

hvn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 433 OF 2015**

Hema Bipin Shah ... Applicant

Versus

The State of Maharashtra and anr. Respondents

Mr. Satyavrat Joshi for the applicant.

Mr. S.R. Ronghe for respondent no. 2.

Mrs. G.P. Mulekar, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JUNE 26, 2015**

P.C.

Admit. Heard finally.

2. The only point raised in this criminal application is that there are no sufficient averments against the applicant in the complaint and therefore, he could not have been prosecuted for the offence punishable under section 138 of Negotiable Instruments Act.

3. I have gone through para 4 of the complaint which can be reproduced as under :

“4. That being so, during last several years, the accused nos. 1

to 3 have been approaching the complainant and his 02 forms – R.R. Finance & R.R. Realty from time to time for their urgent financial requirements & the complainant, through his said 02 firms has been duly providing to the accused the required finance &/or hand-loans almost instantly.”

4. Learned counsel Mr. Joshi has submitted that these allegations pertain to the earlier transactions. The transaction in question has been described in para 5 of the complaint. Though it is stated in para 5 that accused no. 1 had obtained loan on behalf of the applicant and firm, it is not specifically stated that the applicant was also present at the time of procuring the loan. In this regard it may be noted that it is not necessary for the complainant to aver that all the partners or directors were present at every stage of transaction in question. What is required to be examined in the complaint is that whether the applicant sufficiently makes out a case that the particular accused was responsible to the company for conduct of business of company or firm as the case may be at the time of commission of offence. Reading of para 4 and 5, does make it clear that the applicant has never withdrawn herself from the day to day activities of the firm. I do not find any substance in the application.

Application stands disposed of. Ad interim order stands vacated.

(JUDGE)