

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 224 OF 2017

1. Smt.Pushpa Ashok Singh Thakur,
Director-AGT Infrastructure Private Limited,
R/o Shop No.16,Haveli Shopping Complex,
Opposite Zilla Parishad,Main Road,
Chandrapur-442 401. **.....PETITIONER**

...V E R S U S...

1. Kishan Karamchand Lalwani,
Aged about 49 years,Occ-business,
r/o 91, HB Estate, Sonegaon,
Nagpur-400 025.
2. AGT Infrastructure Private Limited,
through its Managing Director,
Ashoksingh Gulabsingh Thakur.
3. Ashoksingh Gulabsingh Thakur,
The authorised signatory of
AGT Infrastructure Private Limited,
R/o Shop No.16,Haveli Shopping Complex,
Opposite Zilla Parishad, Main Road,
Chandrapur-442 401 **...RESPONDENTS**

Shri R.M.Bhangde,Advocate for petitioner.
None for the respondents.

CORAM:- V. M. DESHPANDE, J.
DATED :- JULY-3 ,2017

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard Shri
R.M.Bhangde,learned counsel for the petitioner. None appeared

for the respondents though duly served.

2. This Court on 25/4/2017 issued notices to the respondents for final disposal and notices were made returnable on 6/6/2017. On 6/6/2017 Miss Gupta, learned advocate appeared on behalf of respondent no.1 and a statement was made on her behalf that she will be filing vakalatnama on behalf of respondent no.1 Kishan Karamchand Lalwani. Her statement was accepted. The Court observed in view of her statement that service of the respondent no.1 is complete and thereafter matter was kept after service of the respondent nos. 2 and 3. The office note dated 16/6/2017 shows that the respondent nos. 2 and 3 were also served who are co-accused.

3. Today, in the morning when the matter was called nobody appeared for any of the respondents nor Miss Gupta, learned advocate appeared therefore, the matter was kept in second half. In second half nobody has appeared for the respondents nor there is any request on their part for the adjournment therefore, in view of the order dated 25/4/2017 the matter is decided finally.

4. By the present writ petition, the petitioner is challenging the order passed by learned Assistant Sessions Judge, Nagpur dated 8/2/2017 below Exh.1 in Misc.Cri. Application No.1188/2014 by which learned Judge rejected the application for condonation of delay filed on behalf of the petitioner. Learned counsel for petitioner pointed out that respondent no.1 is the original complainant. Present petitioner is one of the directors of respondent no.2 and respondent no.3 is authorised signatory of the respondent no.2.

5. A complaint to prosecute the petitioner and respondent nos. 2 and 3 for the offence punishable under Section 138 of N.I.Act was filed on behalf of respondent no.1 in the Court of learned J.M.F.C.Nagpur. The said case was registered as Criminal Complaint Case No.3255/2011. Learned Judge vide order dated 10/8/2011 issued process against the present petitioner and co-accused for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act.

6. learned counsel for petitioner thereafter invited my attention to the judgment and order passed by this Court on

20/2/2014. Perusal of the judgment dated 20/2/2014 in Criminal Application (APL) No.287/2012 shows that present petitioner approached to this Court by invoking powers under Section 482 of the Code of Criminal Procedure for challenging the order dated 10/8/2011 passed by the learned Magistrate by which the process was issued against the petitioner. The said petition was filed on 20/4/2012. The petition was decided on 28/2/2014. The judgment of this Court in Criminal Application (APL)No.287/2012 shows that this Court has refused to exercise its inherent powers for quashing the process in view of availability of the alternate remedy of filing revision.

7. According to learned counsel for petitioner after dismissal of the earlier application a revision was preferred before the revisional Court since the revision was barred by limitation an application under Section 5 of the Limitation Act, was also filed. The said application was registered as Misc.Criminal Application No.1188/2014. In the said application it was pointed out by the present petitioner about the pendency of the proceeding before this Court, however vide the impugned order the application is rejected.

8. The record shows that after the order of issuance of process was passed by learned Magistrate on 10/8/2011 the said order was questioned by the petitioner before this Court on 24/2/2012 by invoking the inherent jurisdiction of this Court. The said proceeding was pending before this Court for about 2 years and on 20/2/2014 this Court refused to exercise powers under Section 482 of Code of Criminal Procedure in favour of the petitioner since it was the view of this Court that petitioner should first invoke the revisional jurisdiction to question the order of issuance of process.

9. Thus, for a period of 2 years the matter was pending before this Court.

10. The time for prosecuting the remedy in wrong Court has to be considered in view of Section 14 of the Limitation Act. The perusal of the impugned order shows that the revisional Court has not considered the said aspect in its true prospective. Normally, a litigation should not be shunted out on the technical ground. No doubt, there was a delay in preferring the revision before the Court below, however in my view the petitioner was able to point out the reason for delay. Therefore in my view,

injustice is caused to the petitioner for not permitting her to place her case before the revisional Court on merit . Hence, I pass the following order.

ORDER

- I) The writ petition is allowed.
- ii) The order passed by learned Assistant Sessions Judge, Nagpur dated 8/2/2017 in Misc.Cri.Application No.1188/2014 is hereby quashed and set aside.
- iii) Misc.Cri.Application No.1188/2014 is hereby allowed.
- iv) The revisional Court is directed to register the revision filed on behalf of the petitioner and shall decide the same as expeditiously as possible within a period of six months from the receipt of this order.
- v) learned counsel for petitioner submitted that the petitioner will appear before the learned revisional Court on 10/7/2017 and will abide with its further directions.
- vi) With this rule is made absolute in the above terms with no order as to costs.

JUDGE

