

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2555 OF 2016

M/s. Rohit and Co.

.....Petitioner

V/s.

State of Maharashtra and Ors.

.....Respondents

* * * * *

Mr. Siddharth Murarka i/by. Law Chamber of Siddharth Murarka,
Advocate for the petitioner.

Mr. V.B. Konde Deshmukh, APP for respondent no.1.

Mr. Pradeep Tulshiram Palhade, Proprietor of Pradeep Industries,
respondent no.2 present in Court.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 16TH JANUARY, 2017.

P.C. :-

1). Mr. Pradeep T. Palhade, proprietor of respondent no.2 is present on notice. He states that, he has no objection if the petition is allowed in favour of the petitioner since the dispute between the parties is settled.

2). The petitioner is the complainant in C.C. No.

1895/SS/2015 filed under Section 138 Negotiable Instruments Act in which the process was issued and the summons was served upon petitioner no.2, the proprietor of petitioner no.1. It appears that, thereafter, at some point of time, warrant was issued by the trial Court to secure the presence of respondent no.2. Petitioner no.2 had taken hamdast of the warrant for the purpose of getting the same executed. However, in the intervening period, the dispute between the parties got settled by respondent no.2 making the entire payment to the petitioners. Consequently, the petitioners did not get the warrant executed but filed two applications at Exhibit-38 and Exhibit-39 for withdrawal of the complaint on the ground of settlement of the dispute.

3). By the impugned order, the trial Court, instead off disposing off the complaint in view of the settlement, has issued notice to petitioner no.2 calling upon him to show cause as to why action be not initiated against him as per the provisions of Section 187 Indian Penal Code. The justification stated in the order for issuance of notice is that :

“In the opinion of the court, the complainant has no power to stop the execution of warrant which is not directed in his name and regarding which a humdust was received by him. If complainant does this, there is likelihood of it being misused and in such circumstances, he would be interfering with the administrative of the justice of the court. This act is highly deprecated. Moreover, the warrant has not been returned as yet by the complainant with the report, that is required to be given to the court, about its execution/notification etc. Until and unless such compliance is done, permission cannot

be granted to the complainant”.

4). Mr. Murarka, the learned Advocate appearing for the petitioner states that the warrant has already been returned to the Court. The anxiety in general of the Court, of possibility of misuse by a litigant of receipt of any hamdast of warrant cannot be said to be unjustified. However, in the facts and circumstances of the case, where the parties have actually settled the dispute and the petitioners have filed applications for withdrawal of the proceedings, the impugned order was not warranted. The Court, could have, at the highest, cautioned the petitioner and allowed the applications at Exhibit-38 and 39. Hence, the petition is allowed. The order dated 30th June, 2016 passed by the trial Court is set aside. The notice issued to the petitioner is discharged. The applications at Exhibit-38 and 39 for withdrawal of the complaint are allowed. Refund of the court-fees as per the rules.

(SMT. R.P. SONDURBALDOTA, J)