

MHKO010020372026



Order below Exh. 5 in Criminal Appeal No.68/2026
(Manohar Patil Vs. Hindustan Steel etc.)

1. Perused application. Heard Advocate of applicant.
2. This is an application under section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for suspension of substantive sentence and releasing the applicant i.e. accused on bail.
3. Learned Trial Court i.e. J.M.F.C., (Court No.9) Kolhapur in Sum. Cri. Case No.4523/2017, by order dated 30/04/2026 convicted applicant for offence punishable under section 138 of Negotiable Instrument Act (Hereinafter referred as NI Act) and sentenced to suffer Simple Imprisonment for six months and he is directed him to pay compensation amount of Rs.2,20,000/- to complainant, in default of payment compensation, to undergo simple imprisonment for 60 days.
4. According to Advocate of appellant, order of Ld. Trial Court is not legal and proper. Ld. Trial Court failed to consider improbability arising from invoices at Exh.26 and 27. Exh. 26 and 27 which were purportedly prepared, there are fabricated documents. Mere marking those documents as Exhibit does not amount to proof. Cheque in question was misused by complainant. Ld. Trial Court failed to consider presumptions in proper prospective. Proper opportunity of cross-examination of complainant was not given. In appeal various legal and factual aspects are raised. Appellant prayed to suspend the

sentence passed by trial court.

5. Perusal of judgment of the Ld. Trial Court, it appears that point no.1 that cheque was issued by accused for discharge of legal liability of complainant etc. is answered in affirmative. It is discussed by Ld. Trial Court that accused has purchased building material, invoices are filed on record and cheque was issued. Ample opportunity was granted to accused to conduct cross-examination of complainant but accused failed to take cross-examination. Accused failed to rebut presumptions. Advocate of appellant i.e. accused submitted that Ld. Trial Court failed to appreciate that documents viz. Invoices at Exh. 26 and 27 are not properly proved. Defence of appellant raised in statement u/s. 313 of Cr.P.C. is not considered etc.

6. Therefore while arguing this application Advocate of appellant prayed to suspend the sentence and submitted that appellant is ready to deposit amount as per mandates given in Section 148 of NI Act. Court has to see provisions of Section 148 of Negotiable Instrument Act wherein it is provided that notwithstanding anything contained in the Code of criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent, of the fine or compensation awarded by the Trial Court. Therefore this legal provision has to be followed.

7. It appears that various legal and factual aspects are raised by appellant and appellant has hope to succeed appeal. In such circumstances by bearing in mind provisions of Section 148 of Negotiable Instrument Act in respect of payment of compensation

amount, it is proper to suspend sentence of conviction passed by Ld. Trial Court. Before trial court appellant had not paid any amount. Considering above reasons and legal provisions, appellant is to be directed to pay 20% of compensation amount. Hence, the appellant is entitled for suspension of sentence till the final hearing and disposal of the appeal subject to the following terms and conditions.

Order

- (1) Application is allowed.
- (2) The sentence passed by the Ld. Judicial Magistrate First Class, Court No.9, Kolhapur in S.C.C.No.4523/2017 (Hindustan Steel -Vs- Manohar Ishwar Patil) is suspended till the final hearing and disposal of the appeal subject to depositing Rs.44,000/- (20% of compensation amount of Rs.2,20,000/-) in the Court within one month from today.
- (3) Appellant to furnish PR and SB of Rs.25,000/- within 7 days from today.
- (4) Appellant is directed to appear on each date of hearing of the appeal.

Kolhapur.
Dt.-19/06/2026

(Smt. R.V. Adone)
Additional Sessions Judge, Kolhapur.

Certificate

“ I affirm that the contents of the P.D.F. file order are same word for word as per original order.

Sd/-
A.A.Patil
(Stenographer G-1)