

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1051 OF 2023

Govind Ramvilas Biyani

...Petitioner

Versus

1. The State of Maharashtra

2. Prakash Dattopant Gorkar

...Respondents

Mr. S. J. Salunke, Advocate for the Petitioner.

Mr. S. W. Munde, Advocate for Respondent No. 1.

Mr. V. P. Savant, Advocate for Respondent Nos. 2.

CORAM : R.M. JOSHI, J.

DATE : OCTOBER 20, 2023

PER COURT:

1. This Petition takes exception to the order passed by learned Appellate Court in Criminal Appeal No. 48/2023 filed against the judgment and order of conviction passed by learned Magistrate in S.C.C. No. 296/2015 for the offences punishable under Sections 138 of the Negotiable Instruments Act (for short 'N.I. Act').

2. Petitioner is convict for the offence punishable under Section 138 of NI Act pursuant to the order passed by learned Magistrate dated 30.05.2023 in

SCC No. 296/2015. The said order of conviction came to be challenged in Appeal before the Sessions Court. Learned Additional Sessions Judge directed the Petitioner/Appellant to deposit Rs. 4,50,000/- i.e. 20% amount out of Rs. 22,50,000/- directed to be paid towards compensation. The said direction issued by the Appellate Court is by way of interim compensation.

3. Learned Counsel for the Petitioner placed reliance on the judgment of Hon'ble Apex Court in case of Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd and Others, Special Leave to Appeal (Crl.) No. 4927/2023. By referring to the said judgment, it is submitted that before directing an order to pay interim compensation for the purpose of suspension of sentence under Section 389 of Code of Criminal Procedure, the Appellate Court is required to consider whether the case falls in exception or not to make it condition precedent. According to him, the impugned order does not show said aspect being taken into consideration by Appellate Court and hence, order impugned deserves interference.

4. Learned Counsel for Respondent No.2/Orig. Complainant opposed the said contention by relying on judgment of Hon'ble Apex Court in case of Surinder Singh Deswal @ Col. S.S. Deswal and Others Vs. Virender Gandhi, Criminal Appeal Nos. 917-944 of 2019. It is his submission that the direction to deposit 20% amount of compensation as interim compensation as condition precedent for suspension of sentence is legal and valid.

5. Perusal of the impugned order passed below Exh. 4 & 5 directing payment of deposit of Rs. 4,50,000/- i.e., 20% amount of total compensation directed by trial Court is made condition precedent for suspension of sentence under Section 389 of CrPC. Order does not show that the Appellate Court has taken into consideration the fact as to whether the case falls in exception or not. The Hon'ble Apex Court in case of Jamboo Bhandari (supra) after taking into consideration judgment in case of Surinder Singh Deswal (supra) has held that even if there is no plea taken by Appellant that an exception may be made in the case and the requirement of deposit of minimum 20% amount be

dispensed with, it is for the Appellate Court to consider whether the case falls in exception or not. The said observation is made by keeping in mind the provisions of Section 389 CrPC which normally applies in grant of relief of suspension of sentence without any condition.

6. In view of above, the present case is squarely covered by judgment of Hon'ble Apex Court in case of Jamboo Bhandari (supra). Since the learned Appellate Court has not taken into consideration as to whether this is an exceptional case which warrant amount of suspension of sentence without imposing condition of deposit of 20% fine/compensation amount. Impugned order, therefore, cannot sustain.

7. Following the dictum of Hon'ble Apex Court, the order impugned dated 01.07.2023 is set aside to the extent of deposit of Rs. 4,50,000/- by way of interim compensation as condition precedent for suspension of sentence. The learned Additional Sessions Judge, Beed is directed to decide the said issue afresh in the light of observations made in the judgment of Hon'ble Apex Court in Jamboo Bhandari (supra). The Appellate

Court to take decision on the said issue within a period of one month from the date of passing of this order.

8. In view of above, Writ Petition stands disposed of.

(R.M. JOSHI, J.)

Malani