

Sarnobat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 2119 OF 2012
WITH
CRIMINAL APPLICATION NO. 105 OF 2016
IN
CRIMINAL WRIT PETITION NO. 2119 OF 2012**

Shashikant L. Nayak. .. Petitioner.
Vs.
Sanjeev Kumar Gaur & Ors. .. Respondents.

**WITH
CRIMINAL WRIT PETITION NO. 2120 OF 2012
WITH
CRIMINAL APPLICATION NO. 106 OF 2016
IN
CRIMINAL WRIT PETITION NO. 2120 OF 2012**

L. Vishwanathan . .. Petitioner.
Vs.
Sanjeev Kumar Gaur & Ors. .. Respondents.

**WITH
CRIMINAL WRIT PETITION NO. 2121 OF 2012
WITH
CRIMINAL APPLICATION NO. 107 OF 2016
IN
CRIMINAL WRIT PETITION NO. 2121 OF 2012**

Manoj M. Borkar. .. Petitioner.
Vs.
Sanjeev Kumar Gaur & Ors. .. Respondents.

Mr. Girish Kulkarni I/b M.G. Shukla, Advocate for the Petitioner in
all.

Mrs. N. S. Jain, APP for the State in all.

Mr. D. A. Nalawade with Mr. Milind Sawant, Advocate for the Respondent Nos. 1, 3 in all.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 11th OCTOBER, 2017.

P. C. :

1. The petitioners have challenged the impugned order dated 28th February, 2012 whereby the learned Sessions Judge, Greater Bombay has dismissed the Misc. Application No. 2178 of 2011, seeking to condone the delay in filing the Criminal Revision Applications challenging the order dated 6th August, 2010 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court Ballard Pier, Mumbai, in CC No. 39/SW/2010.

2. Heard the learned counsel for the petitioners and the counsel for the respondents. Perused the records. The records reveal that pursuant to the complaint lodged by the respondent No. 1 herein, the learned Addl. Chief Metropolitan Magistrate by order dated 6th August, 2010 issued process against the petitioners herein for the offence under sections 406, 408 r.w. 120-B and 405 of I.P.C.

3. It appears that the petitioners had earlier challenged the order dated 6th August, 2010 before this court in Criminal Application Nos. 439/11, 295/11 and 313/11. By order dated 13th October, 2011 the said applications were ordered to be withdrawn with liberty to adopt appropriate proceedings. Pursuant to the said order the petitioners filed Criminal Revision Applications along with applications for condonation of delay before the learned Sessions Judge. The learned Sessions Judge has dismissed the applications for condonation of delay on the ground that the petitioners had not made out sufficient cause for condoning the delay between 7th November, 2010 to 29th March, 2011.

4. It is to be noted that the petitioners herein had challenged the order passed before this Court by filing application under Section 482 of Cr.P.C. which is not conditioned by the law of limitation. The said petitions were directed to be withdrawn in view of availability of efficacious and alternate remedy. It is thus evident that the delay in filing the revision application was not intentional or due to negligence of the petitioner. The petitioner has made out sufficient cause for condoning the delay.

5. Even otherwise, considering the facts of the case, the learned Sessions Judge could not have taken a hyper technical approach and dismissed the application for condonation of delay.

6. In the light of the above facts and circumstances the petition is allowed. Hence, the following order :-

- (i) The Petition is allowed.
- (ii) The impugned order dated 28th February, 2012 is set aside. The delay is condoned.
- (iii) The Revision Applications filed by the Petitioners herein before Addl. Sessions Judge, Greater Bombay, C.R. No. 23 are ordered to be restored.
- (iv) The learned Additional Sessions Judge, Greater Bombay, Court Room No.23 shall dispose of the Revision Applications as expeditiously as possible, in any event, within a period of Three months from the date of receipt of copy of this order.
- (v) Both the parties are directed to appear before Sessions Court on 30th October, 2017 at 11.00 am.

[ANUJA PRABHUDESSAI, J.]