

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3515 OF 2016

Ms. Shaikh Nazia Abdul Rahim

.....Petitioner

V/s.

1. The State of Maharashtra

2. Mrs. Hamidbanu @ Hamidunnisa

Mansoor

.....Respondents

* * * * *

Mr. Dev Patel, Advocate appearing for the petitioner.

Mr. S.R. Agarkar, APP for State, respondent no.1.

Ms. Hemlata Kanaujia, Advocate for respondent no.2.

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

27TH FEBRUARY, 2017.

P.C. :-

1). The petitioner herein was the accused in C.C. No. 5341/SS/2008 filed by respondent no.2 under Section 138 of the Negotiable Instruments Act as the three cheques issued by the petitioner in the sum of Rs.95,000/- each had been dishonoured for the reason “funds insufficient”. The cheques had been issued by the petitioner to respondent no.2 towards repayment of the friendly loan taken from her. The trial Court, by its judgment and order dated 11th September, 2013 convicted the petitioner of the

offence. Being aggrieved by the order, the petitioner had approached the Sessions Court vide Criminal Appeal No. 572 of 2013. The Sessions Court, by its judgment and order dated 22nd June, 2015 dismissed the appeal and confirmed the conviction of the petitioner and the sentence awarded to her.

2). It appears that, thereafter the parties arrived at settlement and desired to bring the settlement on record. For that purpose, the petitioner filed Misc. Application No. 1940 of 2015 for restoration fo the Criminal Appeal and for recording of the settlement. The Sessions Court, dismissed the application holding that once the appeal has been decided on merit and dismissed, the Sessions Court cannot restore the same for the purpose of recording settlement. It, however, granted liberty to the petitioner to approach the trial Court for getting the offence compounded. Mr. Patel, the learned Advocate appearing for the petitioner states that, when the petitioner approached the trial Court for getting the order compounded, she was not permitted to make the application for the reason that the proceedings in the trial Court had already been concluded. In these circumstances, the petitioner has filed the present petition seeking two relierfs. The first relief is for setting aside the order of the Sessions Court passed in the appeal and for compounding of the complaint.

3). Respondent no.2, the complainant has filed an Affidavit stating that an amicable settlement has been arrived at between her and the petitioner on the dispute as regards the dishonour of the cheques. The affidavit states that, respondent no.2 has no further interest in proceeding with the case and she

has no objection if the petitioner is acquitted of the offence. The affidavit is taken on file.

4). In view of the settlement between the parties, an opportunity needs to be given to the petitioner to compound the offence and seeks acquittal. Considering the fact that, the parties to the proceedings are women and the transaction between them was of friendly loan, the imposition of any costs upon them, can be dispensed with. Therefore, the petition is partly allowed by granting permission to the petitioner and respondent no.2 to compound the offence under Section 138 Negotiable Instruments Act. In view of compounding of the offence, the petitioner stands acquitted of the offence in C.C. No. 5341/SS/2008. Respondent no.2, is at liberty to withdraw the amount of Rs.57,000/- deposited by the petitioner in the Sessions Court in Criminal Appeal No. 572 of 2013.

(SMT. R.P. SONDURBALDOTA, J)