

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1173 OF 2009

Vilas S/o Kundanmal Lodha,
Age. 60 years, Occ. Business,
R/o. C-104, Isha Emerald, Bibvewadi,
Kondhava Road, Pune-37.

...Petitioner

versus

1. Popatlal S/o Hiralal Bamb,
Age. 70 years, Occ. Business,
R/o. Bank Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

2. The State of Maharashtra.

...Respondents

...

WITH
CRIMINAL WRIT PETITION NO. 1174 OF 2009

Vilas S/o Kundanmal Lodha,
Age. 60 years, Occ. Business,
R/o. C-104, Isha Emerald, Bibvewadi,
Kondhava Road, Pune-37.

...Petitioner

versus

1. Sunil S/o Popatlal Bamb,
Age. 43 years, Occ. Business,
R/o. Bank Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

2. The State of Maharashtra.

...Respondents

...

Advocate for Petitioner : Mr. Garud N.C.
APP for Respondent No.2: Mr. S P Tiwari
Advocate for Respondents : Mrs. Rashmi S Kulkarni h/f S.S Kulkarni
(in both writ petitions)

.....

CORAM : V. K. JADHAV, J.
DATED : 9th DECEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and order dated 1.12.2009 passed by the learned Additional Sessions Judge, Ahmednagar in criminal Revision No. 219 of 2008 and 220 of 2008, the original accused has approached this court by filing present criminal writ petitions.

2. Brief facts, giving rise to the present writ petitions, are as follows:-

a. Present respondent No.1 had filed two complaints bearing S.T.C. No. 98 of 2003 (old) and 2598 of 2008 (new) and 100 of 2003 (Old) and 2599 of 2008 (new) before the Judicial Magistrate, First Class, Kopergaon against the present petitioner-accused for having committed an offence punishable under Section 138 of Negotiable Instruments Act, on account of dishonour of cheques. The parties are same and on account of dishonour of two cheques, two separate complaints, as aforesaid, came to be filed before the J.M.F.C. Kopergaon. In both the cases, the petitioner original accused has filed application Exh. 63 and 60 respectively, thereby challenging the

territorial jurisdiction of the Magistrate, Kopargaon to try and entertain the complaints. However, the learned Magistrate has rejected both the applications and the petitioner accused has therefore, filed two separate criminal applications bearing No. 4360 of 2007 and 4349 of 2007 in this court. By order dated 30.4.2008, this court has quashed and set aside the order passed by the Magistrate and further directed to return the complaints to the complainant for presenting the same to the appropriate court, having territorial jurisdiction.

b) Accordingly, the respondent complainant presented two separate complaints before the J.M.F.C. Ahmednagar. The learned Magistrate, Ahmednagar, in both the cases, instead of issuing process, directly issued summons to the petitioner accused. Being aggrieved by the same, the petitioner original accused preferred two separate criminal revision applications, as aforesaid, and learned Additional Sessions Judge, Ahmednagar by two separate judgment and orders dated 1.12.2009, in aforesaid criminal revision applications, allowed the revision applications and quashed and set aside the order passed by the learned Magistrate, Ahmednagar and further directed the learned Magistrate, Ahmednagar to consider the point of limitation if raised by either of the parties before it or *suo-moto* and thereafter, if necessary, proceed further in accordance with Sections 200 to 204 of Cr.P.C. in accordance with law.

3. Learned counsel for the petitioner submits that the respondent complainant has presented the complaints as per the order passed by this Court. However, at that time, the complains in question were barred by limitation and the learned Magistrate should not have taken cognizance of the same without condoning the delay. The respondent complainant has not filed any application for condonation of delay. Even though the complaints were presented before the Magistrate at Ahmednagar, the learned Magistrate without complying with the provisions of section 200 of Cr.P.C., erroneously observed that it is not necessary to issue process against the accused, as the case has been transferred and accordingly issued summons to the petitioner accused for his appearance. Though, the learned Additional Sessions Judge, Ahmednagar by its impugned order quashed and set aside the order passed by the Magistrate, Ahmednagar, however, erroneously further directed the Magistrate, to consider the point of limitation if raised by either of the parties before it or suo-moto for compliance with the provisions of Section 200 to 204 of Cr.P.C., if found necessary. Entire approach of the learned Additional Sessions Judge is improper, incorrect and illegal. The provisions of Limitation Act cannot be made applicable to the complaint under Section 138 of Negotiable Instruments Act and in absence of any application for condonation of delay, as provided

under Section 142 of Negotiable Instruments Act, there is no question of condonation of delay.

4. Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the judgments in the following cases:-

- i) Times Business Solution Limited vs. Databyte, reported in AIR 2015 SC 1138,
- ii) Vijay Dhanuka etc. vs. Najima Mamta Etc. reported in 2014 AIR SCW 2095,
- iii) Subodh S. Salaskar vs. Jayprakash M. Shah and Anr, reported in AIR 2008 SC 3086
- iv) K.S. Joseph vs. Philips Carbon Black Ltd. and Anr. reported in AIR 2016 SC 2149
- v) Raj Kumar Singhania vs. Ashok Jain, reported in 2012 Cri.L.J. 2254

5. Learned counsel for the respondent-original complainant submits that the learned Additional Sessions Judge, by its impugned order, kept the point of limitation open by observing that the time spent for litigation *bonafide* in another Court is required to be excluded from computing the period of limitation as per Section 14 of the Limitation Act and therefore, time spent in Kopergaon Court must be excluded and upon such exclusion, the complaint is within the

period of limitation. Even by referring to the provisions of Section 14 of the Limitation Act, and even observing that the complaint is within the period of limitation, after excluding the period spent in Kopargaon Court, the Additional Sessions Judge has unnecessarily kept the point of limitation open. After return of the complaints by the Kopargaon Court, as directed by this Court in the aforesaid criminal applications, the respondent-complainant has presented two separate complaints before the Magistrate, Ahmednagar, within three days from the date of return of the complaints by the Kopargaon Court. Learned counsel submits that if there is non compliance of the provisions of Sections 200 to 204 of Cr.P.C., as observed by the learned Additional Sessions Judge, Ahmednagar, the learned Additional Sessions Judge has rightly directed the Magistrate, Ahmednagar to proceed further in accordance with the provisions of Sections 200 to 204 of Cr.P.C. Learned counsel submits that no interference is required. There is no substance in both the petitions and the writ petitions are required to be dismissed.

6. On careful perusal of the impugned judgment and order, it appears that the petitioner-accused has challenged the order passed by the Magistrate, Ahmednagar on two grounds, firstly, that the Magistrate, Ahmednagar should not have taken the cognizance of the case without condoning the delay and since the respondent-

complainant had not filed application for condonation of delay, the complaint ought to have been dismissed and secondly, without complying with the provisions of Section 200 of Cr.P.C. the Magistrate, without issuing any process, issued summons of appearance to the petitioner accused.

7. It is a part of record that, as per the order passed by this Court in above mentioned criminal applications, the learned Magistrate at Kopergaon returned the complaints to the respondent/complainant for presenting the same before the court having territorial jurisdiction to try and entertain the said complaints. Accordingly, within three days of the return of complaints, the respondent-complainant has presented two separate complaints before the learned Magistrate, Ahmednagar. The learned Additional Sessions Judge, in its impugned judgment and order, has referred to the provisions of Section 14 of the Limitation Act and observed that the time spent in Kopergaon Court must be excluded and upon such exclusion, the complaints are within a period of limitation. However, learned Additional Sessions Judge has kept that point open and, further directed the trial court to consider that point, if raised by either of the parties before it or *suo-moto*. So far as the order of issuance of summons directly to the petitioner-accused is concerned, the learned Additional Sessions Judge has rightly quashed and set aside

the order passed by the Magistrate, Ahmednagar to that extent. The learned Magistrate without complying with the provisions of Section 200 of Cr.P.C. has passed the order with observation that since the complaints have been transferred to his Court, the order passed earlier in the complaints would remain as it is and that no order of issuance of process is required to be passed. This approach of the Magistrate is completely illegal and the Additional Sessions Judge has therefore, rightly interfered in the said order.

8. The cases cited and relied upon by learned counsel for the petitioner are not relevant for the issue involved in the present writ petitions. I do not find any fault in the order passed by the learned Additional Sessions Judge in the aforesaid two criminal revision applications. No interference is required. There is no substance in the writ petitions. Both criminal writ petitions are hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

rlj/