

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 46 OF 2014

Namrata Gramin Bigarsheti Sahakari .. Applicant
Pat Sanstha Ltd.

Versus

Dada s/o. Baban Londhe & Anr. .. Respondents

Mr. A.H. Mahajan h/f. Mr. N.V. Gaware, Advocate for the applicant.

Mr. A.B. Gatne, Advocate for respondent No.1.

Mr. K.S. Patil, A.P.P. for respondent/State.

CORAM : A.V.NIRGUDE, J.

DATED : 01.03.2016

P.C. :-

1. Heard. Rule, made returnable forthwith and heard finally with the consent of learned Counsel appearing for the parties.

2. The petitioner was complainant in the Lower Court. He had filed a criminal case against the respondent alleging commission of offence punishable under section 138 of the Negotiable Instruments Act. However, he complaint was filed rather belatedly. Section 142 of the Negotiable Instruments Act, provides part of the procedure, which reads as under :-

"Section 142 in The Negotiable Instruments Act, 1881

142 Cognizance of offences. -Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

3. Proviso to clause (b) mentions that cognizance of such complaint would not be taken by a Court if such complaint is not made within one month from the date on which the cause of action arose. The petitioner's complaint got delayed by three days and therefore the petitioner was under obligation to satisfy the learned Magistrate that for sufficient cause, he could not reach the Court in time. In this case, the application for delay was entertained as Criminal Misc. Application. Evidence was led. The learned Magistrate held that the petitioner could not satisfactorily explain the delay in filing of the complaint. This order was challenged by filing Criminal Revision Application, which was not

registered immediately. The Superintendent of the Sessions Court thought that the revision was not maintainable. He, therefore, referred the case to the learned Additional Sessions Judge. The learned Additional Sessions Judge, thereafter asked the learned Counsel for the petitioner to satisfy him on the point of maintainability of the Criminal Revision Application. Upon hearing, learned Additional Sessions Judge, passed following order :-

"Heard. Order being interlocutory, revision is not maintainable. Hence, rejected.

Sd/-

23/10/13"

4. Learned Counsel for the petitioner asserted that the order is incorrect. He asserted that the impugned order was not interlocutory, but was final, because it finally disposed of the criminal case.

5. The impugned order passed by the learned Additional Sessions Judge is not only incorrect, but is also not proper. When the learned Judge heard the learned Counsel on maintainability etc. he ought to have given reasoned judgment. He ought to have decided as to why he held that the impugned order was 'interlocutory' one. As mentioned above, there is strong line of argument in favour of the petitioner/complainant that the impugned

order refusing to condone the delay was final order as it concluded criminal case finally. The manner in which order is passed is strongly deprecated.

6. The learned Additional Sessions Judge while writing the order even did not know that he was acting as Additional Sessions Judge and not Additional District Judge.

7. The impugned order is set aside. The revision is held maintainable. The case is remanded back to the learned Additional Sessions Judge, who shall decide all questions involved with reasoned judgment. The writ petition is allowed. Rule made absolute.

[A.V.NIRGUDE, J.]