

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 7 OF 2017**

Shri Gautam N. Pednekar,
Son of late Shri Naguesh T. Pednekar,
Aged 36 years, practicing advocate,
unmarried, Indian National,
Resident of House No.107/A,
Xelpem, Duler,
Mapusa, Bardez, Goa.

..... Petitioner

Versus

The State of Goa,
Through Police Inspector,
Mapusa Police Station,
Mapusa, Goa.

..... Respondent

Mr. R. Menezes, Advocate for the Petitioner.

Mr. M. Amonkar, Additional Public Prosecutor for the Respondent/State.

Coram:- C. V. BHADANG, J.

Date:- 3rd July, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. Shri M. Amonkar, the learned Additional Public Prosecutor for the respondent waives service. Heard finally be consent of parties.

2. The petitioner is challenging the order dated 18/8/2016 passed by the learned Judicial Magistrate First Class at Mapusa in Criminal Misc. Appln. No.266/Cond/2016/F by which, the learned Magistrate has "condoned the

delay" in filing the charge sheet against the petitioner.

3. The brief facts are that on the basis of a complaint dated 13/6/2016 lodged by one Felix Fernandes, Head Constable B. No.4193 of C.I.D, Security, Panaji, an offence under sections 504 and 354 of I.P.C. came to be registered against the petitioner with Police Station Mapusa.

4. It appears that the offence was registered by P.S.I Vishwajeet Chodankar who had subsequently carried out the investigation. PSI Vishwajeet Chodankar was transferred to Margao Police Station and subsequently the investigation was handed over to Shri Prashant Bhagat, PSI at Mapusa Police Station who completed the investigation. However, he could not file the chargesheet within time for the reasons stated in the application for condonation of delay filed by the respondent before the learned Magistrate. PSI Prashant Bhagat therefore sought "condonation of delay", in filing the chargesheet. It appears that the notice of the application was served on the petitioner on 2/8/2016. However, according to the petitioner, the notice was not accompanied with the application for condonation of delay and as such, the petitioner was not aware as to what reply he has to file. The petitioner brought this to the notice of the learned magistrate on 3/8/2016. The learned magistrate by an order of the even date

directed issuance of the certified copy of the application (Exhibit 1). The record discloses that the petitioner was called on 20/8/2016 to collect the certified copy. However, in the meantime the learned magistrate allowed the application on 18/8/2016 which records that the petitioner was absent, though served. It is contended that the petitioner was present before the learned magistrate on 18/6/2016 and could have sought time, as he was not in receipt of the certified copy of the application for which he was called on 20/8/2016. It is contended that the impugned order was passed by the learned magistrate in chamber. In these circumstances, the petitioner is challenging the order dated 18/8/2016 and also the subsequent order taking cognizance of the offence punishable under sections 353 and 506 of I.P.C.

5. I have heard Shri Menezes the learned counsel for the petitioner and Mr. Amonkar, the learned Additional Public Prosecutor for the respondent.

6. The learned counsel for the petitioner states that the petitioner has now received the certified copy of the application and will file reply on the date as may be fixed and shall not seek any further time.

7. Shri Amonkar, the learned Addl. Public Prosecutor in all fairness

does not dispute that as on 18/8/2016 a copy of the application which was styled as an application for condonation of delay was not furnished to the petitioner. He, therefore, submits that this court may pass appropriate orders in the matter.

8. Having considered the circumstances and the submissions made and further having regard to the fact that the petitioner was not furnished with a copy of the application filed by the respondent, when the impugned order was passed, I find that the matter can be remitted back to the learned magistrate for passing appropriate order after hearing the parties in accordance with law. In the circumstances I do not propose to examine whether the order was passed in chamber as claimed by the petitioner. Before parting with the final order it is necessary to mention that while section 368(2) of Cr.P.C prescribes the period of limitation for taking cognizance in respect of the various offences as set out therein, section 473 of Cr.P.C speaks about 'extension of period of limitation' in certain cases. Thus the question which the magistrate needs to consider is whether there is case for extension for period of limitation made out in the present case.

9. In the result the following order is passed:

(i) The petition is partly allowed.

- (ii) The impugned orders dated 18/8/2016 and 3/9/2016 are hereby set aside.
- (iii) The application which is styled as an application for condonation of delay filed by the respondent is remitted back to the learned magistrate for deciding it afresh in accordance with law.
- (iv) The petitioner shall file reply to the application on or before 24/7/2017.
The learned magistrate shall thereafter decide the application on hearing the parties and in accordance with law.
- (v) The rival contentions of the parties are left open.
- (vi) Rule is made partly absolute in the aforesaid terms.

C. V. BHADANG, J.

ap/-