

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.492/2019

1.ZUBIN HARBIN JHAVERI

Aged 25 years, Occ:business
Adult, Hindu, Indian Inhabitant
B/8, Tushar Park, Juhu lane,
Andheri (W), Mumbai 400 058

2.SONAL HARBIN JHAVERI

Aged 50 years, Occ:Doctor
Adult, Hindu, Indian Inhabitant
B/8, Tushar Park, Juhu lane,
Andheri (W), Mumbai 400 058

... **PETITIONERS.**

VERSUS

1.THE STATE OF MAHARASHTRA

2.MR.KUMAR GIRDHARLAL SHAH

Aged 62 years, Occ: business
Hindu, Indian Inhabitant,
having his address at 60/62,
Mirza Street, Mumbai 400 003
Resi:Girikunj, Room no.21,
5th Floor, N.S. Marg,
Marine Drive, Mumbai- 400 021

... **RESPONDENTS.**

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Miss Sonal H. Jhaveri- Petitioner no.2 in person.

Mr.S.V.Gavand, APP for State.

Miss Snehankita M. Munj, Advocate, i/b Mr.Jatin P. Shah for

respondent no.2.

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CORAM : A. M. BADAR, J.

DATE : 17TH JANUARY 2020.

ORAL JUDGMENT:

1. Heard. Rule. Heard finally.
2. What is impugned in the instant petition is a discretionary order passed by the revisional court rejecting prayer for condonation of delay in preferring revisional petition, challenging order dated 12.8.2014 passed by the learned trial Magistrate, thereby directing issuance of process against the accused/petitioners herein for the offence under Section 499 of the Indian Penal Code punishable under Section 500 thereof.
3. Heard the petitioner No.2 who is appearing in person. She drew my attention to the roznamas maintained by the

learned trial court and contended that the despite repeated orders of the learned Magistrate, the accused persons were not supplied the copy of the complaint filed against them by the original complainant and therefore, the revisional court ought not to have dismissed the revisional petition challenging order, directing issuance of process on the ground of limitation.

4. As against this, learned counsel for respondent no.2/original complainant vehemently resisted the petition and pointed out from record the facts that on 11.10.2014, petitioner/accused have not accepted the summons sought to be served on them through post. She also drew my attention to the police report dated 12.1.2015 mentioning the fact that though Police Constable had been to the house of the petitioner/accused persons for serving summons for their appearance before the Court on 13.01.2015, accused persons refused to accept those summons. It is further pointed out

that, then on application for issuance of nonailable warrant, learned trial Magistrate had issuedailable warrant and i.e. how presence of accused persons came to be secured. Therefore, in submission of learned counsel for contesting respondents/original complainant, the learned revisional court has rightly refused to condone the delay in preferring the revisional petition.

5. I am aware of the fact that generally discretionary revisional orders may not be interfered in writ jurisdiction of this court. However, if it is shown that discretion is exercised arbitrarily then this Court can interfere in such order. The record made available before me, makes it clear that, initially summons issued to accused persons through post, could not be served as accused persons unclaimed them. They even refused to the summons through police. Consequently, in execution ofailable warrant against them, both the accused persons i.e. the petitioners appeared before

learned trial Magistrate on 5.10.2016. This makes it clear that, by that time they were not aware about the averments made against them in the complaint lodged by the complainant before the learned Magistrate. Copy of Roznama of the learned trial Magistrate shows that on 28.2.2017, the accused persons applied for copy of complaint by moving an application at Exhibit 21 and the same came to be allowed by the learned Magistrate by directing supply of copy of complaint to the accused persons. Ultimately, after lapse of 2 further dates, copy of complaint came to be served on the complainant on 03.08.2017. It is thus, clear that it was on this date, it needs to be held that the accused persons were aware about what allegations were levelled against them by the complainant.

6. It hardly needs to be mentioned that a person can challenge the criminal proceedings against him only when he is made aware as to what are the allegations against him and

whether those allegations, in his opinion are acceptable or not. On this backdrop it is seen that, the accused persons i.e. the petitioners herein have moved the revision petition much earlier i.e. on 26.9.2017 by filing the same before the Sessions Court. Their contention as found in the impugned order is to the effect that on 6.9.2017 they applied for certified copy and after receipt thereof, the writ petition came to be filed on 25.9.2017. However, by impugned order, the learned revisional court, showed its disinclination to condone delay by holding that, certified copy ought to have been applied on 5.10.2016.

7. I am of the considered opinion that discretion so exercised by the learned revisional court is not in consonance with the settled principal of law. The court is expected to show liberal approach in the matter of condonation of delay and in the case in hand, the accused persons were not even armed with the copy of complaint on 5.10.2016. Therefore,

it was not expected of them to examine the matter in order to decide whether issuance of process needs to be challenged by them or they should face the trial. The learned trial Magistrate on application of accused persons had directed for supply of copy of complaint to them and it is borne from record that complaint was served on them on 03.08.2017. Hence, though conduct of accused persons prior to their appearance before Court, in execution of bailable warrant can not be justified, it can not be said that they were not having sufficient cause in approaching the revisional court with some delay. In the result, the petition succeeds and as such the order.

ORDER

(i) Petition is partly allowed by quashing and setting aside impugned order dated 18.1.2019 passed by the learned Additional Sessions Judge, thereby refusing to condone delay and imposing cost on the petitioners.

(ii) Parties are directed to appear before learned Sessions Court, Mumbai on 5.2.2020 concerned for prosecuting revisional petition.

iii) Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)