

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

CRIMINAL WRIT PETITION NO.1779 OF 2023

Sandeep Bhikchand Bagmar

.... Petitioner

versus

Sambhaji Khandu Lendghar & Anr.

.... Respondents

.....

- Mr. Abhaykumar Apte, Advocate for Petitioner.
- Mr. M. G. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JUNE, 2023

P.C. :

1. The Petitioner is the original accused in Summary Criminal Case No.695 of 2019 before the Court of Judicial Magistrate First Class at Vadgaon Maval, Pune. The learned Trial Judge vide order dated 12/07/2022, passed below Ex.15 and 20 directed the Petitioner/accused to deposit interim compensation amount i.e. 20% of the total amount of the cheque on or before cross-examination of the Respondent No.1. He granted 30 days time to the Petitioner/accused to deposit interim compensation amount from the date of the order.

2. The said order was challenged by the Petitioner before the Revisional Court and learned Additional Sessions Judge, Vadgaon, Pune, vide order dated 30/12/2022 partly allowed the Criminal Application No.88 of 2022. He upheld the direction to deposit the compensation amount of 20% of the cheque amount, but the order to deposit the said amount on or before cross-examination of the Respondent No.1 was set aside. Both these orders are under challenge in this Writ Petition.

3. Learned counsel for the Petitioner submitted that the Trial Court has not given any reasons as to why he had exercised the discretion against the Petitioner directing him to make payment of 20% of the cheque amount. He submitted that the Petitioner is ready to go on with the matter and the trial itself can be concluded expeditiously and therefore the deposit of the amount is not necessary. He further submitted that his right to cross-examine is affected because of the operative part of the order passed by the trial Court.

4. I have considered these submissions. The order passed by the Trial Court records the only reason on which the accused/Petitioner opposed the application for depositing of the amount. He was ready to proceed with the case and he was not willing to deposit interim compensation amount. Beyond that there were no submissions advanced on behalf of the Petitioner/accused as to why the discretion should not be exercised against him. He had not touched upon the merits of the matter to show that prima facie the exercise of such discretion was improper.

5. The Trial Court's order suffers from one issue and that is the direction to deposit the amount on or before the cross-examination of the complainant. By the same order, 30 days time was granted to the accused to deposit amount. Thus these two clauses were contradictory and the right to cross-examine could not have been indirectly curtailed depending on the payment of such amount. This infirmity was cured by the learned Additional Sessions Judge, Vadgaon, vide his order dated 30/12/2022 passed in the Revision Application before him. Thus, I do not see any reason to interfere with the order

passed by the Additional Sessions Judge. It was the discretion of the learned Magistrate. The accused has not made out any case for not depositing that amount. No merits of the matter was touched and therefore that order cannot be interfered with except for the conflicting operative part which was corrected by the Revisional Court.

6. In this view of the matter, I do not see any reason to interfere with the impugned order of the learned Trial Court which as of today stands modified pursuant to the order of the Revisional Court. Hence the Petition is disposed of. It is made clear that the issue of payment or non-payment of the said amount of 20% cheque amount shall not be construed in any manner to delay the trial. The complainant can take steps in accordance with law if the amount is not deposited. The trial shall proceed expeditiously.

7. With these observations, the Petition is disposed of.

(SARANG V. KOTWAL, J.)