

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.140 OF 2019

Nurallah Kamruddin Veljee
Aged about 62 years,
married, businessman,
Indian National,
701 "C" Wing, Rizvi Tower,
St. Inez, Panaji, Goa.

....Petitioner

V/s.

Farid Veljee
major, married businessman,
Indian National, R/at A/4,
Karimabad Co-op.
Housing Society Ltd.,
Campal, Panaji-Goa.

... Respondent

Shri Kaif Noorani with Ms. Rida Shaikh, Advocate for the Petitioner.
Shri Abhay Nachinolkar with Shri H. Vaze, Advocate for the
Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on :- 22nd July, 2019

Pronounced on :- 6th August, 2019

JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with
the consent of the learned Counsel appearing for the parties.

2. The challenge in this petition is to an order dated
04/06/2019 passed by the Additional Sessions Judge, Panaji directing

the petitioner to deposit 25% of the amount of compensation awarded by the Trial Court while convicting the petitioner under Section 138 of the Negotiable Instruments Act and sentencing him to pay a compensation of ₹6.00 crores and in default to undergo simple imprisonment for two years.

3. The petitioner has preferred an appeal before the Sessions Court, Panaji, inter alia, moving an application for suspension of sentence dated 27/05/2019. The learned Additional Sessions Judge, Panaji, by the impugned order dated 04/06/2019 directed the petitioner to deposit 25% of the amount of compensation awarded by the Trial Court to the tune of ₹6.00 crores in accordance with the provisions of Section 148 of the Negotiable Instruments Act. No substantive sentence has been passed by the Trial Court.

4. The petitioner's challenge to the impugned order is limited to the extent that the impugned order is illegal, arbitrary, unconstitutional and discriminatory as it has been passed without assigning any reasons or without appreciating the records and proceedings. It is the contention of the learned Counsel for the

petitioner that the impugned order needs to be quashed and set aside to the extent it directs the petitioner to deposit 25% of the amount of compensation awarded by the Trial Court, inter alia, directing the learned Additional Sessions Judge to hear the parties and decide, if the petitioner is liable to pay/deposit any amount pending the final hearing of Criminal Appeal No.60/2019.

5. It is needless to go into the factual matrix of the case since a very limited prayer is made in the petition invoking inherent jurisdiction of this Court under Section 482 of the Criminal Procedure Code, inter alia, Article 227 of the Constitution of India.

6. Shri Noorani, the learned Counsel for the petitioner contended that the learned Additional Sessions Judge misread the judgment of the Supreme Court in the case of ***Surinder Singh Deswal @ Col. S.S. Deswal & Ors. V/s. Virender Gandhi*** in ***Criminal Appeal Nos.917-944 of 2019***. It is contended that the records and proceedings were not received from the Trial Court though the respondent appeared on 01/06/2019. However, the learned Additional Sessions Judge by the impugned order while suspending the sentence

directed the petitioner to deposit 25% of the amount of compensation as above. It is strenuously argued by the learned Counsel for the petitioner that there is no single reason assigned by the learned Additional Sessions Judge in the impugned order and the petitioner has not been given an opportunity to put forth his case as to how it was not necessary to direct 25% deposit as above.

7. It is, thus contended that as the petitioner has not been given an opportunity by the learned Additional Sessions Judge, to show that his case comes within the exception for the special reasons, which can be borne out from the record, the impugned order needs to be quashed.

8. The learned Counsel has placed reliance on a judgment of the Hon'ble Supreme Court in case of *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota V/s. Shukla & Brothers*¹.

9. Mr. Abhay Nachinolkar, the learned Counsel for the respondent, on the other hand, contended that the learned Appellate

1 [(2010) 4 SCC 785]

Court has rightly passed the impugned order in the light of the ratio laid down by the Supreme Court in case of *Surinder Singh Deswal* (supra). It is contended by the learned Counsel that the complaint was filed way back in the year 2010 which is completing about 9 years. The learned Additional Sessions Judge has rightly exercised her discretion in directing the petitioner to deposit the amount as above. He drew my attention to the application for suspension of sentence indicating that there is nothing to show about any exceptional ground raised by the petitioner.

10. It is submitted that neither there is any abuse of process of Court nor any question of seeking the ends of justice. On the contrary, the petition is filed only to protract the matter further which is against the spirit of Section 148 of the Act. According to the learned Counsel for the respondent, this is nothing but the abuse of the process of Court and therefore submits that the petition be dismissed with exemplary costs.

