



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

48 CRIMINAL WRIT PETITION NO. 137 OF 2025

SUSTAINABLE AGRO COMMERCIAL FINANCE LIMITED THROUGH IS
LEGAL OFFICER MARUTI TUKARAM AGAVANE
VERSUS
DADASAHEB ASHOK BHAGURE AND ANOTHER

Mr. S.K. Chavan, Advocate for the petitioner.
Mr. R.M. Gaikwad, Advocate for respondent No.1.
Ms. A.S. Deshmukh, APP for the respondent-State.

CORAM : KISHORE C. SANT, J.
DATE : 14.07.2025

PC :-

01. Heard learned Advocates for the parties. Present applicant/ original complainant in complaint under section 138 of the Negotiable Instruments Act has approached this Court challenging an order dated 14.10.2024 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No. 331 of 2024, whereby the application of the present respondent/original accused seeking relaxation from condition of depositing 20% of the amount of cheque and compensation came to be allowed.

02. The learned Advocate for the petitioner vehemently argued that the complainant has successfully proved guilt of the accused beyond

reasonable doubt. The respondent/accused is now convicted of the offence under section 138 of the Negotiable Instruments Act. There is no reason assigned while relaxing the condition of deposit. The impugned order deserves to be quashed and set aside by directing the respondent to deposit 20% of the amount as required under section 148-A of the NI Act. Learned Advocate for the petitioner submits that in-fact, when the appeal was filed, the respondent had filed an application for suspension of sentence. The learned Sessions Judge allowed the application for suspension of sentence subject to deposit of 20% of the compensation amount. On the very day, again the respondent filed an application for relaxation of condition of deposit.

03. Learned Advocate Mr. Gaikwad for the respondent vehemently argued that though the respondent is convicted, it is discretion of the Court to direct to deposit the amount depending upon the defences available to the accused. In the present case, the respondent happens to be a poor agriculturist without sufficient means to deposit the amount. There are chances of acquittal of the respondent in the appeal. The learned Sessions Judge has considered these aspects and has rightly passed the order. No interference is called for as the order is discretionary one.

04. After having heard the parties, it is seen that the Court while passing the order has considered the judgment in the case of **Jamboo Bhandari Vs. M.P. State Industrial Development Corp. Ltd. reported in DLD (Cri.) 2023-2739**. Section 148-A as inserted w.e.f. 01.09.2019 provides that the Appellate Court can order payment against conviction to deposit minimum 20% of the amount of the fine/compensation awarded by the Trial Court. It also specifically provides that said deposit shall be in addition to any interim compensation paid by appellant under section 143-A of the Act. The amount is to be deposited within 60 days from the date of the order or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the accused. Such amount can also be directed to be released to the complainant at any time during the pendency of the appeal. Though it is discretion, it is to be seen that there should be reason to use such discretion. Once securing the conviction the complainant cannot be deprived of the fruits of the judgment. Section 148-A of the Act is specifically incorporated with a view that the accused person, on conviction, should not be set free of any of the liability or without any condition.

05. In the present case the respondent has secured an order of suspension of sentence by giving an undertaking that he would deposit part of the amount of cheque and it is on that the sentence was suspended. However, on the same day, he filed another application seeking relaxation of condition. It is clearly shown that the undertaking was given only to secure suspension of sentence. The respondent was not intending to deposit the amount. The learned Trial Court in clause (2) of the order dated 14.10.2024 while allowing application below Exh.5 has specifically put condition of deposit of amount and on the same day also relaxed such condition. It is not clear as to what made the learned Judge to change his mind on the same day. It is not clear as to what made the respondent/accused to pray for relaxation on the very day. If the respondent was having amount to deposit the same in the court, there was no question of seeking relaxation. If he was not intending to deposit the amount, there was no question of giving undertaking to deposit the amount. It is thus clear that on one hand the respondent wanted sentence to be suspended and therefore gave an undertaking and filed application for relaxation. Even in the application except stating that he is a poor agriculturist, no other reasons are stated. This Court finds that interference in such circumstances is necessarily warranted. Hence, following order :-

ORDER

- (i) The impugned order dated 14.10.2024 passed at Exh.7 in Criminal Appeal No. 331 of 2024 is hereby quashed and set aside.
- (ii) The respondent No.1/accused to deposit 10% of the amount of the compensation and the cheque within two weeks. The respondent No.1/accused shall further deposit an amount of 10% within four weeks thereafter.
- (iii) Thus, the entire amount be paid within six weeks from today in the office of learned Sessions Judge, Ahmednagar, in Criminal Appeal No. 331 of 2024.
- (iv) If the amounts as stated above are not deposited, earlier order passed by the learned Sessions Judge, Ahmednagar on the same day on application below Exh.5 shall take effect.
- (v) Needless to say that this exercise is subject to outcome of the appeal.
- (v) Learned Advocate Mr. R.M. Gaikwad is appointed to represent respondent No.1 through Legal Aid. This Court appreciates his efforts in preparing the matter

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and assisting this Court. His fees shall be quantified as per rules, by the High Court Legal Services Sub-Committee, Aurangabad.

[KISHORE C. SANT, J.]