

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 95 OF 2019**

Ranjana Baban Suradkar	...Petitioner
Versus	
Jyoti Ashok Raut & Anr.	...Respondents

Ms. Alka Shelke for the Petitioner

Mr. Vivek V. Salunkhe for the Respondent No. 1

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 4th DECEMBER 2019

P.C. :

1 At the outset, learned counsel for the petitioner seeks leave to amend prayer clause (b). Leave granted. Amendment to be carried out forthwith.

2 Heard learned counsel for the parties.

3 By this petition, the petitioner has impugned the orders dated 4th July 2018 passed by the learned Sessions Judge below Exhibit 1, by which the petitioner's appeal being Criminal Appeal No. 163/2017 was

dismissed for default, as well as the order dated 3rd October 2018 passed below Exhibit 19, by which the learned Sessions Judge rejected the petitioner's application for restoring the appeal back to its original file.

4 Perused the papers. The petitioner has been convicted by the learned Judicial Magistrate First Class, Nashik, for the offence punishable under Section 138 of the Negotiable Instruments Act vide judgment and order dated 28th July 2017 and has been sentenced to suffer RI for three months and has been directed to pay compensation of Rs. 12,00,000/- to the respondent No. 1 i.e. the complainant. Aggrieved by the said judgment and order of conviction and sentence, the petitioner preferred an appeal in the Court of the learned Sessions Judge, Nashik.

5 Learned counsel for the petitioner states that since the matter was referred to the Mediator, they did not proceed with the appeal, which was pending on the file of the learned Sessions Judge, Nashik. She submits that as the petitioner failed to remain present before the learned Sessions Judge, the learned Judge dismissed the appeal for default on 4th July 2018. Being aggrieved by the dismissal of the appeal, the petitioner filed an application and sought restoration of the criminal appeal. The learned Sessions Judge vide order dated 3rd October 2019, rejected the

application, after observing that the Court had no inherent power to set-aside the order dated 4th July 2018. Admittedly, the said order is not on merits. Learned counsel for the petitioner assures that the petitioner will proceed with the appeal on the dates given by the learned Judge and will not seek unnecessary adjournments. Statement accepted.

6 In view of the aforesaid, petition is allowed and the impugned order dated 4th July 2018 passed by the learned Sessions Judge dismissing Criminal Appeal No. 163/2017 for default, is restored back to its original file. Since the appeal has been restored back to its original file, the order dated 3rd October 2018 passed by the Additional Sessions Judge is also quashed and set-aside.

7 Petition is allowed in the aforesaid terms and is disposed of accordingly.

8 Since the appeal is of the year 2017, the hearing of the appeal is expedited. The learned Sessions Judge to decide the appeal as expeditiously as possible and in any event, within six months from the date of receipt of this order. All parties to cooperate with the learned Judge in the conduct of the trial.

9 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.