

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 737 OF 2017**

Bharat S. Shethia

....Petitioner.

Vs.

Smt. Mrudula N. Chauhan & Anr.

....Respondents.

Mr. Jehangir Khajotia for the Petitioner.

Ms. Sunita M. Poddar with Khan Farhana for Respondent No.1

Mr. Amit Palkar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 24th SEPTEMBER, 2018.

P.C.:-

By the present Petition, the Petitioner has impugned Order dated 21st December, 2016, rejecting his Miscellaneous Application No. 2448 of 2015 for condonation of delay of 821 days in filing the Revision Application and the Order dated 15th March, 2013 dropping the name of the Respondent No.1 from the case No. 1977/S/2003 instituted by the Petitioner.

2 Heard the learned counsel for the Petitioner, the learned counsel for Respondent No.1 and the learned APP. Perused the record.

3 The record indicates that, the Petitioner is the original

Complainant in Case No. 1977/S/2003 filed in the Court of Additional Chief Metropolitan Magistrate, 40th Court, Mumbai, Girgaon, Mumbai under Section 630 of the Companies Act, 1956.

In the said Complaint, the learned Additional Chief Metropolitan Magistrate, was pleased to take cognizance of the same and issued process therein. The Respondent No.1 filed an Application below Exhibit-8 for dropping him from the complaint under Section 258 of the Code of Criminal Procedure. The learned Magistrate, by the impugned Order dated 15th March, 2013, after taking into consideration the material available on record, was pleased to drop the Complaint against the Respondent No.1, mainly on the ground that, the Respondent No.1, on the date of passing of the impugned Order was not an unauthorized occupant of the complainant Company.

4 Feeling aggrieved by the dropping of the said Complaint, the Petitioner preferred Revision in the Court of Sessions at Mumbai. As there was delay of about 821 days in preferring the said Revision, the Petitioner preferred Miscellaneous Application No. 2488/2015 for condonation of delay. The said Application has been rejected by the impugned Order dated 21st December 2016.

5 The record indicates that, the Petitioner has not given sufficient and proper explanation for condonation of such a colossal and inordinate delay of 821 days.

It is the contention of the Petitioner that, the said company was being governed by two Directors and the present Petitioner was having dispute with the other Director over the issue of prosecuting the present litigation, which ultimately caused delay in filing of the said Revision. Another ground is raised that, the Petitioner was suffering from ailments, which precluded him from approaching the Revisional Court within the period of limitation or with reasonable delay. A Perusal of the condonation of delay Application filed by the Petitioner bearing Miscellaneous Application No.2488 of 2015, discloses that, no sufficient cause for condonation of the said inordinate delay of 821 days has been made out by the Petitioner.

6 In view thereof, I find that the Revisional Court has not committed any error while passing the impugned Order dated 21st December 2016. As noted earlier, the learned Magistrate was pleased to drop the complaint, *inter-alia* dismissed the Complaint predominantly on the ground that, the offence which was charged against the Respondent No.1 did not subsist on the date of passing of

the said Order i.e. Respondent No.1, was not an unauthorized occupant of the complainant Company.

7 After taking into consideration the entire record, this court is of the considered view that, both the Courts below have not committed any error either in law or on facts while passing the Orders dated 15th March, 2013 and 21st December, 2016, respectively.

8 Petition being devoid of any merits, is accordingly rejected.

(A.S. GADKARI, J.)