11. In *Surinder Singh Deswal* (supra), the Hon'ble Supreme Court held as under:

“7.1 The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants - original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I. Act as amended?”

7.2 While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases.

This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to

payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:-

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate 13 Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives."

"148. Power to Appellate Court to order payment pending appeal against conviction....

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court: Provided that the amount payable under this subsection shall be in addition to any interim compensation paid by

the appellant under section 143A.

(2) The amount referred to in subsection (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal: Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018.

Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under

Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.

8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/or affected.

Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand.

Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I.

Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

9. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the N.I. Act as amended, the appellate Court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant - accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned.

Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant Accused under Section 389 of the Cr.P.C. to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant.

Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the N.I. Act.

Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Sec 138 of the N.I. Act.”

12. The ratio is squarely applicable herein.

13. Amendment Act No.20/2018 amending Section 148 of the Act came into force with effect from 01/09/2018. Considering the object and purpose of amendment in Section 148 of the Act and while suspending the sentence in exercise of powers under Section 389 of the Criminal Procedure Code, when the first appellate Court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned Trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the Act. It is specifically observed that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the Act was being frustrated, the Parliament has therefore suitably amended Section 148 of the Act conferring power upon the Appellate Court to direct the convict accused/appellant to deposit such sum which shall be a minimum of 20% of the compensation defined or awarded by the Trial Court. It is apparent that vested right of the convict to prefer an appeal has not been affected by the said

amendment.

14. The Hon'ble Supreme Court has also observed that the word “*may*” appearing in Section 148 of the Act as amended be construed as a “*rule*” or “*shall*” and not to direct to deposit by the Appellate Court is an exception for which special reasons are to be assigned.

15. It is difficult to accept the argument of the learned Counsel for the petitioner that he has been denied an opportunity to satisfy the learned Additional Sessions Court as to how the petitioner's case would come within the exceptions, for the reasons that the impugned order indicates not only an opportunity to hear the petitioner's Counsel was given, but the learned Appellate Court has also perused the appeal memo as well as the judgment and order of the Trial Court. Merely because the record and proceedings of the Trial Court were not before the Appellate Court at the time of passing the impugned order would not prohibit the Court from passing an order after giving a full hearing to the learned Counsel at the time of suspending the sentence. The petitioner cannot, as of right, contend that he is not liable to deposit

any amount pending the hearing and final disposal of the appeal in the light of the judgment of the Hon'ble Supreme Court in ***Surinder Singh Deswal*** (supra). Such argument would be against the very spirit and object of Section 148 of the Negotiable Instruments Act.

Para 4 of the impugned order reads thus:

“4. Since, there is no substantive sentence passed by the trial court, the application for suspension of the sentence which is default sentence and therefore the appellant shall deposit 25% of the amount of compensation awarded by the trial court of Rupees Six Crores in accordance with the provision of Section 148 of NI Act, and in view of the above decision cited before me by the Advocate for the respondent. Hence, I pass the following:

O R D E R

The application is allowed accordingly and the appellant is directed to deposit 25% of the compensation/fine amount awarded by the trial court.”

16. Admittedly, no substantive sentence has been passed by the Trial Court. What has been directed by the Trial Court is only the payment of compensation and in default of payment of the same, the petitioner is directed to undergo simple imprisonment for two years. Once it is held by the Supreme Court that the word "***may***" in Section 148 sub-section (i) to be construed as "***rule***" or "***shall***", there is no question of exercising discretion by the Court not to direct to deposit by the appellant which is an exception. The petitioner who has

already been convicted after a full fledged trial has rightly been directed to deposit 25% of the amount of compensation awarded.

17. As has been rightly argued by the learned Counsel for the respondent that in the application for suspension of sentence, the petitioner has not shown any exceptional circumstances which would weigh upon the Court to assign special reasons. There is, in fact, no miscarriage of justice and therefore there is no question of exercising inherent jurisdiction by this Court.

