



Judgment

418 wp694; 697; 698; 703; 704; 705; 776; 821; 860; 905, and 907.24

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

CRIMINAL WRIT PETITION NO.694 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade
Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,
district Nagpur. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

2. Yuvraj Tikaram Morghade,
aged 68 years, occupation – private,
r/o plot No.4, Bhujbal Layout, near
Triveni Apartment, Trimurti Nagar,
Nagpur. **Respondents.**

**Shri Amit Bhate, Counsel for the Petitioner.
Shri M.J.Khan, Addl.PP for the State.**

CRIMINAL WRIT PETITION NO.697 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade
Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,

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district Nagpur.

..... **Petitioner.**

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

2. Vandana Babarao Kachare,
aged 48 years, occupation – private,
r/o plot No.23, Yashodanagar, Goodluck,
Society, Hingna Road, tahsil Hingna,
district Nagpur. **Respondents.**

Shri Amit Bhate, Counsel for the Petitioner.
Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.703 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade
Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,
district Nagpur. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

2. Vilas Shriram Tale,
aged 52 years, occupation – private,

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r/o plot No.27, Matoshree Nagar,
Hingna, Nagpur. **Respondents.**

Shri Amit Bhate, Counsel for the Petitioner.
Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.704 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade
Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,
district Nagpur. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

2. Priyanka Raju Mahajan,
aged 39 years, occupation – household,
r/o Yergaon, at post Sirasgaon,
Hinganghat, district Wardha.

3. Ram Raju Mahajan,
aged 16 years, occupation – student,
r/o Yergaon, at post Sirasgaon,
Hinganghat, district Wardha.

4. Shyam Raju Mahajan,
aged 14 years, occupation – student,
r/o Yergaon, at post Sirasgaon,

.....4/-

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Hinganghat, district Wardha. **Respondents.**

Shri Amit Bhate, Counsel for the Petitioner.

Shri Varun Kataria, Counsel for R-2.

Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.705 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade
Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,
district Nagpur. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

2. Madhusudan Chintaman Hargode,
aged 56 years, occupation – private,
r/o Gomaji Ward, tahsil Hinganghat,
district Wardha. **Respondents.**

Shri Amit Bhate, Counsel for the Petitioner.

Shri Varun Kataria, Counsel for R-2.

Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.776 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade

.....5/-

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Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,
district Nagpur. Petitioner.

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

2. Puneshwar Narayan Tighare,
aged 55 years, occupation – private,
r/o near airtel tower, Delanwadi,
Bramhpuri, district Chandrapur. Respondents.

Shri Amit Bhate, Counsel for the Petitioner.
Shri Varun Kataria, Counsel for R-2.
Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.821 OF 2024

Bandu Gopalrao Bondade,
aged 50 years, occupation business,
r/o proprietor of M/s.Bondade
Developers and Builders, office at Lane
No.22, Panchvati Park, tahsil Hingna,
district Nagpur. Petitioner.

:: VERSUS ::

1. State of Maharashtra, through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.

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2. Smt.Pratibha Kishor Bhure, aged 40 years,
occupation – private, r/o plot No.55,
Shrinagar, Bobde Layout, Mahajanwadi,
Hingna Road, tahsil Hingna, district
Nagpur. **Respondents.**

Shri Amit Bhate, Counsel for the Petitioner.
Shri Varun Kataria, Counsel for R-2.
Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.860 OF 2024

Suresh Kondbaji Burrewar, aged 53
years, occupation – business, proprietor
of M/s.Gruhalaxmi Construction and Land
Developers Nagpur, office at Gruhalaxmi
Tower, near Chandralok building, central
Avenue Road, Nagpur. **Petitioner.**

:: VERSUS ::

1. Milind Govindrao Karmarkar, aged major,
occupation – nil, r/o Bhiwapur, Hanuman
Mandir, ward No.24, at post Babupeth,
tahsil and district Chandrapur.

2. Paresh Satyawar Kukudwar,
aged major, occupation – nil , r/o
Bhiwapur, Hanuman Mandir, ward No.
24, at post Babupeth, tahsil and district Chandrapur.

