

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

WRIT PETITION NO. 3717 OF 2016

Smt. Maimuna Hamza Keralkar ... Petitioner

vs.

Smt. Sajida M. Javed Shahabazkar & anr. ... Respondents

Mr. Rahul M. More, Advocate for the petitioner.

Mr. Wasim Ansari, Advocate for respondent no.1.

Ms. Anamika Malhotra, A.P.P. for the State/respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 16th February, 2017

P.C. :

1. This petition challenges the order dated 3rd September, 2016 by which the Sessions Court imposed condition of deposit of a sum of Rs.1,50,000/- upon the petitioner for suspending the substantive sentence. The order permitted the petitioner to deposit the amount by installments. The first installment of Rs.50,000/- was to be deposited on or before 1st October, 2016 and the second installment of Rs.1,00,000/- was to be deposited on or before 31st December, 2016. The appeal preferred by the petitioner to the Sessions Court arises out of the proceedings under Section 138 of Negotiable Instruments Act, wherein the petitioner is convicted and sentenced only with fine in the sum of Rs.4,00,000/-. Out of the fine amount, Rs.3,75,000/- is to be paid to respondent no.1 towards

compensation.

2. The application is opposed by respondent no.1 contending that the cheque in question was given to the petitioner in the year 2009 by way of a financial support because at the relevant time the petitioner was in need of money. She had debts on her hand and had to repay certain individuals. Respondent no.1, who is a family friend had given friendly loan of Rs.5,00,000/- to the petitioner on condition that the petitioner will repay to respondent no.1 at the earliest. Thereafter the petitioner had paid a sum of Rs.1,50,000/- to respondent no.1 leaving the balance of Rs.3,50,000/-. For that balance amount, she issued cheque dated 18th July, 2012 which when presented for payment had returned with reasons "funds insufficient". After service of due statutory notice the proceedings under Section 138 of Negotiable Instruments Act came to be filed.

3. Mr. More, the learned advocate for the petitioner submits that the direction for deposit of almost 50% of the cheque amount as a condition for suspension of the substantive sentence would be a harsh condition. He also submits that the health of the petitioner is not good. She has been suffering from hyper tension and paralysis. The third argument is that the petitioner has deposited a sum of Rs.70,000/- earlier when her application for condonation of delay in filing the appeal was allowed.

4. Considering the facts and circumstances of the case, it cannot be said that the condition imposed upon the petitioner is harsh or the same is unjust. Considering the fact that, the petitioner is a woman there is no substantive sentence imposed upon. Besides, the impugned order granted facility of installment to the petitioner. She has not paid any of the installments. Hence there is no merit in the matter. The petition is dismissed.

[Smt. R. P. SondurBaldota, J.]