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

WRIT PETITION NO. 179 OF 2020

M/S. JHAMTANI AGENCIES THROUGH
PROF. PARMANAND MEHLUMAL JHAMTANI ..PETITIONER

VS.

THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Ms. Kanchan C. Phatak h/f. Mr. N. P. Deshpande for the
petitioner.

Mr. A. R. Patil, APP for State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 17, 2022.

P.C. :

1. Heard learned counsel for the petitioner.
2. My attention is invited to the application below Exhibit-35 filed by the petitioner before the Sessions Judge, Pune, at Pune, for taking cognizance and registering an offence against the respondent no.2 herein (the appellant before the Sessions Court).
3. The petitioner is the original complainant in the S. C. C. No.685 of 2011 filed under Section 138 of the Negotiable Instruments Act before the trial Court. It is contended that the trial Court convicted the respondent no.2 for the offence punishable under Section 138 of the Negotiable Instruments Act. The appeal filed by the respondent no.2 before the Sessions Judge, Pune, at Pune, also came to be dismissed.

4. In the application at Exhibit 35, it is stated that after pronouncement of the judgment by the Appellate Court, the accused was made to sit in the dock till arrival of police constable but he fled away from the custody of the Court and the said fact has been mentioned by the Appellate Court in the operative part of the judgment.

5. The application at Exhibit 35 is filed as the act on the part of the accused, according to the petitioner, is an offence contemplated under Section 224 of the Indian Penal Code and therefore, it is only the Appellate Court which can take cognizance of the offence committed by the respondent no.2. On the said application (Exhibit 35), the Appellate Court passed the following order:-

“It is learnt that appellant already filed appeal before Hon’ble High Court. This Court already noted his conduct in its judgment. Hon’ble High Court will take into account while passing stay order/judgment.”

6. The prayer made in this writ petition is for deciding the application filed below Exhibit 35 for taking cognizance. The remedy of the petitioner, therefore, will be to challenge the order dated April 30, 2019 before the appropriate Forum if at all it is the petitioner’s contention that it is only the Appellate Court which can take cognizance. However, from the reliefs sought in the present writ petition, the petitioner is seeking a direction to the Appellate Court to decide the application below Exhibit 35. In the face of the order dated April 30, 2019, if it is the contention of the petitioner that the observations made do not dispose of the application,

then it is for the petitioner to approach the concerned Court and seek clarification. The petitioner may resort to the appropriate remedies available in law.

7. With these observations, the writ petition is disposed of.

(M.S.KARNIK, J.)