

AGK

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

WRIT PETITION NO.3443 OF 2022

K. Raghavendra Rao ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Niranjan Mundargi with Mr. Veerdhawal Deshmukh
i/by Naved Askari for the petitioner.

Mr. A.R. Patil, APP for respondent no.1/State.

Ms. U.N. Katpitia with Ms. R.B. Amrolia i/by K.M.
Legal for respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 20, 2023

RC.:

1. The writ petition is directed against order dated 31st May 2022 passed by In-charge Additional Sessions Judge, Pune in Criminal Appeal No.173 of 2022 directing the petitioner to deposit 20% of the cheque amount while suspending sentence imposed in proceedings under section 138 of the Negotiable Instruments Act, 1881 (hereafter “NI Act”, for short). The subsequent order dated 1st September 2022 rejecting request for relaxation of condition is also challenged in the present writ petition.

2. Facts necessary for the purpose of adjudication of issue

involved are as under:

Petitioner is accused no.2 in complaint bearing SCC No.16697 of 2015 filed before Metropolitan Magistrate, Pune under section 138 read with section 141 of the NI Act. Accused no.1 is the company registered under the Companies Act, 1956. Petitioner is a director. Accused no.3 is wife of petitioner who is also a director. After holding trial based on defense of the petitioner that he is the only director in-charge of affairs of accused no.1/company, the Magistrate convicted and sentenced petitioner for offence under section 138 read with section 141 of the NI Act. Accused no.1/company and the petitioner were directed to pay compensation of Rs.8,10,41,582/- under section 357(3) of the Criminal Procedure Code, 1973 (hereafter “Code”, for short). Accused no.3 was acquitted.

3. Petitioner filed appeal before the Sessions Court wherein he filed an application under section 389 of the Code for suspension of sentence. By order dated 31st May 2022, the Sessions Court suspended substantive sentence imposed on the petitioner, subject to the petitioner depositing 20% of the compensation amount was rejected.

4. The petitioner has, therefore, filed present writ petition challenging both the orders.

5. By detailed judgment dated 8th March 2023 in a group of matters, lead matter being Criminal Application No.886 of 2022, this Court has held that rigors of section 143A of the NI Act would apply only to the appeals filed by ‘drawer’ under section 138. The

company being drawer, the petitioner (director) cannot be directed to deposit compensation amount of not less than 20% under section 148 of the NI Act. However, it is held that such direction can be issued in exercise of powers under Section 389 of the Code.

6. In case of **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr.** reported in (2007) 6 SCC 528, the question of power of Appellate Court to impose condition of payment of compensation arose for consideration. The Apex Court in paragraph 72 held as under:

“72. We, therefore, are of the opinion:

(i) in a case of this nature, sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

(ii) the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) the amount of compensation must be a reasonable sum;

(iv) the court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of Criminal Procedure;

(v) no unreasonable amount of compensation can be directed to be paid.”

7. In case of **Surinder Singh Deswal v. Virender Gandhi** reported in (2019) 11 SCC 341, the Apex Court in paragraph 8

observed as under:

“8. ... Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant-Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant-Accused under Section 389 of the Code of Criminal Procedure to suspend the sentence. ...”

8. The Apex Court in **Dilip Dahanukar** (supra) has held that the condition of suspension of sentence should be reasonable. In the facts of the present case, the wife of the petitioner was acquitted based on defense of the petitioner that he is the only in-charge and responsible for the affairs of the company. There are only two directors of the company, petitioner and his wife. Prima facie, by raising defense of playing active role in the day-to-day affairs of the company, the petitioner is successful in getting acquittal of his wife. The Trial Court has directed the accused no.1/company to pay entire compensation amount along with petitioner. Prima facie, no material is brought on record that the petitioner is unable to deposit 20% of the amount of compensation. Therefore, in my opinion, direction to deposit 20% of the amount of cheque in the facts of the case cannot be termed as unreasonable.

9. For the aforesaid reasons, there is neither error of jurisdiction nor perversity in the impugned order.

10. The writ petition is, therefore, dismissed.

11. The time to deposit 20% of the amount as directed by the Sessions Judge is extended by three weeks from today

(AMIT BORKAR, J.)

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signed by
ATUL
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