18. The learned Counsel for the petitioner has also placed reliance on the judgment of Madras High Court in the case of ***LGR Enterprises & Anr. V/s. P. Anbazhagan*** in ***Cr.O.P. No.15438 of 2019***. The ratio laid down by the Single Judge of the Madras High Court would not be applicable to the case in hand since the case before the Madras High Court was in respect of Section 143A of the Act which empowers the Court to direct interim compensation while trying an offence under Section 138 of the Act. Para 6 of the judgment reads thus:

“6. A reading of the above provision makes it clear that the Court trying an offence under Section 138

*of the Negotiable Instruments Act “**may**” (Emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. The provision itself shows that the discretion is vested with the Trial Court to direct interim compensation to be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case. The legislature had intentionally not used the word “**shall**”, since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughtfully used the word “**may**” under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word “**shall**” into the word “**may**” which is used in the provision.”*

19. It has been observed by the Madras High Court that as per Section 143A of the Act, discretion is vested with the Trial Court to direct interim compensation to be paid to the complainant which would be given only on a case to case basis by taking into consideration the facts of each case. It is observed that the legislature has intentionally not used the word “**shall**” since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 25% as interim compensation amount to the complainant. It is not the case in hand. The petitioner herein has

been convicted and while in appeal, the learned Additional Sessions Judge in view of the judgment laid down by the Supreme Court in case of ***Surinder Singh Deswal*** (supra) rightly exercised her jurisdiction in directing payment of compensation as above. The ratio, therefore, can be distinguished accordingly.

20. In case of ***Assistant Commissioner*** (supra), the learned Counsel for the petitioner has drawn my attention to paras 13,14 and 21 of the judgment which read as under:

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said, "The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts;

(2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and (4) to provide reasons for an appeal Court to consider." Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons

amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for providing public understanding of law and imposing self-discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award.

The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various

contentions were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

21. There cannot be any dispute that reasons are the soul of orders. There is no violation of principles of natural justice since the petitioner has moved an application for suspension of sentence in which he has not made out any special circumstances. Secondly, in view of the judgment of the Supreme Court in case of **Surinder Singh Deswal** (supra) and in view of the scope and object of Section 148 of the Act, no fault can be found with the impugned order, as it is not the contention of the petitioner that he was not heard at the time of passing the order. More so, it is not a final order conclusively determining or adjudicating the rights of the parties. It is an order pending the appeal and, therefore, there is no question of causing any prejudice to the petitioner. It is not a final judgment. It is not even the case of the petitioner that he has not even participated in the trial.

22. The learned Counsel for the respondent in support of his contentions placed reliance on a judgment of the Bombay High Court

in *Floyd D. Aguiar V/s. Bronwyn D. Aguiar & Anr.*² and submitted that jurisdiction of the High Court under Article 227 is discretionary. Such powers of judicial superintendence have to be exercised sparingly and only to keep the subordinate courts within the bounds of their authority. Paras 8 & 11 of the judgment read thus:

“8. So far as power under Article 227 of the Constitution of India is concerned, it is true that it is very wide. The power can be used to meet the ends of justice. The said power can be exercised to interfere even with an interlocutory order. However, the jurisdiction under Article 227 of this Court is discretionary. The power under Article 227 being a power of judicial superintendence has to be exercised sparingly and only to keep sub-ordinate Courts within the bounds of their authority. It cannot be said that availability of remedy of revision before the Sessions Court takes away the jurisdiction of the High Court to exercise powers under Article 227 of the Constitution of India. However, as a normal rule, jurisdiction under Article 227 of the Constitution of India will not be exercised if another statutory remedy is available as the power of superintendence cannot be used to circumvent express provisions of a Statute. Therefore, this Court will not normally exercise jurisdiction under Article 227 when the aggrieved party has not exhausted a statutory remedy.

11. The Apex Court has time and again held that the inherent jurisdiction though wide has to be exercised very sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in Section 482. In the present case when the petitioner can avail of remedy of filing a Revision Application before the Sessions Court for challenging the order issuing process, the jurisdiction

2 [2007 1 BomCR(Cri) 912]

under Section 482 which is to be exercised sparingly cannot be invoked. Even if the petitioner fails in Revision Application, his remedy of approaching this Court is not taken away provided the case is covered by tests specifically laid down in Section 482 of the said Code. As stated earlier, the jurisdiction under Section 482 of the said Code is to be exercised sparingly. In view of the law laid down by the Apex Court and in particular in the case of Navjot Sandhu (supra), I am not inclined to entertain this petition.”

23. In view of the ratio laid down by this Court, no case is made out to interfere with the impugned order passed by the learned Additional Sessions Judge.

24. In case of **Shivaji Raghunath Gaikwad** (supra), this Court has observed that powers under Article 227 are discretionary. It is not an appellate or revisional power but a supervisory power. There is neither any illegality nor gross irregularity in the impugned order and therefore there is no question of exercising powers under Article 227 of the Constitution of India. As such, the petition is devoid of merits and therefore deserves to be dismissed. The petition accordingly stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

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