

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

928 CRIMINAL WRIT PETITION NO.1389 OF 2023

**SHIVRAJ LAXMAN YEGLEWAD
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Petitioner : Mr. Hamzakhani I. Pathan
APP for Respondent / State : Mr. S.W. Munde
...

**CORAM : R. M. JOSHI, J.
DATE : OCTOBER 19, 2023**

PER COURT :

. This petition takes exception to the directions issued by the Appellate Court by order dated 16.08.2023 below Exh.3 in Criminal Appeal No.17 of 2023 to deposit fine amount of Rs.1,51,000/- in aggregate against the petitioner / original accused to become a condition precedent for suspension of sentence under Section 389 of the Code of Criminal Procedure (For the sake of brevity, hereinafter referred to as the 'Cr.P.C.').

2. The petitioner is accused in Regular Criminal Case No.49 of 2021 filed for the offences punishable under Sections 354, 354-A, 454 of the Indian Penal Code. By judgment dated 01.08.2023 passed by Judicial Magistrate First Class, Umbri, petitioner is convicted and

was sentenced to suffer rigorous imprisonment for two years for each of the offence with fine. The aggregate amount of fine comes to Rs.1,51,000/-. The petitioner challenged the said judgment of the conviction before the Appellate Court. The Appellate Court by passing the impugned order dated 16.08.2023 directed the appellant/petitioner to deposit fine amount of Rs.1,52,000/-. It is made as condition precedent for suspension of substantive sentence.

3. Learned counsel for the petitioner submits that the learned Magistrate had power upto Rs.50,000/- for each offence, however in view of Section 31 (2)(b) of the Cr.P.C. the aggregate amount of fine shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence. Thus, according to him, when the petitioner is sentenced for four offences, the aggregate amount of fine could not exceed Rs.1,00,000/- as the jurisdiction of the Magistrate is to impose fine of Rs.50,000/-. He further submits that Magistrate has convicted the petitioner for the offence punishable under Section 323 of the Indian Penal Code (I.P.C.) and sentenced him to suffer Rigorous imprisonment with fine of Rs.1,000/-. According to him, without framing charge to that

effect the conviction has been recorded. Thus, it is his contention that in the aforesaid circumstances the petitioner cannot be called upon to deposit the fine.

4. Learned APP opposed the petition by contending that the jurisdiction of the Magistrate to impose sentence including fine is not in dispute. It is contended that fine of Rs.50,000/- for each of the offence imposed by the Magistrate is within his jurisdiction and no fault can be found in impugned order.

5. There is no denial of the fact that in the instant case the Magistrate has jurisdiction to impose fine not exceeding Rs.50,000/-. The petitioner / original accused is convicted on four counts. On three counts the fine imposed is Rs.50,000/- and for the offence under Section 323 of the IPC Rs.1,000/- imposed as a fine. Thus, the Magistrate has directed the petitioner to pay in aggregate fine of Rs.1,51,000/- which exceeds the twice of the amount of punishment which the Magistrate was competent to inflict for the single offence. This Court finds substance in the contention of the learned counsel for the petitioner that apparently the said order is not sustainable. Apart from this, perusal of the reason recorded for the imposition of

such heavy amount of fine may not be justified on the face of it. Of course, it is for the Appellate Court to go into the said aspect and decide the said issue at the appropriate time. Suffice it to say that the petitioner has made out a case for setting aside the order passed by the Appellate Court to deposit the amount of fine as condition precedent for suspension of the sentence. Hence, the following order:

ORDER

(i) Criminal Writ Petition stands allowed in terms of prayer clause 'B'.

6. It is clarified that the observations made herein above are restricted to the decision of this petition and the Appellate Court shall not get influenced thereby.

[R. M. JOSHI]
JUDGE

GGP