3. Gattu Harinath Chakravatrhy,
aged major, occupation – nil, r/o
Bhiwapur, Hanuman Mandir, ward No.

.....7/-

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24, at post Babupeth, tahsil and district
Chandrapur. Respondents.

Shri Amit Bhate, Counsel for the Petitioner.
Shri A.K.Waghmare, Counsel for Respondents.
Shri M.J.Khan, Addl.PP. for the State.

CRIMINAL WRIT PETITION NO.905 OF 2024

Nitesh @ Nitin Ramchandra, Dhakate,
aged 40 years, occupation business,
proprietor of M/s.Sai Vitsalaya Builder and
Developers, office at 13-14, Om Shri Sai
Nagar Layout, Khat Road, Bhandara. Petitioner.

:: VERSUS ::

1. Suhas Mahadeo Londhe, aged 46 years,
occupation – service, r/o at post Khumari,
tahsil Ramtek, district Nagpur.

2. Ramesh Shamrao Gabhne,
aged 58 years, occupation – service, r/o
at post Asgaay, taluka Pavni, district
Bhandara.

3. Balu Udaram Deshkar, aged 46 years,
occupation – contractor, r/o tilak ward,
Gandhi Chowk, Bhandara.

4. Prakash Umashankar Pande, aged 45
years, occupation business, r/o c/o
Vishwanath Kukde, LIC-21, MHADA
colony, khat road, Bhandara.

.....8/-

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5. Yadorao Laxman Meshram, aged 48 years,
occupation – service, r/o near old bus stop, c/o
Ashok Hude, tahsil Sadak Arjuni, district
Gondia. **Respondents.**

Shri Amit Bhate, Counsel for the Petitioner.

CRIMINAL WRIT PETITION NO.907 OF 2024

Nitesh @ Nitin Ramchandra Dhakate,
aged 40 years, occupation business,
proprietor of M/s.Sai Vatsalya Builder and
Developers, office at 13-14, Om Shri Sai
Nagar Layout, Khat Road, Bhandara. **Petitioner.**

:: VERSUS ::

1. Manmohan Vijaysingh Tomar, aged 43
years, occupation service, r/o c/o
Gunwant Tambekar, plot No.30, line no.
9, Pragati Colony, tahsil and district
Bhandara.

2. Hetal Mansukhbhai Sapriya, aged 53
years, occupation – business, r/o Takiya
Yard, tahsil and district Bhandara.

3. Ashish Vijaysingh Hanspal, aged 50 years,
occupation – service, r/o Bela, tahsil and
district Bhandara. **Respondents.**

Shri Amit Bhate, Counsel for Petitioners.

Shri Himanshu Khedikar, Counsel for Respondent No.1.

.....9/-

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 19/06/2025

PRONOUNCED ON : 27/06/2025

COMMON JUDGMENT

1. Heard learned counsel appearing for respective parties. **Rule.** Heard finally by consent.

2. By these writ petitions, petitioners take exception to order dated 2.5.2024 passed by learned Additional District Consumer Disputes Redressal Commission, Nagpur in Execution Application Nos.18/16, 20/50, 19/155, 14/18, 17/62, 17/47, 17/48, and 19/156; order dated 29.7.2024 passed by State Consumer Disputes Redressal Commission, Maharashtra State, Circuit Bench, Nagpur in Execution Application No.21/2017; order dated 8.8.2024 passed by learned Additional District Consumer Disputes Redressal Commission, Bhandara in Execution Application No.22/43; and order dated

.....10/-

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30.7.2024 passed by learned Additional District Consumer Disputes Redressal Commission, Bhandara in Execution Application No.19/31 imposing condition of depositing amounts while releasing them on bail.

The legality of imposing such condition has been questioned under writ jurisdiction.

