

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4562 OF 2016

MAHADEO DATTATRAY MATALE)...PETITIONER

V/s.

NAMDEO KEDU AHER AND ANR.)...RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO.4563 OF 2016

MAHADEO DATTATRAY MATALE)...PETITIONER

V/s.

SOU.SUJATA BABURAO SONAWANE & ANR.)...RESPONDENTS

Mr.Sachin Gite, Advocate for the Petitioner.

Mr.Satyajeet P. Dighe, Advocate for Respondent No.1.

Ms.PN.Dabholkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 28th SEPTEMBER 2017

P.C. :

1 The petitioner / original accused, by these petitions is challenging the judgment and order dated 25th October 2016 passed by the learned Sessions Judge, Nashik, in Criminal Revision

Petition No.248 of 2016 filed by the petitioner, thereby partly allowing his revision petition and remanding the criminal complaint for recording verification of the complainant afresh. The petitioner is an accused whereas respondent no.1 is the complainant in Summary Criminal Case No.2708 of 2015.

2 Heard the learned advocate appearing for the petitioner / accused. He argued that the revision petition filed by the petitioner / accused challenging the order of condonation of delay in filing the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act was pending at the time time of disposal of Revision Petition No.248 of 2016. As the order condoning delay was under challenge, the learned Sessions Judge ought not to have heard Revision Petition No.248 of 2016. However, the same was heard and decided in absence of the learned advocate for the petitioner / accused. It is further argued that as the order issuing process was passed without recording fresh verification statement, the revisional court ought not to have permitted curing the lacuna.

3 I have also heard the learned advocate appearing for respondent no.1. The learned APP appears for respondent no.2.

4 I have carefully considered submissions so advanced and also perused the impugned judgment and order.

5 The complainant averred that he agreed to purchase one flat from the accused and accordingly paid consideration of Rs.27.50 Lakh. The accused did not execute conveyance and issued two cheques, one for Rs.10 Lakh and another for Rs.15 Lakh, towards refund of consideration. Those were not honoured by the banker of the accused, and therefore, the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act.

6 When the complaint was filed, it was barred by limitation, and therefore, an application for condonation of delay of two days came to be moved. The verification affidavit was also filed. Then, after hearing the application for condonation of delay,

the delay in lodging the complaint came to be condoned. Thereafter, the learned Magistrate by an order dated 4th April 2016 impugned in Revision Petition bearing No.248 of 2016 was pleased to issue process for the offence punishable under Section 138 of the Negotiable Instruments Act against the accused i.e. the petitioner before this court. This order was impugned in the revision petition at the instance of the accused.

7 The revision petition filed by the accused i.e. the present petitioner was decided on the basis of the record in absence of the learned advocate for the revision petitioner. No infirmity can be found in disposal of the revision petition in absence of the learned advocate for the revision petitioner as the revisional court is empowered even to exercise revisional powers suo motu and the subject matter is required to be decided on the basis of record.

8 The learned revisional court found that there is technical error as the verification was prior to condonation of

delay, and therefore, by the impugned order, the matter was remanded for examination of the complainant and for further deciding the question of issuance of process in the matter. Technical error crept in the proceedings cannot be considered as lacuna. Lacuna in the prosecution case is patent legal infirmity.

9 Pendency of revision petition challenging the order condoning the delay cannot ipso facto amount to stay of the proceedings in the complaint and consequent revision.

10 The writ petitions, as such, are devoid of merits, and the same are dismissed.

(A. M. BADAR, J.)