



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

911 CRIMINAL WRIT PETITION NO. 1488 OF 2024

SHIVKUMAR MADHUKAR MURTI

VERSUS

PADMAKAR DATTATRAY SHELKE

AND

912 CRIMINAL WRIT PETITION NO. 1489 OF 2024

SAIDATTA ENTERPRISES THROUGH AUTHORISED PERSON

SHIVKUMAR MADHUKAR MURTI

VERSUS

PADMAKAR DATTATRAY SHELKE

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Mr. Wagh Rajendra Haribhau, Advocate for the Petitioners

CORAM : Y. G. KHOBRADE, J.

Dated : 17th October, 2024

PER COURT :-

1. Heard the learned counsel appearing for the Petitioners at length.

2. In both these petitions, the Petitioners have assailed the orders dated 18-07-2024 passed below Exh. 14 in Cri. Appeal Nos. 103 of 2023 & 106 of 2023 by the learned Additional Sessions Judge, Aurangabad, whereby imposing condition of deposit of 25% of Cheque amount within a period of 15 days from the date of the order while suspending sentence for the offence

punishable u/s 138 of the Negotiable Instrument Act.

3. In both these petitions, after conclusion of trial, both the Petitioners are convicted for the offence punishable under Section 138 of the Negotiable Instruments Act.

4. In Cri. Writ Petition No. 1488 of 2024, the Petitioner filed Cri. Appeal No. 103 of 2023 challenging the judgment & order dated 18th May, 2023 passed by the learned Judicial Magistrate First Class, Aurangabad, Court No.17 in Summary Criminal Case No. 5456 of 2014, whereby the Petitioner Shri Shivkumar Madhukar Murti was held guilty for the offence punishable u/s 138 of the Negotiable Instrument Act and he was sentenced to suffer simple imprisonment for one year with fine of Rs.27,50,000/- and in default of payment of fine, he was directed to suffer further S.I. for six months.

5. In Writ Petition No. 1489 of 2024, the Petitioner filed Cri. Appeal No. 106 of 2023 challenging the judgment & order dated 18th May, 2023 passed by the learned Judicial Magistrate First Class, Aurangabad, Court No.17 in Summary Criminal Case No.7657 of 2013, whereby the Petitioner- Saidatta Enterprises

through Proprietor Shivkumar Madhukar Murti, was held guilty for the offence punishable u/s 138 of the Negotiable Instrument Act and he was sentenced to suffer simple imprisonment for one year with fine of Rs.27,50,000/-, and in default of payment of fine, he was directed to suffer further S.I. for six months.

6. In both these Appeals bearing Nos. 103 of 2023 and 106 of 2023, the Petitioners have filed Exh. 14 an application for suspension of sentence. On 12.06.2023, the learned Additional Sessions Judge, Aurangabad passed orders below Exh. 14 in both the appeals and suspended the sentence during the pendency of the appeals on condition that the present Petitioners/Appellants shall deposit 25% amount of the cheques amount within a period of 15 days from the date of the order.

7. Being aggrieved by said orders, the Petitioners have invoked jurisdiction of this Court under Article 227 of the Constitution of India r/s Sec. 482 of Code of Criminal Procedure, 1973.

8. In both these matters, the only question that arise for my consideration is that, whether the First Appellate Court can

impose condition of depositing 25% of the cheque amount while suspending the sentence for the offence punishable u/s 138 of N.I. Act ?

9. The learned counsel for the Petitioners canvassed in vehemence that as per Section 148 of the Negotiable Instruments Act, the condition of deposit of 25% of the cheque amount is not mandatory but is directory and said condition can be imposed after recording sufficient reasons.

10. To buttress these submissions, the learned counsel for the Petitioners relied on (i) ***Jamboo Bhandari Vs. MPIDC Ltd. and others*** reported in ***(2023) 10 Supreme Court Cases 446***, (ii) Order dated 20th October, 2023 passed by this Court (Coram : R.M. Joshi, J.) in ***Cri. W.P. 1051 of 2023 Govind Ramvilas Biyani-Vs-The State of Maharashtra and another***, (iii) Order dated 22-01-2024 passed by the Madras High Court in Cri. O.P. No. 947 of 2024, ***C.R. Balasubramanian s/o C.R. Raju-V- P. Eswaramoorthi s/o N.P. Palaniyappan***.

11. Sec. 148 of Negotiable Instruments Act reads as

under:

“148. Power of Appellate Court to order payment pending appeal against conviction.—(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court”.

12. In ***Surinder Singh Deswal @ S.S. Deswal & Ors., v. Virender Gandhi; (2019) 11 SCC 341***, the Hon'ble Supreme Court held that, amended Sec. 148 of 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 Cri.P.C., to suspend the sentence. The aforesaid requirement is to be construed considering the fact that as per the amended Section 148 of NI Act, a minimum of 20% of the fine or compensation awarded by the trial Court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Appellate Court if sufficient cause

is shown by the Appellant.

13. In case of **Jamboo Bhandari** cited (*supra*), the Hon'ble Supreme Court referred the case of **Surinder Singh Deswal** cited (*supra*) and held that, deposit of 20% of the compensation amount is not an absolute rule and it can be reduced or even exempted in exceptional cases by assigning reasons.

14. In **C.R. Balasubramanian** cited (*supra*), it is held that while directing deposit of 20% of the amount contemplated u/s 148 of the NI Act, if the accused person is able to make out a ground for reduction of this percentage or for exemption of deposit, the same has to be considered by the Appellate Court before directing deposit of compensation amount as a condition while suspending the sentence / granting bail.

15. In the case in hand, it appears that, in both the complaints ie. SCC Nos. 5456 of 2014 and 7657 of 2013, the learned trial Court observed while convicting the Petitioners/Accused that both the cheques in question were issued

towards the legally enforceable liabilities but in both the complaints, the cheques are apparently dishonored, which resulted into conviction of the Appellants/Petitioners. Needless to say that, while suspending the sentence, in both the appeals, the learned Sessions Court passed the impugned order holding that, in both the cases cheques which were issued for discharging legal liabilities are dishonored and considering right of Petitioners/Accused as they were on bail through out the trial and a condition was imposed for depositing 25% of cheque amount within a period of 15 days therefrom while suspending the sentence, which does not appear illegal, bad in law. Therefore, no interference is called at the hands of this court. Both the Petitions are hereby dismissed.

(Y. G. KHOBRAGADE, J.)

Chavan