

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2963 OF 2022

Dilip @ Delip Vasant Rao Bagul ...Petitioner

V/s.

M/s. Prefeb Engineering Pvt. Ltd.

Through Amit Pangam & Anr. ...Respondents

Mr. Laxman Kanal a/w Divia Kanal for Petitioner.

Mr. Ashish Chavan a/w Mr. Zishan Quazi for Respondent No.1.

Mr. A. R. Patil, APP for Respondent No.2 (State).

CORAM : AMIT BORKAR, J.

DATE : NOVEMBER 10, 2022

PC.:

1. The Petitioner is original accused in a proceedings under Section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate by judgment and order dated 16th March 2022, convicted the petitioner for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and directed him to undergo simple imprisonment for a period of six (6) months and to pay an amount of Rs.1 Crore towards compensation. The petitioner being aggrieved by the order of imprisonment and payment of compensation filed Criminal Appeal No.76 of 2022.

2. Learned Sessions Judge by impugned order dated 20th June 2022 suspended the judgment and order passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai,

subject to deposit of 20% of compensation within two (2) months. The petitioner has filed present Petition challenging the order of suspension which is subject to deposit of 20% of compensation.

3. Learned advocate appearing for the petitioner submitted that the principal challenge in the Appeal is the amount of compensation imposed by the learned Magistrate, and therefore, it is not necessary for him to deposit 20% of the compensation amount as directed by the learned Sessions Court. According to him, the liability under Section 138 for which cheque was issued is also subject matter of challenge in the Appeal.

4. At this stage, it is necessary to consider Section 148 of the Negotiable Instruments Act, 1881. Sub-sections 1 and 2 of Section 148 of the Negotiable Instruments Act, 1881, reads as under:

“(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 percent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(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)

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.”

5. On perusal of the language of section, it is manifest that the Appellate Court has power/duty to direct the Appellant to deposit minimum of 20% of fine or compensation awarded by Trial Court. In the facts of the case, the amount of compensation directed to be paid is Rs.1 Crore. Therefore, learned Appellate Judge in the light of mandate under Section 148 (1) of Section 148 of the Negotiable Instruments Act, 1881, has directed the petitioner to deposit 20% of the amount, which is a minimum amount which the appellant needs to deposit.

6. The liability to pay the amount of cheque is the matter of merit, which the Appellate Court is required to consider at the time of consideration of merits of Appeal. At the stage of deposit of minimum of 20%, the Appellate Court cannot go into the aspect as to whether the amount of liability under the cheque was less

then the liability imposed by the Magistrate.

7. In that view of the matter, there is no manifest perversity in the order nor the effect of impugned order resulted into miscarriage of justice.

8. There is no merit in the Petition. The Petition is therefore dismissed.

(AMIT BORKAR, J.)