



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRI. WRIT PETITION NO.552 OF 2024

Bandu Gopalrao Bondade
Aged 39 yrs, Occu – Business
R/o Proprietor of M/s Bondade
Developers and Builders, Office at
Lane No 22, Panchvati Park,
Tahsil Hingna, Dist- Nagpur.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.
2. Shivsajan Sitaramji Kadav
Aged 46 yrs, Occ- Private
R/o Raju Nagar, Shiva Pan Centre,
Bus Stop, Hingna, Nagpur.

..... **RESPONDENTS**

Mr. A. D. Bhate, Advocate for Petitioner.
Ms. R. V. Sharma, APP for Respondent No.1/State.
Mr. J. J. Khangara, Advocate for Respondent No.2.

CORAM: **G. A. SANAP, J.**
DATE: **19th AUGUST, 2024.**

ORAL JUDGMENT:

Rule. Rule is made returnable forthwith. Heard finally
with the consent of the learned Advocates for the parties and the
learned APP.

2. In this writ petition, the petitioner has questioned the

correctness of the condition imposed by the Additional District Consumer Dispute Redressal Commission, Nagpur (for short 'Commission') whereby the Commission while deciding the bail application was pleased to release him on bail but by way of condition no.2 directed him to deposit Rs.6,00,000/- (Rupees Six Lakhs only) i.e. 50% of the total financial liability towards decretal amount. The main grievance of the petitioner is that the order directing him to deposit the amount is contrary to the provisions of law. It is pointed out that the order passed is beyond the scope of provisions of Section 27 of the Consumer Protection Act, 1986.

3. The respondent consumer has opposed the petition contending that there has been deliberate failure on the part of the petitioner to comply the order passed by the Commission dated 24.01.2018 whereby the main complaint filed by the consumer was allowed. It is further contended that on account of his failure to comply this order the application under Section 27 of the Act of 1986 has been filed by the consumer.

4. Heard learned Advocates for the parties and the learned APP. Perused the record and proceedings.

5. The learned Advocate for the consumer submitted

that this writ petition is not maintainable, in as much as the remedy under Section 27-A provides appeal against the order passed under Section 27. The petitioner would have preferred an appeal against the impugned order before the State Commission. In order to seek support to this submission the learned Advocate has relied upon the decision of the Apex Court in the case of ***Cicily Kallarackal v. Vehicle Factory 2012 LawSuit(SC) 597***. The learned Advocate for the consumer further submitted that despite the order passed by the Commission having attained the finality, there has been deliberate failure on the part of the petitioner to pay the amount.

6. As far as the maintainability of the petition is concerned, the learned Advocate for the petitioner relied upon decision of the Co-ordinate Bench of this Court in the case of ***Suhas Ratnakar Morey v. Dhanraj Tulshiram Khaparde 2021 SCC OnLine Bom 6145***. The learned Advocate for the petitioner pointed out that the Co-ordinate Bench of this Court in the case of *Suhas* has considered the decision of the Hon'ble Apex Court in the case *Cicily Kallarackal* supra. The learned Advocate submitted that against the final order passed under Section 27 by the Commission, the aggrieved party has a right to file an appeal

under Section 27-A of the Act of 1986. The learned Advocate submitted that the order challenged in this petition is interim order whereby the direction has been issued to the petitioner to pay Rs.6 lakhs. The learned Advocate submitted that the Co-ordinate Bench in the case of *Suhas (supra)* was considering the issue of maintainability of the writ petition vis-a-viz the order of rejection of the bail by the Commission in a proceeding under Section 27 of the Act of 1986. The learned Advocate further submitted that the identical issue fell for consideration of the Co-ordinate Bench of this Court at Aurangabad Bench in a bunch of applications namely ***Abhay Narayan Raje v. The State of Maharashtra and others and connected matters in Criminal Application No.3390 of 2018 on 09.07.2019.*** The learned Advocate submitted that the Co-ordinate Bench in the case of *Abhay (supra)* has held that the Commission has no jurisdiction to direct the judgment debtor to pay penalty of Rs.10,000/- which, the Commission on proof of the charge can direct the judgment debtor to pay as a penalty.

7. In my view, as far as issue of maintainability is concerned, it has already been considered by the Co-ordinate Bench of this Court in the case of *Suhas (supra)*. The order in this

case is not a final order. The petitioner has challenged the part of the order namely condition imposed by the Commission directing him to deposit the amount before his release on bail. In my view, this order could not be said to be a final order. It is an interlocutory order and as such against this order the writ petition is maintainable. The decision of the Hon'ble Apex Court in the case of *Cicily* has been considered by the Co-ordinate Bench of this Court in the case of *Suhas (supra)* in the context of the facts of the said case. In my view, in the factual background of this petition, the view taken by the Co-ordinate Bench of this Court in the case of *Suhas (supra)* would be applicable to this petition with equal force.

8. Similarly the decision in the case of *Abhay v. State (supra)* decided by the Co-ordinate Bench of this Court at Aurangabad is a direct judgment on this point. The Co-ordinate Bench in the case of *Abhay v. State (supra)* has considered the scope of the provisions of Section 25 and the scope of the provisions of Section 27. The Co-ordinate Bench on comparative analysis of the scope of the two provisions has held that the conditions similar to the one imposed in case of this petitioner cannot be imposed while deciding the bail application. In my view,

this petition is fully covered by the decision in the case of *Abhy v. State*.

9. Section 27 is a penal provision. The Commission has issued a process against the accused after taking the cognizance of the offence. Section 27 prescribes the punishment for commission of the offence. For the purpose of conduct of proceeding under Section 27 the Commission shall have the power of a Judicial Magistrate of the first class for the trial of the offences under this Act. The Commission for this purpose shall be deemed to be a Judicial Magistrate of the first class. The Commission is required to grant an opportunity of hearing to the accused or the person against whom the process has been issued under Section 27 of the Act of 1986. Sub-section (2) of Section 27 provides the substantive sentence as well as sentence by way of a fine. As per Section 27 sub-section (2) the substantive sentence may extend to three years. The sentence of a fine shall not be less than two thousand rupees but which may extend to ten thousand rupees. It is to be noted that this sentence has to be awarded while deciding the proceeding under Section 27 of the Act of 1986 finally. The outer limit for awarding the sentence of fine has been provided. Section 27 does not expressly empower the Commission

to award any amount under any head other than the fine. In view of this, I am satisfied that this order imposing the condition no.2 is against the provisions of law. The condition is onerous. It is to be noted that if such a condition is imposed than the person accused of commission of bailable offence could be denied bail during the pendency of the proceeding. The object behind categorizing the offence as bailable and non-bailable has bearing with the right of the accused in the matter of a bail. In the bailable offence the bail is right and it cannot be denied by putting such a onerous condition. Accordingly, the petition is allowed. The condition no.2 imposed by the Commission vide order dated 02.05.2024 is quashed and set aside.

10. Rule is made absolute in the above terms.

(G. A. SANAP, J.)