

nsc.

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

WRIT PETITION NO.125 OF 2017

Elektronik Lab	...Petitioner
Versus	
Captain S.C. Mathur and Ors.	...Respondents

Mr.M.Shukla a/w Ms.Smita Sawant i/b Dave & Co., for the Petitioner.

Mr.A.H.Mehta a/w Ms.Ashwini Pawar i/b Akshar Laws, for the Respondent Nos.1 and 2.

Mr.S.V.Walve, A.P.P for the Respondent No.4-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 31st JANUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 19th September, 2016, passed by the learned Additional Sessions Judge, Sessions Court, Greater Mumbai, by which the petitioner's application being M.A. No.206 of 2016 (for condonation of delay) filed in Revision Application, came to be dismissed.

3. Learned Counsel for the petitioner submitted that the petitioner aged 70 years is suffering from advanced parkinson's disease and that he has a disability of 50%. Learned counsel has tendered a medical certificate of the petitioner. The same is taken on record. He further submitted that since there are several litigations/cases pending in Mumbai and Gujarat, as a result of which, he could not give proper attention to the aforesaid case. He submitted that the delay in filing the Revision Application was neither intentional nor deliberate and as such the learned Sessions Judge ought to have condoned the delay and heard the Revision on merits. He submitted that in the interest of justice, 468 days delay in filing the Revision Application be condoned.

4. Learned Counsel for the Respondent Nos.1 and 2 vehemently opposed the petition. He submitted that no interference is warranted in the impugned order. He further submitted that the delay is of 560 days and not 468 days. He submitted that the petitioner has not shown any sufficient cause for condoning the delay in filing the Revision Application.

5. Perused the papers including the impugned order. Admittedly,

there are certain litigations pending in Gujarat and Mumbai, involving the petitioner. The petitioner (original complainant) filed a criminal complaint No.6 of 2007, before the learned Metropolitan Magistrate, as against the Respondent Nos.1 to 3, alleging offences punishable under Sections 403, 405, 406, 418, 419, 420 r/w 34, 120B of the Indian Penal Code. The learned Magistrate was pleased to issue process vide order dated 29th February, 2008. The respondent no.1 challenged the said order of issue process before this Court by filing Criminal Application No.2640 of 2009 and this Court vide order dated 17th February, 2010, was pleased to quash and set aside the order of issue process and remitted the matter back to the learned Metropolitan Magistrate for compliance of Section 202 Cr.PC. Thereafter, the learned Magistrate directed the police of the Byculla Police Station to conduct an enquiry in the matter and submit a report. The police submitted a report on 17th June, 2013. Being aggrieved and dis-satisfied with the police report, the petitioner filed a protest petition in the Court of the learned Magistrate on 28th April, 2014. The learned Magistrate was pleased vide order dated 9th July, 2014, to issue process only as against the respondent no.3 (Original accused no.1) for the alleged offences punishable under Sections 403, 406, 418, 420 of the Indian Penal Code and was

pleased to dismiss the complaint as against the respondent nos.1 and 2 (original accused nos.2 and 3). Being aggrieved and dis-satisfied with the said order dated 9th July, 2014, dismissing the complaint as against the respondent nos.1 and 2, the petitioner herein, filed a Revision Application in the Sessions Court. Since there was some delay in filing the Revision Application, the petitioner also filed an application being M.A. No.206 of 2016 and sought condonation of delay of 468 days. The learned Judge refused to condoned the delay and as such was pleased to reject the said application. Hence, this petition.

6. The petitioner (original complainant) appears to be suffering from Parkinson's disease and has a disability of about 50%. It also appears that there are litigations pending in Gujarat and Mumbai with which the petitioner is concerned.

7. Considering the aforesaid, only by way of indulgence, and in the interest of justice, without going into the merits of the case, it would be appropriate to quash and set aside the order dated 19th September, 2016, passed by the learned Additional Sessions Judge, Sessions Court, Greater

Mumbai, below M.A. No.206 of 2016. Accordingly, delay in filing the Revision Application is condoned, subject to the petitioner paying Rs.20,000/- to the Respondent No.1, within two weeks from today. Registry of the Sessions Court to number the Revision Application filed by the petitioner. The learned Judge shall decide the said Revision as expeditiously as possible and in any event within 3 months from the date of receipt of this order.

8. The Petition is allowed on the aforesaid terms and is accordingly disposed of. All contentions of all the parties are kept open. It is made clear, that this petition has not been considered on merits.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.