

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

904 CRIMINAL APPLICATION NO. 3269 OF 2016
WITH
CRIMINAL APPLICATION NO. 3270 OF 2016

DHARMARAJ S/O VILAS GHEWARE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Advocate for Applicant : Wakure Sanjay A.
APP for Respondent/State : G.O. Wattamwar
Advocate for Respondent 2 : A.V. Patil
...

CORAM : T.V. NALAWADE, J.
DATED : 3rd February, 2017.

ORDER :

1. The same point is involved in both the matters. Both the matters involve the same petitioner though different respondents are involved and so, both the proceedings are being decided together. Both the sides are heard.

2. The two proceedings are filed to challenge the decisions of two revisions filed by original complainant to challenge the orders of Magistrate made on delay condonation applications in private complaints filed under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act' for short). Applications filed for delay condonation were dismissed by the Judicial Magistrate, First Class by observing

that no sufficient cause was shown. The Sessions Court has observed that there was sufficient cause as acknowledgment receipt was not returned by the post office to the complainant and there was nothing with the complainant to presume that the period of limitation had started to run.

3. In the private complaints filed under section 138 of the Act against the present applicant, it is contended by the complainant that the statutory notice was sent to the present applicant on 8.1.2013, but no acknowledgment receipt in respect of service of notice on the present applicant was returned by post office to the complainant. It is contended that complainant then made correspondence with the post office and first time, it was informed to the complainant by the post office on 18.4.2013 that statutory notice was served on accused, present applicant on 10.1.2013. The complaints came to be filed on 26.4.2013. It appears that initially the Magistrate had dismissed the complainants by observing that they were not filed within limitation. In the revisions, the orders of the Magistrate were set aside and they were remanded back for deciding the point of limitation after filing application for condonation of delay by the complainant.

4. The submissions made and the record show that the complainant first time made correspondence through advocate with post office on 4.4.2013. Post office gave reply on 18.4.2013 and informed that the notice was served on accused on 10.1.2013. Private complaints came to be filed on 26.4.2013 within eight days from the date of intimation given by the post office.

5. It is true that in the provision of section 142 (1) (b) of the Act, it is mentioned that complaint needs to be filed within 30 days from the date on which cause of action arises under clause (c) of section 138. The provisions of sections 138 and 142 need to be read together. The provision of section 138 (c) shows that the period of 15 days needs to be given to the accused in statutory notice and this period starts to run from the date of receipt of statutory notice. Section 142 shows that after expiry of the period of 15 days as mentioned in section 138, the complaint needs to be filed within 30 days. The proviso to section 142(1)(b) provides that if sufficient cause is shown, the Magistrate can condone the delay caused in filing the complaint. The proviso of section 142 (1) (b) runs as under :-

"142. Cognizance of offences.- (1)

Notwithstanding anything contained in the Code of

Criminal Procedure, 1972 (2 of 1974)-

(a)

(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;"

If these provisions are read together, it can be said that only after getting knowledge about the receipt of notice by accused, the complainant can come to know as to when or whether the cause of action has taken place for filing the complaint. When the notice is sent through post, the things are not within the control of complainant and he has right to wait for the delivery of acknowledgment receipt by post in respect of statutory notice sent by him. The learned counsel for accused submitted that the post office has now started to give online information and so, the complainant ought to have collected the information on website of the post office and as that was not done, it cannot be accepted that he had no knowledge that accused had received notice on 10.1.2013. This submission is not acceptable. There is no provision of law making it necessary for the complainant to

go through the information made available by post office on website, if at all, it is there.

6. Condonation of delay is within the discretion of the Magistrate. Nothing could have been achieved by the complainant by not filing complaint in time. He filed the complaint within eight days from the date of receipt of information from the post office. Thus, even if it is presumed that the complaint was not filed within 30 days from the date of expiry of period of 15 days given to the accused under section 138 of the Act, the fact remains that the delay of around 2 months was caused due to aforesaid circumstances. There is the record and the law is amended in view of the aforesaid probabilities and power is given to the Magistrate to condone the delay. In view of the possibility mentioned, the Court is expected to use this provision liberally. This Court holds that the Sessions Court has not committed any error in holding that there was sufficient cause for condonation of delay.

7. The learned counsel for present applicant placed reliance on the observations made by the Apex Court in the two cases reported as **AIR 1999 SUPREME COURT 1609 [M/s. SIL Import, USA Vs. M/s. Exim Aides Silk Exporters,**

Bangalore] and **2010 (4) Mh.L.J. 142 [Tameeshwar Vaishnav Vs. Ramvishal Gupta]**. The facts of both the cases were altogether different. In the first matter, the notice was sent on fax and so, there was reason to believe that complainant immediately came to know that fax message was reached to the accused. In the second matter, the complainant was claiming the benefit of other circumstance and he had sent second notice of demand when the first notice was already received by the accused. Thus, the cause of action had already arisen, but complaint was not filed within time and so, the complaint filed on the basis of second statutory notice could not have been entertained as it was not in time from the date of cause of action. In view of these circumstances, this Court holds that the Sessions Court has not committed any error in allowing the revisions. There is no possibility of interference in the decisions given by the Sessions Court. In the result, both the applications stand dismissed.

[T.V. NALAWADE, J.]

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