

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 119 OF 2016

MR. CONROY D'MELLO.	... Petitioner
Versus	
MR. HERBERT RODRIGUES AND ANR.	... Respondents

Adv. Chirag Ramniklal Shah for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 10th October, 2016

P.C.:

The petitioner is the original accused in a complaint filed under section 138 of the Negotiable Instruments Act. The challenge in this petition is to the order dated 11/4/2013 passed by the learned Magistrate whereby the delay of six days in filing the complaint has been condoned.

2. The order passed by the learned Magistrate has been confirmed by the learned Sessions Judge.

3. It is contended on behalf of the petitioner that the application for condonation of delay was not filed along with the complaint but only after about one year of the petitioner raising an objection and seeking dismissal of the complaint on the ground of limitation. It is also submitted that the affidavit of the concerned advocate on whose part the delay has occurred has not been filed. Secondly, it is contended

that a complaint filed by the Power of Attorney is not maintainable under section 142 (b) of the Negotiable Instruments Act and this aspect has not been considered by the learned Magistrate and the learned Sessions Judge.

4. I have carefully considered the rival circumstances and the submissions made. It is true that normally a party is expected to file an application for condonation, along with the complaint, however, only because the application is filed subsequent to the objection being raised would not be sufficient to refuse condonation of delay of mere six days in filing the complaint. It is now well settled that in a matter of condonation of delay particularly of small duration, the Court has to take a liberal view (see *ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY & OTHERS* (2013) 12 SCC 649). Thus I am not inclined to interfere with the order passed by the magistrate as confirmed by the learned Sessions Judge.

5. In so far as the ground based on section 142 (b) of the N.I. Act is concerned, the learned counsel does not dispute that it is not in all cases that the Power of Attorney cannot file a complaint. The contention is that the Power of Attorney should have done something in respect of the transaction and should have the knowledge of the transaction or a part of the transaction so as to file the complaint. This question to my mind cannot be gone into or decided at this

stage. Thus keeping this issue open, to be gone into at the trial, the writ petition is dismissed.

C. V. BHADANG, J.

ap/-