

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

CRIMINAL WRIT PETITION NO. 1321 OF 2017

House of Anita Dongre Ltd.	... Petitioner.
Versus	
The State of Maharashtra.	... Respondent.

Ms. Mahima Sinha a/w. Mr. Manaswi Agrawal i/b. Mr. Charles Desouza, advocate for Petitioner.

Ms. Neeta Jain, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MARCH 27, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 This is a petition seeking modification of the order dated 15th March, 2017 passed by the Additional Chief Metropolitan Magistrate, Ballard Pier, Mumbai. The petitioner herein happens to be the original complainant in C.C. No. 11/N/2017. The facts of the case are as follows :

On 10/7/2016 the Petitioner herein filed a report alleging therein that an amount of Rs. 1,53,700/- has been stolen from the digital locker of the complainant. The accused were arrested and charge-sheet is filed against the accused for offence punishable under section 381 of the Indian Penal Code. Out of the stolen mount the investigating agency could recover an amount of Rs. 1,43,000/- from the accused. The said denomination was of Rs. 500/- and 1000/- which are not worth circulating after demonetization policy of the government declared in November, 2016. The Petitioner herein therefore filed an application seeking return of money for the purpose of depositing the same in the Reserve Bank of India as the last date for depositing the old currency is 31st March, 2017. The

learned Magistrate has allowed the application, however has passed following directions in clause (iv) of the operative order :

“(iv) The applicant/complainant is hereby directed not to spend, use, change or alienate the alleged amount in favour of any person till decision of this crime.”

In view of this, the Petitioner has prayed for modification of the order dated 15/3/2017.

4 The Ministry of Law and Justice had issued a gazette dated 28/2/2017. The clause 3 of the said gazette reads as follows :

“3. On and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O. 3407(E), dated th 8th November, 2016, issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and

shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act.”

Clause 5 of the said gazette reads as follows :

5 On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note:

Provided that nothing contained in this section shall prohibit the holding of specified bank notes-

(a) by any person-

(i) up to the expiry of the grace period; or

(ii) after the expiry of the grace period,-

(A) not more than ten notes in total, irrespective of the denomination or

(B) not more than twenty-five notes for the purposes of study, research or numismatics;

(b) by the Reserve Bank or its agencies, or any other person authorised by the Reserve Bank;

(c) by any person on the direction of a court in relation to any case pending in the court.”

5 It is in view of this that the currency notes seized in the course of investigation would be of no value, if not deposited in the Reserve Bank of India on or before 31st March, 2017.

6 It is in these circumstances that the Writ Petition deserves to be allowed upon imposing certain conditions.

7 Hence following order is passed :

ORDER

(i) The impugned order dated 15th March, 2017 stands modified as follows :

(a) The investigating Officer is directed to release the said amount of Rs. 1,40,000/- in favour of the Petitioner by obtaining solvency of Rs. 1,40,000/-.

(b) The Petitioner is further permitted to deposit the said amount in the Reserve Bank of India, which would further be deposited in the KYC account of the Petitioner.

(c) The Petitioner shall furnish solvency of Rs. 1,40,000/- within 6 weeks from the date of release of the amount.

(ii) The Rule is made absolute in the above terms.

8 The Writ Petition is disposed of accordingly.

Parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)