

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5273 OF 2019

WITH

INTERIM APPLICATION NO. 2021 OF 2021

IN

WRIT PETITION NO. 5273 OF 2019

SHRADDHA
KAMLESH
TALEKAR

Digitally signed by
SHRADDHA
KAMLESH TALEKAR
Date: 2022.04.22
20:48:54 +0530

Ms. Rekha Mistry

...Petitioner

Vs.

1. The State of Maharashtra
& 3 Ors.

.. Respondents

Mr.Ashok Dubey i/b A.M.Saraogi for petitioner.

Mr.S.R. Aagarkar, APP for respondent No.1-State.

Mr.Shivmsinh Deshmukh for respondent Nos. 2 to 4.

CORAM : N. J. JAMADAR, J.

DATE : 18th APRIL, 2022

P.C.:

1. Heard the learned counsel for the petitioner and the learned counsels for the respondents.

2. The challenge in this petition is to an order passed by learned Sessions Judge, Greater Mumbai in Criminal Revision Application No. 377 of 2019, whereby the learned Sessions Judge was persuaded to allow the revision and set aside the order passed by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai in C.C. No. 66/SS/2017 dated 21st February 2019, issuing process against respondent No.3-Smt. Papiya

Jyotimay Baul for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 ('The Act, 1881'). The learned Sessions Judge was persuaded to interfere with the order passed by the learned Metropolitan Magistrate on the premise that the petitioner-complainant had preferred an application for amendment of the complaint filed under section 138 of the Act, 1881 and implead respondent No.3-Smt. Papiya Jyotimay Baul as an accused without adhering to the mandate of the provisions contained in section 319 of the Code of Criminal Procedure, 1973 ('the Code').

3. Evidently, the case of the petitioner is that respondent No.3-Smt. Papiya Jyotimay Baul is the signatory to the dishonoured cheques. What weighed with the learned Sessions Judge was the irregularity of the procedure adopted by the learned Metropolitan Magistrate in impleading respondent No.3 as a party accused to the complaint.

4. In the aforesaid view of the matter, it would be expedient to allow the petitioner-complainant to make a fresh application under section 319 of the Code and request the learned Metropolitan Magistrate to decide the said application, uninfluenced by the observations made by the learned Magistrate

in the order dated 21st February 2019 as well as the order passed by the learned Sessions Judge on 29th August 2019 in Criminal Revision Application No. 377 of 2019.

5. Hence, the following order :

O R D E R

(i) The petition stands disposed with liberty to the petitioner to file a fresh application under section 319 of the Code.

(ii) The learned Metropolitan Magistrate is requested to decide the application which may be preferred by the petitioner on its own merits without being influenced by the observations by learned Metropolitan Magistrate in the order dated 21st February 2019 and the learned Sessions Judge in the order dated 29th August 2019.

(iii) In view of the disposal of the petition, Interim Application No.2021 of 2021 does not survive and accordingly stands disposed.

(N. J. JAMADAR, J.)