

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 187 OF 2017.

Shri Sukhjit Pasricha,
Vice President, Hr,
Interglobe Aviation Ltd.(Indigo),
Major of Age, Indian National,
Having Office at Tower C, Level-1,
Global business Park,
M.G.Road, Gurgaon,
Haryana-India.

... Petitioner

Vs.

STATE, Represented by Labour
Enforcement Officer (Central),
Dr. Mukund Building, 3rd Floor,
F. L. Gomes Road,
Vasco-da-Gama, Goa.

... Respondents

Mr. Jitendra P. Supekar with Mr. Sufiyan Sayeed, Advocates for the
Petitioner.

Mr. Mahesh Amonkar, Addl. Public Prosecutor for the Respondent
-State.

**Coram : C. V. Bhadang &
Nutan D. Sardesai, JJ.**

Date : 07th October, 2019.

Oral Judgment: (Per C. V. Bhadang, J)

This petition in our opinion has to partly succeed on a short count. The issue is whether the provisions of Section 473 of Cr.P.C. would apply and whether the learned Magistrate has jurisdiction to condone the delay in filing a complaint under the Contract Labour (Regulation and Abolition) Act, 1970, (Act for short). The learned Magistrate by the impugned order dated 11.09.2017 has condoned the delay of three days.

2. We are conscious that a delay of three days would normally be condoned. However the question in this present petition is whether there is lack of such jurisdiction, to condone the delay.

3. The learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **P.P. Unnikrishnan & anr. Vs. Puttiyottil Alikutty & anr., (2000) 8 SCC 131** in order to submit that the provisions of Section 473 of Cr. P. C. would be

applicable when the period of limitation is prescribed in Chapter XXXVI of the Code. In other words, the contention is that Section 473 of Cr.P.C. would not apply to the prosecution under the provisions of the Contract Labour Act since there is different period of limitation provided under the virtue of Section 27 of the Said Act.

4. The learned Counsel for the petitioner has also placed reliance on the decision of the Karnataka High Court in the case of **Smt. P. R. Nagaveni Vs The State of Karnataka, Criminal Petition No. 3339/2016** decided on 29.07.2016 and the decision of the Himachal Pradesh High Court in **Rajesh Pandya & anr. Vs. State of H.P. in Cr. MMO No. 26/2014** decided on 28.04.2015. The learned Counsel for the petitioner submits that the decision of the Hon'ble Supreme Court in the case of **Unnikrishnan** (supra) was brought to the notice of the learned Magistrate. However, we find from the perusal of the impugned order that the learned Magistrate has not referred to the said judgment. The impugned order does not find any reference or discussion on the applicability of the provisions under Section 473 of Cr.P.C.

5. Mr. Mahesh Amonkar, the learned Standing Counsel submits that in that case, this Court may consider remanding the application

back to the Magistrate.

6. In the circumstances, we find it appropriate that the learned Magistrate reconsiders the application on its own merits and in accordance with law.

7. Accordingly, the petition is partly allowed. The impugned order is hereby set aside. The application for condonation of delay bearing Criminal Misc. Application (COD) No. 15/2016/D in Labour Case No.29/2017 is restored back to the file of the learned Magistrate for deciding it afresh, in accordance with law.

8. The rival contentions of the parties are left open.

NUTAN D. SARDESSAI, J.

C.V. BHADANG, J.

MF/-