IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1772 OF 2022

Deepak Vitthal Rao ... Petitioner
versus
The State of Maharashtra and another ... Respondents

WITH
WRIT PETITION NO.1775 OF 2022

Deepak Vitthal Rao ... Petitioner
versus
The State of Maharashtra and another ... Respondents

WITH
WRIT PETITION NO.2022 OF 2022

Deepak Vitthal Rao ... Petitioner
versus
The State of Maharashtra and another ... Respondents

Mr.Vincent X.D'Silva with Mr.Sujit A. Mane, Advocate for petitioner.
Mr.Jugal Kanani, Advocate for respondent no.2.
Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 16th June 2022

PC :

1. Writ Petition Nos.1775 of 2022 and 2022 of 2022 are not on board. Taken on board. All the petitions involve common issue and connected. Hence disposed off by common order.

2. The petitioner in all these petitions has challenged the order dated 29th April 2022 passed by the Sessions Court, Greater Bombay releasing compensation amount of Rs.67,75,000/- to the complainant.

3. The petitioner is convicted for the offence under Section 138 of Negotiable Instruments Act (`the Act' for short) vide judgment and order dated 10th February 2021 in three different complaints viz. CC No.340/SS/2017, CC No.226/SS/2017 and CC No.339/SS/2017. Petitioner is sentenced to suffer imprisonment of ten months and to pay compensation of Rs.1,35,00,000/- in CC No.340/SS/2017. He is sentenced to suffer imprisonment for eight months and directed to pay compensation of Rs.1,15,00,000/- in CC No.226/SS/2017. He is sentenced to suffer simple imprisonment for two months and pay compensation of Rs.21 lakh in CC No.339/SS/2017.

4. The petitioner had challenged the judgment of convictions by preferring three appeals before the Court of Sessions viz Criminal Appeal Nos.108 of 2021, 109 of 2021 and 110 of 2021. The appeals are admitted and sentence of imprisonment was suspended on the condition that petitioner shall deposit 25% compensation amount of Rs.67,75,000/-. The said amount has been deposited by petitioner in the Appellate Court. The respondent no.2/complainant preferred common application seeking permission to withdraw the compensation amount deposited by appellant as per provision of Section 148(3) of the Negotiable Instruments Act. The said application was allowed by order dated 29th April 2022 directing that the amount of Rs.67,75,000/- deposited in the Court be released in favour of respondent no.2/complainant subject to conditions in the proviso of sub-section 3 of Section 148 of Negotiable Instruments Act.

5. The grievance of the petitioner is that although the amount is

deposited by the petitioner, the respondent no.2-complainant should not be allowed to withdraw the said amount.

6. Learned counsel for petitioner submitted that the petitioner has good case on merits. Petitioner was not represented properly before Trial Court. His case is prejudiced and damaged due to mistakes of his advocate. Statement under section 313 of Cr.P.C. is recorded without his consent and advocate has admitted liability. The amount was paid to the complainant. There was no liability. The trial was not conducted properly. In the event amount is returned to respondent no.2-complainant, grave prejudice will be caused to the petitioner. Section 148(3) of the Act refers to the word "may" which would indicate that it is not mandatory to release the amount to the complainant. The order passed by learned Appellate Court allowing withdrawal of the amount by complainant is required to be set aside. The petitioner has relied upon the statement of payment allegedly made to the complainant.

7. Learned counsel for respondent no.2 vehemently opposed the prayer sought in this petition. It is submitted that the petitioner cannot urge the merits of the petition. He has been convicted for the offence u/s.138 of the Act. The appeal is pending before the concerned Court. Merits of the matter will be decided at the appropriate stage. There is no illegality in the impugned order passed by the Court. The apprehension, if any, expressed by the accused is taken care of in proviso of sub-section 3 of Section 148 of the Act wherein it is provided that if accused 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. It is further submitted that if the amount is not allowed to be withdrawn, the object and purport of Section 148 would be frustrated. This provision has been incorporated by amendment of 2018. The statement of object and reasons which necessitated the amendment which led to the introduction of Section 148 of the Act, is required to be taken into consideration. The word `*may*' appearing in the said provision would not restrict release of compensation amount. In the light of object of the Act and amended provision, compensation amount has to be released. The petitioner-accused has been directed to pay total compensation in all the three complaints to the tune of Rs.2.71 crores and during pendency of appeal the petitioner has been directed to deposit Rs.67,75 lakh which is 25% of the total compensation. There is no illegality in the order passed by Appellate Court.

8. I have perused the documents on record. Undisputedly the petitioner has been convicted in three complaints for the offence u/s.138 of Act. The primary contention of petitioner is that petitioner was not represented properly before Trial Court. The trial was not fair The substantial amount was parted to the complainant. Learned Magistrate on appreciating the evidence on record has convicted the petitioner and sentenced to suffer imprisonment as well as directed to pay compensation. The legality of judgments of conviction is yet to be decided. At this stage it would not be advisable to make any comment on the merits of appeals which are

pending before appropriate Court. The total amount of compensation is Rs.2,71,00,000/-. The petitioner is directed to pay 25% of total compensation.

9. Section 148 of Negotiable Instruments Act reads as follows :

> *"**148. Power of 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 the sub-section shall be in addition to any interim compensation paid by the appellant under section 143-A.*
>
> *(2) The amount referred to in sub-section (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."*

10. On reading the aforesaid provision it is apparent that Appellate

Court can direct the convict to deposit the amount towards compensation which shall not be less than 20% of the fine or compensation awarded by the trial Court. The said provision was incorporated by amendment which came into force in 2018. The statement and object of Section 148 of the said Act is as follows :

> *" 2. ... It is proposed to amend the said Act with a view to address the issue of undue delay to 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 creditability 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".*

11. Learned Sessions Judge who is seized of the appeals preferred by the petitioner has directed the petitioner to deposit 25% amount of compensation. The amount has been deposited by the petitioner, however, objection of the petitioner is that amount should not be allowed to be withdrawn by the complainant-respondent no.2. Thus, there is no challenge to the order directing depositing the said amount but the objection is only to the extent of permitting respondent no.2 to withdraw the said amount. The contention of petitioner that he did not get fair trial or that there was no liability to pay the amount, are the issues which are subject matter of appeal. In any case the grounds urged by petitioner does not appeal to me to stop release of amount. Assuming that Section 148(3) refers to word `*may direct release*', no case is made out by petitioner, not to release the amount. It is also pertinent to note that sub-section (3) of Section 148 incorporated proviso to protect interest of accused in the

event he is acquitted. The appellate Court, in the present case has released the amount to complainant. Subject to condition in the proviso of sub-section (3) of Section 148 of Negotiable Instruments Act. Hence, these petitions are devoid of merit and required to be dismissed.

ORDER

(i) Criminal Writ Petition No.1772 of 2022, Writ Petition No.1775 of 2022 and Writ Petition No.2022 of 2022 are dismissed and disposed of.

(PRAKASH D. NAIK, J.)

MST