

(2010) 06 BOM CK 0074

In the Bombay High Court

Case No : Criminal Writ Petition No. 1137 of 2009

Shabbir Abdul Rahman Shaikh

APPELLANT

Vs

Parnerkar Nagari Sahakari Pathsanstha Maryadit

RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 357(1), 357(2), 357(5), 482

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 4 BC 542 : (2011) 7 RCR(Criminal) 2153

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.S. Sayyad, for the Appellant; S.S. Jadhavar, for the Respondent

Judgement

Shrihari P. Davare, J.—Heard Mr. Sayyad learned Counsel for the petitioner and Mr. Jadhavar, learned Counsel for the respondent.

2. Rule made returnable forthwith with the consent of respective learned Counsel for the parties, taken up for final hearing.

3. The present petition has been filed by the petitioner (original accused) against the respondent (original complainant), under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, praying that the impugned order dated 27.11.2009 passed below Exhibit-4 by the learned District Judge-3 and Additional Sessions Judge, Ahmednagar in Criminal Appeal No. 189/2003, be quashed and set aside.

4. The respondent, viz. Parnerkar Nagari Sahakari Pathsanstha Maryadit (herein after to be referred to as the said society), i.e. the original complainant, is a cooperative society, which had filed a complaint u/s 138 of the Negotiable Instruments Act against the petitioner (original accused) herein bearing S.T.C. No. 6503/2006. The said complaint was filed on the basis of alleged dishonour of cheque amounting to Rs. 10,875/- issued by the petitioner herein towards the

repayment of loan given to one Shabana, i.e. Wife of the petitioner, to which the petitioner herein was guarantor.

5. The learned Judicial Magistrate First Class, Court No. 1, Ahmednagar, held the petitioner guilty for the offence punishable u/s 138 of the Negotiable Instruments Act and convicted him thereunder and sentenced him to suffer S.I. for one month and to pay a fine of Rs. 13,000/-, and in default of payment of fine, directed to suffer further S.I. For one month. It was further directed, if the petitioner/accused pays the amount of fine as per the aforesaid directions, the amount of Rs. 12,000/- therefrom be paid to the complainant towards the compensation u/s 357(1) of the Code of Criminal Procedure by way of judgment and order rendered on 3.11.2009.

6. Being aggrieved and dissatisfied by the said judgment and order, the petitioner herein preferred Criminal Appeal No. 189/2009 before the learned Sessions Judge, Ahmednagar and thereby assailed the above referred judgment and order of conviction and sentence and prayed quashment thereof.

7. Moreover, after filing the said appeal, the petitioner herein preferred an application dated 27.11.2009 for suspension of sentence in S.T.C. No. 6503/2006 and requested to release him on bail. The learned District Judge-3 and Additional Sessions Judge, Ahmednagar passed an order on the said application on 27.11.2009. and thereby suspended the execution of the sentence imposed upon the petitioner by the learned trial Court subject to appellant depositing in the court an amount of Rs. 10,000/- within a period of fifteen days, i.e. On or before 16.12.2009 and subject to appellant furnishing a solvent surety of Rs. 15,000/- and P.R. bond in the like amount and also directed that if the appellant fails to deposit the said amount of Rs. 10,000/- in the Court as per the said directions on or before 16.12.2009, the said order would stand vacated forthwith.

8. Being aggrieved and dissatisfied by the said order, more particularly, the direction in respect of deposit of amount of Rs. 10,000/- by the petitioner herein within the aforesaid stipulated period of fifteen days, as aforesaid, the petitioner herein has approached to this Court by way of the present writ petition.

9. The learned Counsel for the petitioner relied upon the observations, made by the Hon'ble Supreme Court in the case of Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. reported at 2006 (2) Bom. C.R. (Cri.) 414 which read as under:

We, therefore, are of the opinion:

(i) in a case of this nature, Sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when Appellant was directed to pay compensation;

(ii) The appellate Court, however, while suspending the sentence, as entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii) The amount of compensation must be a reasonable sum;

(iv) The Court, while fixing such amount, must have regard to all relevant factors including the one referred to in Sub-section (5) of 357 of the Code of Criminal Procedure;

(v) No unreasonable amount of compensation can be directed to be paid.

10. Mr. S.S. Jadhavar, learned Counsel for the respondent opposed the present petition vehemently and supported the impugned order dated 27.11.2009 passed by the learned District Judge-3 and Additional Sessions Judge, Ahmednagar and submitted that, the learned Judicial Magistrate First class, Court No. 1, Ahmednagar, has imposed the fine of Rs. 13,000/- upon the petitioner herein out of which, an amount of Rs. 10,000/- was directed to be deposited by the learned District Judge-3 and Additional Sessions Judge, Ahmednagar, while suspending the substantive sentence imposed upon the petitioner herein and the said amount of deposit is reasonable one and no interference therein is warranted in the present writ petition and hence submitted that the present petition be dismissed.

11. After considering the rival submissions advanced by both the learned respective Counsels for the petitioner and the respondent, at the out set there is no dispute that the amount of cheque in question is of Rs. 10,875/- and keeping in mind the said amount of cheque and coming to the impugned order, wherein direction was given to the petitioner to deposit the amount of Rs. 10,000/- in the Court within a period of fifteen days while suspending the substantive sentence, that too, the said deposit was condition precedent for suspension of the substantive sentence and, therefore, considering the amount of cheque of Rs. 10875/-, the direction of deposit of Rs. 10,000/- appears to be unreasonable, Since the said direction of deposit of amount of Rs. 10,000/- appears to be almost equal to the amount of cheque in question and, therefore, the said order deserves to be quashed and set aside.

12. Relying upon the observations made by the Hon''ble Supreme Court in the aforesaid decision (cited supra), there is no impediment to put the applicant on terms while suspending the substantive sentence like deposit of compensation in the court, but the amount of such compensation must be a reasonable sum and while fixing such amount, the court shall have regard to all relevant factors including one referred to in Sub-section (5) of Section 357 of the Code of Criminal Procedure. Consequently, no unreasonable amount of compensation can be directed to be paid/deposited. Keeping in mind the said observations and applying the parameters thereof to the instant case in hands, admittedly, the cheque amount is of Rs. 10875/- and, therefore, while suspending the substantive sentence, reasonable amount which is required to be directed to be deposited by the appellant can be quantified at Rs. 6,000/-, which can be almost above 50% of the cheque amount and necessary directions can be issued to the appellant accordingly which would meet the ends of justice.

13. In the circumstances, the impugned order, directing the appellant to deposit an amount of Rs. 10,000/- while suspending the substantive sentence, deserves to be quashed and set aside and the appellant can be directed to deposit an amount of Rs. 6,000/- while suspending the substantive sentence.

14. In the result, the present writ petition is allowed and the impugned order dated 27.11.2009 passed by the learned District Judge-3 and Additional Sessions Judge, Ahmednagar in Criminal Appeal No. 189/2009, stands quashed and set aside and the impugned orders stand substituted by the following order-

The execution of the sentence imposed upon the petitioner/original accused by the learned Judicial Magistrate First Class, Court No. 1, Ahmednagar, shall stand suspended upon the appellant depositing an amount of Rs. 6,000/- (Rupees six thousand) in the said Court till 9th July, 2010 and upon furnishing a solvent surety by the appellant in the sum of Rs. 10,000/-(Rupees ten thousand) and PR bond in the like amount. If the petitioner fails to comply with the aforesaid directions within the aforesaid period, the order shall stand vacated automatically.

15. Rule is made absolute in the aforesaid terms with directions that the hearing of the Criminal Appeal No. 189/2009 be conducted expeditiously.