

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.452 OF 2023

Sanjay Rameshchandra Vyas

...Petitioner

Versus

The State of Maharashtra & Anr

...Respondents

Mr. Yashpal Thakur, Advocate for Petitioner.

Mr. Arfant Sait, APP for State/Respondent No.1.

Mr. Vishal Kanade a/w Janhvi Joshi, Devang Shah & Shraddha Mishra, i/b Lakshyavedhi Legal, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th OCTOBER 2023

PC :

1. The Petitioner has challenged the order dated 26th September 2022 passed by the Additional Sessions Judge, Sessions Court at Dindoshi, Borivali Division, Goregaon, Mumbai. By the impugned order the Application for suspension of sentence of the Petitioner was allowed on the condition of depositing 20% of the compensation amount with interest.

2. The Petitioner is the original Accused before the Metropolitan Magistrate, 43rd Court, Borivali, Mumbai in C.C.

No.4300192/SS/2019. The prosecution was for dishonour of two cheques, each dated 14th September 2018, for Rupees Fifty Lakhs and one Crore respectively. At the conclusion of the trial, the Petitioner was convicted for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to suffer simple imprisonment for six months. He was directed to pay double the amount of cheques i.e., the amount of Rs.3 Crores along with simple interest at 9% p.a.; and in default to suffer simple imprisonment for three months.

3. The Petitioner challenged the order passed by the trial Court vide Criminal Appeal No.248/2022 before the Court of Sessions, at Dindoshi. In that Appeal, he preferred an Application at Exhibit-2 for suspension of sentence during the pendency of his Appeal. In that Appeal, the impugned order dated 26th September 2022 was passed. The operative part of the said order reads thus:

“

ORDER

- 1) Application Ex.2 is hereby allowed.
- 2) The judgment and order passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai in C.C. No.4300192/SS/2019 on

11.03.2022, is hereby suspended till the decision of appeal subject to deposit of 20% compensation amount i.e. Rs 60,00,000/- with interest of 9% p.a. from date of judgment/order dtd 11.03.2022, within period of Two months.

3) The application (Exh.2) stands disposed of accordingly.”

4. Learned Counsel for the Petitioner submitted that, on the face of it, the order of the trial Court is unsustainable because the Petitioner was not given an opportunity to explain the circumstances against him under Section 313 of Cr.P.C. The record shows that the recording of statement under Section 313 of Cr.P.C. was dispensed with. Therefore, the Petitioner was not given any opportunity. On this basis alone his Appeal would succeed. He further submitted that he was even denied an opportunity to cross-examine the complainant's witnesses. He further submitted that while suspending the sentence, the Appellate Court had imposed condition of making payment of 20% of the compensation amount. However, the Appellate Court has not given any reason whatsoever for imposing that amount. He relied on the Judgment of the

Hon'ble Supreme Court in the case of **Jamboo Bhandari vs. M.P State Industrial Development Corporation Ltd. And Ors.** in **Criminal Appeal No.2741/2023** decided on **4th September 2023**.

5. Learned Counsel for the original complainant-Respondent No.2 herein opposed these submissions. He submitted that the record shows that, at every stage, the Petitioner was remaining absent in the trial Court and; therefore, the trial Court was left with no option but to proceed in his absence. Therefore, the cross-examination was closed and even the recording of statement under Section 313 of Cr.P.C. was dispensed with. He submitted that the trial Court was empowered to dispense with recording of the statement under Section 313 of Cr.P.C. as provided under proviso to sub-section (1) of 313 of Cr.P.C.

6. He further submitted that the Petitioner had approached the Appellate Court belatedly and the delay was condoned by the Appellate Court. Even after that, the impugned order passed on 22nd September 2022, even thereafter, the Petitioner approached this Court belatedly. Thus, there was clear attempt on his part to

delay the proceedings and, therefore, he can not take advantage of his own wrong.

7. I have considered these submissions. At this stage, it is not necessary to go into the merits of the trial Court's order because the Appeal is still pending before the Appellate Court. Any observations made at this stage may not be proper as the Appellate Court is free to decide the Appeal on its own merits. Therefore, today I am considering the sustainability of the condition imposed by the Appellate Court directing the Petitioner to deposit 20% of the compensation amount.

8. Mr. Thakur, learned Counsel for the Petitioner has relied on the Judgment of the Hon'ble Supreme Court in the case of Jamboo Bhandari (*supra*). In that context, paragraph Nos.7, 8 and 9 of the said Judgment are important. They read thus:

“7. Therefore, when Appellate Court considers the prayer Under Section 389 of the Code of Criminal Procedure of an Accused who has been convicted for offence Under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants

grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned Counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the Appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the Appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an Accused applies Under Section 389 of the Code of Criminal Procedure for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the Appellants, the Court has to consider whether the case falls in exception or not.”

9. Hence, it can be seen that the Hon'ble Supreme Court has laid down the ratio that when the Appellant seeks suspension of sentence then the Appellate Court has to consider whether his case falls in the category of exceptional cases; so that the condition to deposit 20% of the fine amount can be dispensed with.

10. In the present case, the learned Additional Sessions Judge, has not given any reason whatsoever while imposing condition to deposit 20% of the compensation amount. As observed by the Hon'ble Supreme Court, it is necessary for the Appellate Court to consider; whether the Appellant's case falls within the category of exceptional cases, where the condition of deposit of 20% of the fine amount can be dispensed with. Therefore, it is necessary to direct the learned Additional Sessions Judge, to reconsider his direction to deposit the amount of 20% of compensation. It is also necessary to give directions, so that, there is no further delay on the part of the Petitioner, to conduct the proceeding.

11. Hence, the following order:

O R D E R

- i) The order dated 26th September 2022, passed by the Additional Sessions Judge, Sessions Court at Dindoshi, Borivali Division, Goregaon, Mumbai in Criminal Appeal No.248/2022, imposing condition on the Petitioner to deposit 20% of the compensation amount while suspending the sentence, is set aside.
- ii) The Application filed below Exhibit-2 is directed to be considered by the said Appellate Court again in consonance with the directions given by the Hon'ble Supreme Court in the case of Jamboo Bhandari (supra). This Application shall be decided within a period of three weeks from today. Till the said Application is decided, the sentence imposed by the trial Court shall remain suspended. The said Application for suspension of sentence shall be considered afresh after hearing

both the sides.

iii) With these directions, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)