3. Learned counsel for petitioners submitted that orders impugned are *per se* illegal and without authority vested with the District Forum to pass such orders. It is submitted that no proceeding as contemplated under Section 27 of the Consumer Protection Act is initiated against petitioners. The orders to arrest have been passed in execution proceedings and NBWs were issued against petitioners. By executing NBWs, they were produced before the said Forum and while releasing them on bail, condition was imposed to

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deposit amount Rs.1,60,000/- (in Cr.W.P.No.694/2024); Rs.5,70,000/- (in Cr.W.P.No.698/2024); Rs.2,80,000/- (in Cr. W.P. No.697/2024); Rs.3,75,000/- (in Cr. W.P. No.703/2024); Rs.1,72,500/- (in Cr. W.P. No.704/2024); Rs.1,37,000/- (in Cr. W.P. No.705/2024); Rs.1,55,000/- (in Cr. W.P. No.776/2024); Rs.3,90,000/- (in Cr. W.P. No.82/2024); Rs.2,75,000/- (in Cr. W.P. No.860/2024); Rs.19,45,000/- (in Cr.W.P.No.905/2024); and Rs.12,80,000/- (in Cr. W.P. No.907/2024).

It is submitted by learned counsel for petitioners that such a condition cannot be imposed while releasing petitioners on bail.

4. *Per contra*, learned counsel appearing for respective respondents submitted that despite directions given by the said Forum, petitioners have not deposited amounts. Before the said Forum, petitioners shown their

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willingness to deposit amounts and, therefore, said directions are given. One of petitioners i.e. Suresh Kondbaji Burrewar gave an undertaking before the said Forum that he is ready and willing to deposit the amount and also ready to deposit total amount in all three complaint cases and has undertaken to deposit balance decretal amount within one month from that day. Thus, in view of undertakings given by petitioners, directions were given to them to deposit amounts and, therefore, no illegality is committed by the said Forum. In view of that, writ petitions deserve to be dismissed being devoid of merits.

5. Before advertng to issue involved and submissions made by learned counsel appearing for parties, few facts leading to filing of these petitions are required to be seen.

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6. The respondents filed consumer complaints against petitioners who are builders and developers alleging deficiency in service. The said complaints were allowed partly by the said Forum. The petitioners failed to comply with directions and, therefore, respondents filed execution applications before the said Forum. The petitioners appeared as NBWs were issued against them. The said Forum was pleased to allow the said applications and granted bail in favour of petitioners imposing conditions that they shall deposit amounts as mentioned above i.e. approximately 50% of the total financial liability towards the decretal amount.

7. The issue raised that the said Forum has no authority to impose such condition and, therefore, the orders directing to deposit amounts require to be quashed and set aside.

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8. On careful consideration of record and submissions advanced, in light of overall facts of the case, orders impugned are passed by the said Forum and the Consumer Protection Act, 1986 provides remedies for enforcement of orders passed by the said Forum.

9. For recovery of amount due from any person under an order passed by the District Forum, the State Commission or the National Commission, as the case may, remedy is provided under Section 25(3) of the Consumer Protection Act. Said Section reads as under:

“25(3). Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum

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or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue."

10. Thus, if we consider powers of the District Consumer Forum to enforce its orders to recover amount due and payable to any person, then the District Consumer Forum cannot issue warrant of arrest and order to detain such person in prison in execution proceeding filed for recovery of amount due under order of the said Forum. In terms of sub-section (3) of Section 25 of the said Act, at the most the Forum can issue certificate of recovery in favour of such person. The process of recovery pursuant to such certificate to be initiated by the Collector to whom such recovery

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certificate is issued to recover the amount so specified in certificate by adopting the procedure prescribed for recovery of arrears of land revenue. Under Section 25 of the Consumer Protection Act, it is nowhere provided for arrest and detention of person in prison towards recovery of amount due under orders of Forum.

11. Section 27 of the Consumer Protection Act provides for penalties to be imposed where the person against whom the complaint is made fails or omits to comply with the order made by District Forum/State Commission/National Commission. The said Section reads as under :-

"27. Penalties-(1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the

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case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both;

(2) Notwithstanding, anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be."

