantive sentence of imprisonment and enlarge the accused-applicant on bail pending the appeal.

5. The learned Additional Sessions Judge, Kopergaon also simultaneously passed impugned order dated 22-11-2018 and directed the appellant-applicant to deposit amount of Rs.2,00,000/- (Rs. Two Lakhs Only) being an part of compensation amount awarded by the learned Magistrate, in the Court, by the next date. The impugned order passed by learned Additional Sessions Judge, is the subject-matter in the present application.

6. The learned counsel for applicant explained entire factual aspects in detail and submits that the learned Magistrate committed error while imposing heavy amount of compensation on the applicant-accused. The learned Additional Sessions Judge also directed to deposit Rs. 2,00,000/- (Rs. Two Lakhs Only), being part payment of compensation within stipulated period. He contends that the substantive sentence of imprisonment has already been suspended by the learned Additional Sessions Judge and the applicant-accused was enlarged on bail pending the appeal. In such circumstances, the appellate Court has no jurisdiction to impose such conditions for payment of compensation partly, pending the appeal. Learned counsel for

the applicant gave much more emphasis on the provisions of Section 357 of Cr.P.C. and submits that if appeal is filed against the impugned order of conviction and sentence of fine or compensation, it is not necessary to make payment of such fine or compensation till decision of the appeal. He further submits that amount of Rs.2,00,000/- (Rs. Two Lakhs Only), as directed by the Appellate Court, to deposit in the Court, towards part of compensation, is exorbitant and excessive. The learned counsel for applicant requested to quash and set aside the impugned order and directed the appellate forum to entertain the appeal without any deposit of compensation amount awarded by learned Magistrate, pending the appeal.

7. I have given anxious consideration to the rival contentions propounded on behalf of both sides. The submission of learned counsel appearing for the applicant appears not sustainable and considerable one. In the case of - **Hari Singh Versus Sukhbir Singh and others**, reported in, **1988 SCC (Cri.) 984**, the Honourable Apex Court had an occasion to consider the effect of Section 357 of Cr.P.C., and in particular Sub-section (3) thereof. The relevant paragraphs No. 10 and 11 of said judgment would read as under:-

"10. Sub-section (1) of [Section 357](#) provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are

concerned only with sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it, it empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to, crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."

8. It is worth to mention that the Honourable Apex Court, in the case of - **Dalmiya Cement (Bharat) Limited**

Versus Galazy Traders Agencies Limited and others,

reported in, **MANU/SC/1722/2001 : 2001 CriLJ 972**, held that Section 138 makes a civil transaction to be an offence by legal fiction. The Honourable Apex Court held that the object of the said provision is of making a special provision by incorporating a strict liability so far as a cheque is concerned. The Honourable Apex Court further held that efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged.

9. At this juncture, it would apposite to make a reference of decision of the Honourable Apex Court in the case of **Stanny Felix Pinto Versus Jangid Builders Private Limited and another,** reported in, **MANU/SC/0034/2001 : 2001(2) SCC 416**. In said Judgment, the Honourable Apex Court elucidated as under:-

"2. When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine he moved the superior court for suspension of the sentence. The High Court while entertaining his revision granted suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time. It is against the said direction that this petition has been filed. In our view the High Court has done it correctly and in the interest of justice. We feel that while

suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act, it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition. Hence, there is no need to interfere with the impugned order. As such no notice need be issued to the respondent. Appeal is accordingly dismissed.”

10. In the light of aforesaid exposition of law laid down by the Honourable Apex Court, it is evident that while suspending the sentence for the offence under Section 138 of NI Act, it is advisable that the appellate Court imposes condition of deposit of compensation, keeping in mind the provisions of Section 138 of NI Act. When the amount of compensation is heavy, the Court can direct deposit of an reasonable amount. Only in exceptional cases, the Appellate Court can grant interim protection without requiring deposit of compensation amount.

11. In the matter in hand, the learned Magistrate imposes an compensation of Rs.6,50,000/- (Rs. Six Lakhs Fifty Thousands Only) to be deposited in the Court, within 30 days, from the date of Judgment and order. However, the Appellate Court, taking into consideration the quantum of compensation, directed the applicant-accused to deposit the amount of Rs.2,00,000/- (Rs. Two Lakhs Only) being part of compensation till next date. In view of aforesaid ratio laid down by the Honourable Apex Court, the leaned Additional Sessions Judge was justified in imposing the condition of depositing Rs.2,00,000/- (Rs. Two Lakhs Only) in the Court, pending the appeal. The learned counsel for applicant made an abortive attempt to make a reference of provision under Section 357 of Cr.P.C to point out that in case the appeal is filed, there is no requirement to make payment till decision of the appeal. As referred above, in view of legal guidelines delineated by the Honourable Apex Court discussed above, I do not find any force in the contentions propounded on behalf of learned counsel for the applicant. In short, the impugned order passed by learned Additional Sessions Judge issuing directions to the applicant-accused to deposit Rs. 2,00,000/- (Rs. Two Lakhs Only), pending the appeal, appears to be just, proper and reasonable one. There is no abuse of process of law. No interference is warranted to meet the ends of justice by exercising inherent powers under section 482 of Cr.P.C.

12. With the aforesaid discussion, the Criminal Application, being devoid of merit, deserves to be dismissed. Accordingly, Criminal Application stands dismissed. Rule stands discharged. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
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