

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 985 OF 2019

Tausif Ahemad Md. Zakir Sheikh

..vs..

Sanjit Pite Ajit Roy

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Aditya Satpute, Advocate for petitioner.
Shri Ritesh R. Dawda, Advocate for respondent.

CORAM : VINAY JOSHI, J.

DATED : 11/03/2020

Heard learned Counsel for the parties.

2. The petitioner who was accused in Criminal Case bearing No. S.C.C. 56 of 2018 under Section 138 of the Negotiable Instrument Act, 1881 has filed this Writ Petition challenging the order dated 18.10.2019 rejected by the Magistrate. The said application was filed by the appellant-accused seeking to stay the criminal proceedings till disposal of Special Civil Suit No. 10 of 2014. The learned Magistrate for the reasons recorded in the application has granted stay to the proceedings under Section 138 of the Negotiable Instruments Act, 1881 till disposal of concerned Civil Suit. Being aggrieved, the appellant-accused has filed this Writ Petition to quash and set aside the impugned order and further to grant stay to the proceedings under 138 of the Negotiable Instruments Act, 1881 till disposal of Civil Suit. It reveals from the order dated 23.01.2020 of this Court that the learned Counsel for the petitioner sought time to take instructions from the petitioner whether he is ready to deposit entire

principle amount in this Court. The order dated also 06.02.2020 indicates that the petitioner/accused has already deposited Rs.2,66,000/-. The statement was made on behalf of the petitioner that within the period of four weeks the petitioner will deposit Rs.10,00,000/- before this Court. The said statement was accepted by this Court.

3. In the wake of such position, the petitioner has filed Pursis seeking permission to withdraw the Writ Petition. The other side has objected on the ground that the petitioner though undertakes to deposit Rs.10,00,000/- in this Court however, instead of complying his undertaking he had filed an application under Section 143 of the Negotiable Instrument Act, 1881 before the Trial Court for compounding the case. In said application he gave the schedule of future dates as to how he would pay the amount of Rs.10,73,333/-. According to the respondent, when the petitioner gave undertaking to this Court to deposit the amount, it was inappropriate for him to seek further time in Trial Court instead of approaching to this Court. Precisely, it is submitted that the petitioner is not complying his statement but, he is seeking extension of time from Trial Court.

4. The above referred two orders of this Court indicates that statement was made by the petitioner/accused to pay certain amount in this Court. However, acting on said statement this Court has not passed any order in his favour meaning thereby no stay was granted. Merely petitioner's statement of depositing the disputed amount was recorded. It would have been different matter, if on the basis of such statement the

petitioner has obtained any order in his favour. However, in normal course the petitioner ought to have asked extension of time to this Court but without intimating this Court he has filed application before the Magistrate giving a long schedule as to how he would pay the balance amount. In fact, the said application appears to be moved under Section 143 of the Negotiable Instrument Act, 1881 which is pertaining to compounding of offences. I do not see any hurdle for the petitioner to compound the matter before the Trial Court. He may file such application for compounding the offences which will be dealt in accordance with law. However, the petitioner instead of informing this Court has chosen to seek extension of time meaning thereby he has no regard to his own statement.

5. Though the respondent has objected for withdrawal of this Petition, I find no logic in forcing a party to go on with the matter when he wants to withdraw the same. Particularly, on the background when no interim orders are passed the party cannot be forced to go on with the Petition. However, as the petitioner made certain statements in this Court and perhaps delayed the proceedings in Trial Court, he is permitted to withdraw the Petition subject to payment of cost of Rs.10,000/- to be paid to the High Court Legal Services Sub-Committee, Nagpur. It is clarified that the learned Magistrate can compound the matter on petitioner's application if he thinks fit and permissible in law. Of-course the compromise would be always if consented by the original complainant. The petitioner shall deposit cost amount within three weeks from today, failing which the Registry to inform the Collector to recover the amount as arrears of

land revenue.

6. Criminal Writ Petition stands disposed
accordingly.

JUDGE

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