

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

CRIMINAL WRIT PETITION NO. 814 OF 2013.

Bharat s/o. Sukhaji Jadhav
Age.: 48 Years., Occ.: Agriculturist & Service.
R/o.: Plot No.212, Samta Nagar, Gangapur,
Vaijapur Road, Tal. Gangapur,
Dist. Aurangabad. :: **Petitioner.**

Versus

- (1) The State of Maharashtra.
- (2) Chabu s/o Nana Rokde.
Age.: 50 Years., Occ.: Agriculturist.
R/o.: Muddesh-wadgaon, Tal. Gangapur,
Dist. Aurangabad. :: **Respondents.**

Appearance ==>

Mr. D.R. Adhav, Advocate for the Petitioner.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of
Maha./Resp. No.1.

Mr. Devdatt Palodkar, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 19th JANUARY, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides.

[2] Present Respondent No.2 is the original Complainant. She filed complaint for the offence under section 138 of the Negotiable Instruments

Act, 1881. Admittedly, said complaint was barred by limitation, therefore, the Complainant filed an application for condonation of delay. Copy of said application is filed on record of this court at page No.18. The prayer of the said application shows that delay caused in preferring complaint to be condoned. The learned Magistrate was expected to decide the said application firstly and then ought to have pass necessary order of issuance of process, if the Magistrate was satisfied that Respondent No.2 – Complainant has made out a case against the present Petitioner.

[3] Instead of deciding the Application for condonation of delay and without condoning the delay caused in filing the complaint, the learned Magistrate straightway issued process against the present petitioner on 12/07/2012, which is questioned before this court by filing present Writ Petition.

[4] The learned counsel for the original Complainant has fairly stated that there was delay in preferring the complaint. From the record, it is clear that no notice was issued on the application for condonation of delay, therefore, opportunity was not given to the present petitioner – accused on the the said application for condonation of delay and the learned Magistrate straightway proceeded with the matter by issuing process. Such method on the part of the learned Magistrate, in my view is not correct. Unless and until delay is condoned, complaint itself was not in existence.

[5] In that view of the matter, order of issuance of process dated 12th July, 2012 passed by the learned Judicial Magistrate, First Class, Gangapur is hereby set aside. Instead, it is directed that the learned Magistrate shall decide the application filed by the original Complainant seeking condonation of delay, on its own merit, after giving opportunity of hearing to the present Petitioner.

[6] With this, present Writ Petition is allowed. Both the learned counsel submit that their respective clients will appear in the Court of the Judicial Magistrate, First Class, Gangapur in respect of condonation of delay, on 9th February, 2015. Registry is directed to transmit the Record & Proceedings in the meanwhile. Rule made absolute, accordingly.

Writ Petition allowed.

(V.M. DESHPANDE, J.)