

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.136 OF 2019

Keshava Kolar @ K. ... **Applicant**
Versus
Ajay Gopaldas Samat & Anr. ... **Respondents**

WITH
CRIMINAL APPLICATION NO.138 OF 2019

M/s.Maxworth Realty India Ltd. & Anr. ... **Applicants**
Versus
Rani Gopaldas Samat & Anr. ... **Respondents**

WITH
CRIMINAL APPLICATION NO.139 OF 2019
WITH
CRIMINAL APPLICATION NO.141 OF 2019

M/s.Maxworth Realty India Ltd. & Anr. ... **Applicants**
Versus
Ajay Gopaldas Samat & Anr. ... **Respondents**

WITH
CRIMINAL APPLICATION NO.140 OF 2019

Keshava Kolar @ K. ... **Applicant**
Versus
Kaku Tulsidas Bhatia & Anr. ... **Respondents**

WITH
CRIMINAL APPLICATION NO.142 OF 2019

M/s.Maxworth Realty India Ltd. & Anr. ... **Applicants**
Versus

Geeta Peter Khubani & Anr. ... **Respondents**

**WITH
CRIMINAL APPLICATION NO.143 OF 2019**

M/s.Maxworth Realty India Ltd. & Anr. ... **Applicants**

Versus

Manisha Ajay Samat & Anr. ... **Respondents**

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Mr.Banarsi Dass Chauhan, Advocate for the Applicants.

Mr.Jatin P. Shah with Ms.Snehankita Munj, Advocate for the Respondent No.1.

Mr.A.R.Patil, the Additional Public Prosecutor for the Respondent No.2/State.

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CORAM : A.M.BADAR J.

DATED : 17th DECEMBER 2019.

ORAL JUDGMENT :

1 In all these applications, applicants/convicted accused are challenging the Order dated 14th February 2019 passed by the first Appellate Court thereby directing them to deposit 30% of compensation awarded by the learned trial Court as a condition for suspension of sentence. As impugned Orders are identical, facts are identical and common question of law is involved in all these applications, they are being decided by this common Judgment.

2 Heard. Rule. Rule is made returnable forthwith.

3 The learned Counsel for the applicants vehemently argued that complainants have recovered more money from the accused persons than that of amount under cheque. The transactions were not commercial transactions. It is further argued that there was raid of the Income-Tax Department and, as such, applicants are not in a position to deposit the amount of 30% of the compensation as directed by the first Appellate Court. It is contended that the property is mortgaged with the complainant and, therefore, the learned Appellate court ought not to have directed depositing of compensation. Appeals are already admitted for final hearing and there is possibility of allowing appeals. Hence, in submission of the learned Counsel for the applicants, impugned Orders so far as they direct deposit of 30% of compensation needs to be quashed and set aside.

4 As against this, the learned Counsel appearing for respondent No.1/original complainant vehemently argued that discretion as conferred by Section 148 of the Negotiable Instruments Act, 1881 is exercised by the learned first Appellate Court judiciously and, therefore, no interference is required in the impugned orders. He drew my attention to the fact that only cheque amount is awarded as compensation to complainant by rounding it off. Therefore, in submission of the learned Counsel for the complainants, first Appellate Court has directed depositing 30% of amount of compensation awarded by the trial Court. He placed reliance on the following Judgments.

- 1 Judgment of the Honourable Supreme Court in the matter of ***Surinder Deswal Versus Virender Gandhi***.¹
- 2 Judgment of the Kerla High Court in the matter of ***T.K.Sanjeevan Versus Fracis T. Chacko***.²
- 3 Judgment of Single Judge of this Court in the matter ***Nurallah K. Veljee Versus Farid Veljee***.³
- 4 Judgment of Single Judge of this Court in the matter of ***Alpesh Mehta Versus Heenaben Chheda*** in Criminal Writ Petition No.4465 of 2018 dated 30th November 2018.
- 5 Judgment of Chattisgarh High Court in the matter of ***Ashok Panchbhai Versus State Bank of India***.⁴
- 6 Judgment of Punjab & Haryana High Court in the matter of ***M/s.Ginni Garments Versus M/s.Sethi Garments***.⁵

5 I have considered the submissions so advanced and also perused the material placed on record. It is seen from record that in fact by rounding of the amount under cheques involved in the complaints, virtually, the amount under the cheques came to be awarded as compensation by the learned trial Court. In appeal, the first Appellate Court has, therefore, directed deposit of 30% of amount of compensation in the light of statutory provisions of Section 148 of the Negotiable Instruments Act, 1881. Therefore, it cannot be said that the discretion in directing deposit of amount of

1 2019 Cri.L.J. 3507.

2 CDJ 2019 Ker HC 765.

3 CDJ 2019 BHC 1141.

4 CDJ 2019 Ch HC 245.

5 CDJ 2019 PHC 024.

compensation in the light of provisions of Section 148 of the Negotiable Instruments Act, 1881 is exercised either arbitrarily or capriciously by the learned first Appellate Court. In the matter of ***Surinder Deswal (supra)*** by reiterating the statement of object and reasons of amended Section 148 of the Negotiable Instruments Act, 1881, the Honourable Apex Court has held that even at the time when appellant had submuitted the application under Section 389 of the Code of Criminal Procedure for suspension of sentence pending appeal challenging the conviction and sentence, amended Section 148 of the Negotiable Instruments Act, 1881 had already came into force with effect from 01/09/2018. With such finding of fact, the Honourable Apex Court further held that no error has been committed by the first Appellate Court directing the appellant in that case to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court. Facts of the case in hand are identical with the facts in the matter of ***Surinder Deswal (supra)***.

6 In this view of the matter, no case for interference is made out. All the applications are accordingly dismissed. Rule stands discharged.

(A.M.BADAR, J.)