

NSC.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.4877 OF 2019
WITH
CRIMINAL WRIT PETITION NO.4880 OF 2019**

Naresh Barot and Anr. ... Petitioners
Versus
Kirti Punamchand Shah and Ors. ... Respondents

**WITH
CRIMINAL WRIT PETITION NO.4878 OF 2019
WITH
CRIMINAL WRIT PETITION NO.4879 OF 2019**

Naresh Barot and Anr. ... Petitioners
Versus
Kantilal Moraji Shah and Ors. ... Respondents

Mr. Ram Upadhyay i/b Law Competere Consultus, for the Petitioners.

Mr.P. H. Gaikwad - Patil, A.P.P for the Respondent No.3 - State in WP/4877/2019 and WP/4880/2019.

Ms.Veera Shinde, A.P.P for the Respondent No.3 - State in WP/4878/2019.

Mr.A. R. Patil, A.P.P for the Respondent No.3 - State in WP/4879/2019.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th NOVEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.

2. Since the issue involved in all the aforesaid petitions is common, the same is decided by a common order.

3. The Petitioners herein have been convicted in four cases i.e. C.C.No.6913/SS/2015; C.C.No.6903/SS/2015; C.C.No.5329/SS/2015 and C.C.No.5328/SS/2015, for the alleged offence punishable under Section 138 of the Negotiable Instruments Act, vide Judgment and Order dated 30th July, 2019, passed by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai. Whilst convicting the petitioners and sentencing them for the offence, the petitioners were also directed to pay compensation to the Respondent – Complainant, jointly or severally, in each of the said cases. In default of payment of compensation, the petitioner nos.1 and 2 were directed to suffer simple imprisonment for 3 months. The compensation in all the four cases were different, since the amounts involved in all the four cases were different.

4. Being aggrieved by the said Judgment and Order passed in all the aforesaid four cases by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, the petitioners filed four appeals before the learned Sessions Court. The learned Additional Sessions Judge, City Civil and

Sessions Court, Borivali Division, Dindoshi, admitted the said appeals filed by the petitioners and suspended the sentence of the petitioners on two conditions i.e. (1) the petitioners were directed to deposit 1/3rd of the compensation amount awarded by the trial Court, within sixty days and (2) the petitioners were directed to execute P.R. Bond of Rs.15,000/- each and furnish solvent surety in the like amount vide orders dated 9th August, 2019.

5. Learned Counsel for the petitioners in all the aforesaid petitions submits that the order directing the petitioners to deposit 1/3rd of the compensation amount, is contrary to the provisions of Section 148 of the Negotiable Instruments Act. He relied on the Apex Court Judgment in the case of ***Surinder Singh Deswal and Ors v/s Virender Gandhi***¹ in particular paragraph 9 of the said judgment.

6. Perused the papers. As noted above, the petitioners have been convicted in all the four cases for the alleged offence punishable under Section 138 of the Negotiable Instruments Act and have been sentenced to suffer simple imprisonment in all the said cases. The petitioners were also directed to pay compensation as mentioned in the Judgment and Order of Conviction and Sentence dated 30th July, 2019, in the four cases. As noted

¹ AIR (2019) SC 2956

above, being aggrieved by the said Judgment and Order of conviction and sentence, the petitioners filed four appeals before the learned Sessions Court, challenging the said Judgment and Orders. In the said appeals the petitioners filed applications for suspension of their sentence and enlargement of bail, which was allowed by the learned Additional Sessions Judge, vide order dated 9th August, 2019. A perusal of the Section 148 of the Negotiable Instruments Act shows that the Appellate Court has the power to direct deposit of the compensation/fine amount, pending the appeal against conviction.

7. Having regard to the Judgment of the Apex Court in ***Surinder Singh Deswal (supra)***, and the Statement of object and reasons of the amendment in Section 148 of the Negotiable Instruments Act, no infirmity can be found in the order dated 9th August, 2019, directing the petitioners to deposit 1/3rd of the compensation amount before the Appellate Court. The amounts that the petitioners have been directed to deposit is 1/3rd of the compensation amount of Rs.2,25,879/- in C.C.No.6913/SS/2015, Rs.3,70,413/- in C.C.No.6903/SS/2015; Rs.6,90,451/- in C.C.No.5329/SS/2015 and Rs.3,44,487/- in C.C.No.5328/SS/2015.

8. In the facts, no infirmity can be found in the impugned orders. However, since the time to deposit has expired, the same is extended by a period of six weeks from today to enable the petitioners to comply with the impugned orders dated 9th August, 2019.

9. Petitions are accordingly dismissed on aforesaid terms.

REVATI MOHITE DERE, J.