

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.702 OF 2022

Amarnath Ranga Reddy

.VS.

Yogesh Satish Dhamejani

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr M. P. Kariya, Adv. A/w. Mr V. D. Darne, Advocate for the applicant
Mr R. M. Tahaliyani, Advocate for the respondent

CORAM : G.A. SANAP, J.

DATE : DECEMBER 06, 2022.

Heard.

2. This application is filed questioning the correctness of the order dated 20.04.2022, passed by the learned Additional Sessions Judge, Yavatmal, whereby the learned Judge was pleased to allow the application at Exh. 18, made by the respondent/original complainant, seeking direction to the applicant/accused to deposit 20 % of the amount of compensation/penalty, as mandated by Section 148 of the Negotiable Instrument Act, 1881 (For short 'N. I. Act').

3. The main ground of challenge is that the direction to deposit remaining 10 % of the compensation amount in terms of the mandate of Section 148 of the N. I. Act,

tantamount to review of the earlier order. It is submitted that the learned Judge could have decided this issue on independent application made by the respondent/complainant seeking directions to the applicant/accused to deposit the amount as required under Section 148 of the N. I. Act.

4. I have heard the learned Advocate for the parties. Perused the record and proceedings.

5. In my view, in the facts and circumstances, the submissions advanced on behalf of the applicant/accused cannot be accepted. It is true that vide order dated 03.01.2022 the application for suspension of substantive sentence was allowed subject to certain conditions. One of the conditions was that the applicant/accused shall deposit 10% of the amount of compensation. It is seen on perusal of the record that on 08.02.2022, the respondent/complainant made an application at Exh.18 and prayed that the applicant/accused be directed to deposit 20 % of the amount of a compensation/penalty in view of the amended provisions of Section 148 of the N. I. Act. It is to be noted that the Court on its own did not modify the order. Similarly, there was no objection or challenge to the order passed by the learned Judge directing the applicant/accused to deposit the amount of compensation. Perusal of the application indicates that the

specific prayer was made. It was stated that when the Court has inclined to suspend the sentence and found that the applicant/accused should be directed to deposit some amount, then the amount should not have been less than 20 % of the compensation amount. In my view, this is the crux of the matter. The application made was an independent application. He did not seek review of the order. In fact, the applicant prayed before the Court to pass an order according to law and mandate of Section 148 of the N. I. Act.

6. The learned Advocate for the applicant/accused relied upon the decision in the case of *Atul Shukla .v/s. The State of Madhya Pradesh and Anr.*, reported in, (2019) 17 SCC 299 and submitted that Criminal Court has no power to review its order. In this case, it is held that there is a specific bar under Section 362 of the Code of Criminal Procedure for review or modification of the order. In my view, the question in this case is whether the order passed on an independent application made by the respondent/ complainant without seeking even modification or review of earlier order would constitute the review of the said order ? Perusal of the order would show that the learned Judge applied independent mind to the facts stated in the application and the provisions of law. I have already observed that the applicant/accused was not aggrieved by the order directing the applicant/accused to deposit part of the amount. It is to be noted that when the

Court was inclined to impose such condition it must be consistent with the provisions of law. The respondent /complainant by making an independent application made an independent request to the Court that the amount of compensation/penalty to be deposited shall not be less than 20% of the compensation amount. That application was allowed and accordingly the direction was given to deposit 20 % of amount of compensation/penalty. In the facts situation, it could not be said that the order passed on independent application and that to in view of the mandate of Section 148 of the N. I. Act would constitute the review of the earlier order. Therefore, I do not see any substance in the application. The application stands **dismissed**.

7. At this stage, learned Advocate for the applicant makes prayer to continue stay order. Considering the fact that he is enjoying the benefit of suspension of sentence, the prayer for continuation of stay cannot be granted. Since the order passed by the learned Additional Sessions Judge was stayed on filing of this application, one month's time is granted to the applicant/accused to deposit the amount consistent with the order passed by the learned Additional Sessions Judge.

(G. A. SANAP, J.)

Namrata