

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 846 OF 2024

Ujwala Rajendra Torde

VERSUS

Atul Prakash Torde

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Advocate for the Petitioner : Mr. Savale Amit S
Advocate for Respondent : Mr. Pradeep B Salunke

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CORAM : S.G. MEHARE, J.

DATED : JULY 18, 2024

PER COURT:-

1. Heard the respective counsels.
2. The brief facts of the case were that the petitioner had been convicted under Section 138 of the Negotiable Instruments Act. The Appellate Court directed her to deposit 20% of the cheque amount. Accordingly, she has deposited Rs.8,40,000/-. After depositing the said amount, the respondent/complainant applied to the Court for withdrawal of the amount. By the impugned order dated 01.04.2024 in Criminal Appeal No.23/2023 below Exhibit-23, the Court allowed the respondent/complainant to withdraw the amount. It seems to be a well-reasoned order quoting various judgments of the Supreme Court.
3. Learned counsel for the petitioner has objection to allowing the said application as the complainant himself has declared that he is heavily indebted. If the judgment and order were reversed,

he would not be in a position to repay the amount, though the complainant has furnished the undertaking. It was a bare undertaking. The complainant should have been directed to furnish the solvent surety or bank guarantee for the withdrawal of the amount.

4. Learned counsel for the respondent would submit that the settled law for withdrawal of the amount is to furnish an undertaking. Prima facie offence is made against the petitioner, and he has been convicted. A huge amount of Rs. 40 lacs is to be recovered from him. Barely being indebted does not mean he would not be able to repay the amount. He is bound by the undertaking furnished before the Court.

5. Learned counsel for the petitioner, in reply, would submit that, in fact, less amount is to be recovered from him. But the cheque amount has been enhanced. Therefore, the complaint under Section 138 being false is not maintainable.

6. The sole purpose of directing the petitioner/accused to deposit the amount would be to provide some solace to the complainant whose money had not been paid on time. Though the complainant has mentioned that he has been indebted, that may be aground for withdrawal of the amount. Normally, the undertaking is sufficient to assure the opponent. The condition of solvent surety or bank guarantee would be hard for the person who is otherwise

entitled to recover the money. Undertaking, which is sufficient, binds the respondent.

7. After having gone through the impugned order, the Court believes there is no error of law in the impugned order. The petition is devoid of merit. Hence, it is dismissed.

(S.G. MEHARE, J.)