

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

33 CRIMINAL WRIT PETITION NO.898 OF 2023

VASANT LAXMANRAO SONAWANE
VERSUS
SANGITA ARJUN SONAWANE

...
AND

34 CRIMINAL WRIT PETITION NO.903 OF 2023

VASANT LAXMANRAO SONAWANE
VERSUS
PANDHARINATH HARIBHAU ZENDE

...
In both the matters:

Advocate for Petitioners : Mr. Amol Karbhari Gawali

Advocate for Respondent : Mr. R.S. Kasar

...

CORAM : R. M. JOSHI, J.

DATE : AUGUST 7, 2023

PER COURT :

. These petitions takes exception to the order dated 25.08.2022 passed by the Additional Sessions Judge, Ahmednagar in Criminal Appeal No. 186 of 2022 and 185 of 2022 directing the petitioner / convict for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'N.I. Act') to deposit 50% amount of the compensation directed by the impugned judgment and orders therein.

2. The learned counsel for the petitioner states that for the purpose of directing the amount of 50% to be deposited, no reason is recorded by the learned Appellate Court. He drew attention of this Court to the judgment and order passed by the learned Magistrate in SCC No.2291 of 2018 and SCC No.2292 of 2028 in order to argue that the accused herein had raised specific plea about the cheques in question not being issued from the account maintained by him. According to him, without there being any substantive evidence to hold that the cheque in question was issued by the accused from his account maintained with the bank, the judgment of conviction of the accused is not sustainable. Thus, according to him, arguable case is made out by the petitioner before the Appellate Court. It is his submission that direction to deposit 50% amount of the compensation will frustrate the purpose of filing of the appeal.

3. Learned counsel for the respondents opposed the said contention by submitting that the conduct of the petitioner does not show bona fides. He drew attention of the Court to the orders passed by the Appellate Court in order to argue that the order dated 25.08.2022 was not complied within two months as per directions of

the Appellate Court and in any case such period could not have been extended beyond 90 days from the date of passing of said order. It is also submitted that the petitioner herein has delayed the compliance of the order on one or the other ground.

4. Perusal of Section 148 of the N.I. Act undoubtedly empowers the Appellate Court to direct the appellant to deposit the sum which shall be minimum 20% of the fine or the compensation awarded by the trial Court. Thus there is no impediment with the Appellate Court to pass order of directing any amount more than 20% amount of compensation. The question arises in this case as to whether the Appellate Court was justified in issuing such direction. For that purpose if the prima facie record is perused, it indicates that the original complainant is sister-in-law of accused. Undisputedly reply to the notice under Section 138 of N.I. Act was given by the accused that the cheques in question were given to the husband of the complainant towards payment of the agricultural tax. In spite of such specific defence taken while replying the notice during the trial it is sought to be contended that the accused has never issued cheques in question and that those cheques are not from the account

maintained by him with the bank. Prima facie perusal of the judgment of conviction of the accused indicates that said contention has been dealt with adequately by the learned Trial Court. In such circumstances, the direction to deposit 50% amount cannot be said to be in excessive exercise of the jurisdiction by the Appellate Court. Apart from this, perusal of record more than sufficiently indicates that the petitioner herein has adopted all possible tactics in order to ensure that the amount is not required to be deposited in this Court. This ground also disentitles him to seek any relief.

5. Considering the fact that sub section (3) of Section 148 of the N.I. Act enables the Appellate Court to release the amount deposited by the appellant - accused to complainant at any time during the pendency of the appeal. In view of fact that Exh.5 is yet to be heard and decided by the learned Trial Court, the Trial Court not to release an amount more than 20% of the amount deposited towards compensation as directed by the Trial Court.

6. In view of above, petition stands dismissed. It is clarified that above observations are made for the purpose of decision of this

petition and the learned Appellate Court to decide any application filed in the proceeding before it in accordance with law.

[R. M. JOSHI]
JUDGE

GGP