

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4562 OF 2015

Tata Capital Financial Services Ltd. ... Petitioner

V/s.

The State of Maharashtra ... Respondent

Mr. Yashpal Thakur i/b. PKA Advocates for the Petitioner.
Ms. S.V. Gajare, A.P.P. for the State.

CORAM : A. V. NIRGUDE, J.

DATE : 5th DECEMBER, 2015.

P.C. :

1. This Petition raises an interesting question. The petitioner is a finance Company. It filed a criminal complaint alleging commission of offence punishable under Section 138 of Negotiable Instruments Act against a borrower on 08.05.2015. The amount sought to be recovered through the cheque in question was Rs.3,50,00,000/-. In view of this, the petitioner-complainant was under obligation to pay Court fee Rs.1,50,000/- as per provisions of Bombay Court Fee Act. Such Court fee was not deposited on the day when the complaint was filed. The complaint, therefore, was not registered as

criminal complaint. Till 04.07.2015 no progress was made for prosecuting the complaint. On 04.07.2015, the complainant simply sought withdrawal of the complaint. The learned Magistrate was pointed out that the petitioner-complainant had not paid Court fee and, therefore, the complainant was directed to first pay the Court fee and it is only thereafter order would be passed. The question is, whether the complainant is under obligation to pay Court fee when before processing the complaint, the same is withdrawn? My answer to this is in the negative.

2. As said above, no progress was made in the complaint though it remained on the file of the Court. Had the petitioner-complainant not moved an application for withdrawal, no further action would have been taken on the complaint and the complaint ought to have been dismissed for non-prosecution. In such circumstances, there appears no reason for insisting on the petitioner-complainant to first pay the Court fee. In my view, Court fee is payable only at the time when the complaint is pressed for action against the accused. When a complaint under Section 138 of Negotiable Instruments Act is moved, the learned Magistrate directs recording of verification statement. After perusal of said statement, if a case is made out for issuance of process, such order is passed. None of this happened in this case. The complainant did not go before the learned Magistrate for

further orders such as recording of verification, etc. Section 200 of Cr.P.C. provides that a Magistrate who would take cognizance of an offence of a complaint moved before him should first examine upon oath the complainant and witnesses, if any. As per Section 203 of Cr.P.C., the Magistrate is expected to consider the statements so recorded and form an opinion as to whether there is sufficient ground for proceeding against the accused. Thereafter, process is issued. In this case, the Magistrate did not even take cognizance of the complaint. Therefore, though the complaint was filed before the Court, it was really not a complaint in the sense which is understood by Section 200 of Cr.P.C.

2. In view of this, it would not be proper to expect the petitioner-complainant to deposit Court fee. I am inclined to utilize my powers under Section 482 of Cr.P.C. for securing the ends of justice. I should exempt the petitioner-complainant from depositing any Court fee in the case. The impugned order and notice of the learned Magistrate is set aside. The petitioner-complainant is permitted to withdraw the complaint without paying Court fee.

3. The Writ Petition is disposed of.

(A.V. NIRGUDE, J.)