

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.462 OF 2016
AND
CRIMINAL APPLICATION NO.463 OF 2016
IN
CRIMINAL REVISION APPLICATION (STAMP) NO.469 OF 2016

ABDUL MAAZ ABDUL MAJID CHAUDHARY)
AND ORS.)...APPLICANTS

V/s.

ISSAR CHAUDHARY ALIAS BABLU & ANR.)...RESPONDENTS

Mr.Jayesh Bhatt, Advocate for the Applicants.

Mr.Syed Asif Naqvi, Advocate for Respondent No.1.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2017.

P.C. :

1 These are applications for condonation of delay in filing revision petition as well as for permission to file and prosecute revision petition on behalf of the deceased complainant.

2 Heard the learned advocate appearing for applicants. He argued that applicants are legal heirs of deceased complainant who was proprietor of M/s.Haji Shahadat & Sons – a proprietary firm. It is argued that as the complainant was ill and consequently died, there is delay in filing the revision petition. He further argued that his right to sue survives, applicants being legal heirs of deceased complainant are entitled to challenge the appellate order by filing revision petition.

3 The learned advocate appearing for non-applicant / accused argued that deceased complainant was merely a Power of Attorney holder of M/s. Haji Shahadat & Sons and since he has died, the Power of Attorney granted to him terminates. Therefore, in submission of the learned advocate appearing for the non-applicant, now legal heirs of deceased Power of Attorney holder cannot prosecute the remedy before this court. He further argued that the delay is inordinate.

4 I have carefully considered the rival submissions and perused the record made available. The complaint under Section 138 of the Negotiable Instruments Act filed by deceased complainant, from first paragraph itself contains a pleading that complainant Chaudhary Abdul Majid Shahadat is proprietor of Haji Shahadat & Sons. At this stage, it indicates that the complaint was filed by proprietor of a proprietary firm and therefore, I do not find any substance in the contention that on death of the original complainant, Power of Attorney granted to him terminates. Similarly, it is seen that the complaint was for the offence punishable under Section 138 of the Negotiable Instruments Act. Thus, the right to sue survives. The fact that the original complainant died after disposal of appeal filed by the accused itself goes to show that applicants were prevented by sufficient cause in filing the revision petition within time. Applicants in the application for condonation of delay are on affidavit.

In this view of the matter, both applications are allowed.

(A. M. BADAR, J.)