



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 163 OF 2024

SHIVSHAKTI TRADERS, THRU. ITS. PROPRIETOR SACHIN SANJAY YENKAR

VERSUS

SHIVKRUPA TRADING CO. THRU. ITS PROPRIETOR NAGNATH @ NAGESH A. DILLEWAR

with

CRIMINAL WRIT PETITION NO. 164 OF 2024

SHIVSHAKTI TRADERS, THRU. ITS. PROPRIETOR SACHIN SANJAY YENKAR

VERSUS

SHIVKRUPA TRADING CO. THRU. ITS PROPRIETOR NAGNATH @ NAGESH A. DILLEWAR

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CRIMINAL WRIT PETITION NO. 165 OF 2024

SHIVSHAKTI TRADERS, THRU. ITS. PROPRIETOR SACHIN SANJAY YENKAR

VERSUS

SHIVKRUPA TRADING CO. THRU. ITS PROPRIETOR NAGNATH @ NAGESH A. DILLEWAR

Office Notes, Office Memoranda of Coram,
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order

Mr. Rahul S. Kurekar, Advocate for the petitioner.
Mr. Hariom V. Dhage, Advocate for the respondent.

CORAM : G. A. SANAP, J.

DATE : OCTOBER 15, 2024.

1. Heard Mr. R.S. Kurekar, learned advocate for the petitioner and Mr. H.V. Dhage, learned advocate for the respondent.

2. These three petitions can be disposed of by common order, inasmuch as the orders dated 18.01.2023, impugned in these petitions, filed by the petitioner, who is the original complainant, are identical.

3. In three criminal cases, the respondent, who is the Proprietor of M/s Sivkrupa Trading Company, has been convicted by the learned Judicial Magistrate, First Class,

Mahagaon and sentenced to suffer simple imprisonment for six months for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. He has also been directed to pay compensation.

4. After conviction and sentence in all the three cases, the respondent filed appeals before the Court of Additional Sessions Judge, Pusad. In these appeals, the respondent had applied for suspension of sentence. The learned Judge, by the impugned order, granted the applications for suspension of sentence with a direction the respondent/accused to deposit 10% of the amount of compensation in each case. The petitioner, who is the original complainant in all the three cases, is aggrieved by this order.

5. It is submitted that the learned Judge ought to have directed the respondent/accused to deposit at least 20% of the amount of compensation in each case. Learned advocate submitted that the learned Judge has not properly exercised the discretion. The reasons have not been recorded while directing the accused to deposit only 10% of the amount of compensation. It is submitted that the condition imposed while suspending the substantive sentence is not just and proper. The respondent/accused has not adduced any evidence to rebut the contention of the petitioner/complainant. It is submitted that, therefore, it is necessary to modify the order and direct the accused to

deposit 20% of the amount of compensation, in each case, ordered to be paid by the learned Magistrate.

6. Learned advocate for the respondent/accused submitted that there are major contradictions in the evidence. The evidence is not sufficient to prove the offence. Learned advocate submitted that the discretion was properly exercised. No interference is warranted in the discretion exercised by the learned Judge.

7. I have perused the record and proceedings. The substantive sentence imposed by the learned Magistrate is to suffer simple imprisonment for six months. The amount of cheque in three cases comes to Rs.17,72,000/-. It is to be noted that the order of conviction and compensation passed by the Magistrate, as on date, is in favour of the complainant. He is found entitled to get the compensation quantified in each case. It is evident that till disposal of the appeal, he would not be able to recover his amount. Today, as the judgment is against the accused, the equity is in favour of the complainant. His grievance has not been properly addressed by the learned Judge.

8. Failure to exercise the discretion judiciously, is itself an error apparent on the face of the record. It can be corrected by the Court as and when it is questioned in appeal or revision. In this case, the learned Judge has failed

to record the proper reasons. The right of the complainant to recover the amount has been stalled in view of the order of suspension of sentence. The equity supports the complainant. The complainant has asked for 20% amount of compensation to be deposited. He has not asked for deposit of entire amount of compensation. In my view, therefore, the submissions advanced by the learned advocate for the petitioner deserves acceptance.

9. Accordingly, the petitions are allowed.

10. The order dated 18.01.2023 passed by learned Additional Sessions Judge, Pusa, in Criminal Appeal nos. 04/2023, 05/2023 and 06/2023, is modified.

11. The respondent/accused is directed to deposit 10% more i.e. 20% of the compensation amount in each and every appeal.

12. The amount be deposited within a period of 6 (six) weeks from today.

13. The petitions stand disposed of.

(G. A. SANAP, J.)