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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.555 OF 2016

Smt. Shamim Saifuddin Sarkhot,	]	
age: 56 years, Occupation : Nil	]	<u>Petitioner</u>
residing at: Sarkhot Mohalla	]	Original
at Post Shriwardhan, District: Raigad	]	accused

Versus

1. Shri. Jugraj Miyachand Jain	]	
age: adult, Occn. Business.	]	<u>Respondents</u>
r/o Shrivardhan, District: Raigad	]	(Respondent
	]	No.1 original
2. The State of Maharashtra	]	complainant

Mr. Anwar F. Shaikh, for the petitioner.
Mr. A.S.Shitole, APP for respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH FEBRUARY 2016.

Oral order:

1. Heard learned counsel for the petitioner.
2. With consent of parties, the petition is taken up for final hearing before admission.
3. By this petition, the petitioner is challenging the order passed by Judicial Magistrate First Class, Shrivardhan, on 19.12.2015, thereby

directing the petitioner to pay fine of Rs.25,000/ due to the State and compensation of Rs.2,82,500/- due to the respondent No.1, within 30 days from the date of order and further directed to issue a warrant to Collector, upon failure on the part of the petitioner to comply with the directions.

4. Submission of learned counsel for the petitioner is that the impugned order is illegal as the petitioner is only legal heir of the original accused and secondly petitioner has received property on the basis of will executed by original accused. It is, therefore, the self acquired property of the petitioner and the petitioner is not liable either to pay fine amount or compensation.

5. The impugned order of the trial Court, reveals that respondent was original complainant in S.C.C.No.173 of 2008, who had filed private criminal case against Saifuddin late husband of present petitioner, for offence punishable under Section 138 of the Negotiable Instruments Act. In that case, Saifuddin was convicted. Against the said order and judgment, Saifuddin has preferred Criminal Appeal No.18 of 2010. During pendency of the said appeal, Saifuddin expired. However, the petitioner did not apply to the Court to bring on record her name. As a result, appeal came to be abated.

6. In view of order passed by trial Court in S.C.C.No.173 of 2008. amount of Rs.4,10,000/- was directed to be paid as fine amount and in default sentenced of six months. Out of fine amount, compensation of Rs.3,85,000/- was directed to be paid to the respondent original complainant. As the petitioner was liable to pay said compensation and fine amount, but did not comply with the same. Respondent filed Criminal Complaint before the trial Court, raising several contentions which have been properly dealt with by the trial Court, in the light of the provisions of Section 421, 431 of Code of Criminal Procedure and Section 70 of the Indian Penal Code. As per Section 421 of the Code of Criminal Procedure, fine amount as imposed by the Court is to be recovered by sale and auction of the property of accused; whereas as per section 431 even amount of compensation can be recovered as if it was a fine. In the instant case compensation as directed to be paid, is out of fine amount and therefore, under both Sections 421 and 431 of the Code of Criminal Procedure, amount is to be recovered byway of auction and sale of property of accused late Saifuddin.

7. As regards the contention of the petitioner that she is not liable to pay amount, Section 70 of the Indian Penal Code, takes care of this contention. According to section 70 of IPC, death of offender does not

discharge him from the liability and the property which would after his death comes into the hands of his legal heirs, be legally liable for his debts. Therefore, provisions of Section 421 and 431 of the Code read with Section 70 of IPC, make amount of fine or compensation recoverable from the property of the offender.

8. Here in the case, property which has come into the hands of petitioner was admittedly owned by original accused Saifuddin, by virtue of will deed executed by Saifuddin on 6.10.2010, said property is received by the petitioner naturally, with all liabilities attached therewith. In view of Section 70 of IPC, amount of fine and compensation is recoverable from the said property.

9. The trial Court has considered all these legal aspects of the case and thereafter passed the impugned order. As no illegality or impropriety much less perversity in the findings is found, writ petition is dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]