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12. When the proceeding under Section 27 of the said Act is filed, the district forum has to find out whether opponent/accused has obeyed the orders in question and if it found that the orders are not obeyed, the district forum has to take cognizance under Section 190 of CrPC and issue summons to the opponent/ accused. After opponent/accused appears, he shall obtain bail and thereafter on the same day or on the next day he shall explain gist of the accusations to him and his plea shall be recorded. If he pleads guilty, he can proceed for imposition of the punishment as provided under section 27(1) of the Act, but if he denies the guilt, further trial has to be taken by the district forum namely to record statement of the officer/complainant for cross examination of the other side. If there are other witnesses of the complainant, they can offer of the other side and thereafter examine the accused under section

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313 of the CrPC and by giving him an opportunity to examine the witnesses, in support of his defence and after hearing both the sides, the order of punishment shall be passed. This is the procedure contemplated under Section 27 of the Act.

13. Thus bare reading of provisions Section 27 of the Consumer Protection Act reflects that only after conducting the proceeding and the said Section, if the District Consumer Forum or the State Commission, as the case may be, reaches to the conclusion that the person has failed or omitted to comply with the order, then depending upon the facts and circumstances of the case, the defence if any taken by such person in such proceeding, the forum can impose penalty/punishment as provided under Section 27 of the said Act.

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14. Perusal of orders reflects that impugned orders have been passed in an execution proceedings filed for recovery of amount due against the petitioners. In absence of any proceeding registered and initiated under Section 27 of the said Act, the District Consumer Forum should not have passed such orders and imposed the costs in each proceeding while releasing the petitioners on bail.

15. As far as petitioner Nitesh @ Nitin Ramchandra, Dhakate is concerned, he himself has filed an application before the forum showing his willingness to deposit the amount by filing application on 8.10.2024 i.e. after passing of the order dated 2.5.2024.

Petitioner Suresh Kondbaji Burrewar, has also given undertaking before the State Commission showing

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his willingness to deposit the amount and already paid the part payment.

However, question before the court is that while passing orders to release the petitioners on bail, whether the said Forum appears to have exceeded its authority and directed to impose condition to pay the amount to the complainant. While releasing the person on bail, the Court is expected to confine the scope of order to release the petitioners on such terms and conditions, which the Court deem fit and proper in the facts and circumstances of the case to ensure the availability of accused for conduct of trial against them. The imposition of costs and payment to the complainants do not fall within the ambit of exercise of powers to release the person on bail.

16. The above said aspect has been dealt with by this court at Aurangabad Bench in Criminal Application

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No.3390/2018 and other connected matters decided on 9.7.2019 and Criminal Writ Petition No.803/2021 decided on 23.12.2021 and the condition imposed was quashed and set aside.

17. The Single Bench of this court in Criminal Writ Petition No.552/2024 by referring judgment in the case of **Abhay Narayan Raje vs. The State of Maharashtra and ors, Criminal Application No.3390/2013 decided on 9.7.2019** has considered the scope of the provisions of Sections 25 and 27 of the said Act and held that the condition similar to one impose in case of this petition cannot be imposed while deciding the bail applications. Even, if it is presumed that order has been passed in exercise of powers conferred upon the judicial Magistrate as provided under sub-section (2) of Section 27 of the said Act, still the order imposing the costs and payment

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thereof to the complainants falls beyond the scope of exercise of powers under the said provisions of law and, therefore, the order of imposition of costs and payments unsustainable in law.

18. In view of the above facts and circumstances, the amounts deposited by some of petitioners can be treated as part compliance of orders passed by the said Forum and the same be adjusted towards recovery of the amounts due and payable in terms of the order passed by the said Forum. In case, the petitioners have deposited the amounts of costs and the same have been paid to the respective complainants, the same shall be treated as part or full payment, as the case may be, in cases of individual complainant to the extent of amounts withdrawn. The petitioners who have deposited the amounts as part payment are not entitled for the refund of the same.

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19. In the facts and circumstances of the case, as the condition imposed is unsustainable in law, the writ petition deserve to be allowed and the same are allowed. The orders impugned imposing the condition to deposit the amounts are quashed and set aside.

Petitions stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

The original complainants are permitted to withdraw amounts already deposited by petitioners before the said Forum on due identification and verification.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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