

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 214/2016

(ARADHYA INFRATECH PRIVATE LIMITED & OTHERS VERSUS M/S PATEL SAW MILL & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr. N.V. Fulzele, counsel for the petitioners.
 Mr. C.N. Deshpande, counsel for the R-1.
 Mr. Shyam Bissa, A.P.P. for the R-3.

CORAM : REVATI MOHITE DERE, J.

DATE : DECEMBER 07, 2017.

Heard learned counsel for the parties.

This Court (Coram: R.K. Deshpande, J.),
vide order dated 03.10.2017 had passed the following
 order:-

“On 08.08.2013, complaint under
 Section 138 of the Negotiable Instruments Act was
 filed. The verification was done on 22.10.2013.
 Thereafter, on 11.03.2014, two applications were
 filed, one was for condonation of delay in filing the
 complaint and other was for grant of permission to
 file application for condonation of delay. Though
 the order of issuance of summons appears to have
 been passed on 24.06.2015, in fact the summons
 was issued prior to that, on 06.01.2015. Two
 certified copies of Exh.1, the complaint, are placed on
 record, one of which contain the order of issuance of
 summon on 24.06.2015, but the other does not.

In view of the aforesaid position, the learned Principal District and Sessions Judge at Chandrapur is directed to conduct an enquiry in the matter and submit the report before this Court within a period of four weeks from today. Before preparing the report, the learned Principal District and Sessions Judge shall hear both the counsels appearing for the parties.

The interim order passed by this Court shall continue to operate.”

Pursuant to the aforesaid order dated 03.10.2017, the learned Principal District and Sessions Judge, Chandrapur conducted a detailed enquiry and forwarded the enquiry report *vide* letter dated 13.11.2017. In the enquiry report, the learned Principal District and Sessions Judge, Chandrapur, *prima-facie* found substance in the grievance of the complainant to the extent of passing of a backdated order of issuance of process by the learned Magistrate.

Without going into the merits of the case, considering the enquiry report and with the consent of the parties, the impugned orders dated 24.06.2015 passed by the learned Judicial Magistrate First Class, 7th Court, Chandrapur below Exhibit 8 (by which delay was condoned) as well as the order below Exhibit 1 (by which process was issued) are quashed and set aside.

It is informed that the Magistrate who had passed the impugned order, has now been transferred. Hence, the learned Magistrate who is now seized of Summary Criminal Case No.1724/2013 shall decide the said complaint as well as the application for condonation of delay, afresh on its own merits in accordance with law. In view of the enquiry report, the Principal District and Sessions Judge, Chandrapur shall take appropriate steps/action as he may deem fit on the basis of his findings recorded in the enquiry report.

The petition is disposed on the aforesaid terms.

All parties to act on the authenticated copy of this order.

JUDGE

APTE