

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

CRIMINAL WRIT PETITION NO. 5958 OF 2019

M/s. Prabhu Steel Industries Ltd. & ors. ..Petitioners.

v/s.

Securities and Exchange Board of India & anr. ..Respondents.

Mr. Anirudha Deo a/w. Mr. Vivek Bharadwaj i/b. Mr. Kaynat Mirza, advocate for petitioners.

Ms. Ushajee Peri a/w. Ms. Shreya Kanaiya, advocate for respondent No. 1.

Mr. P.H. Gaikwad-Patil, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 13, 2020.

P. C. :

1 Heard the learned Counsel for the petitioner and the learned APP for State.

2 This is an application filed by the original accused in Case No. 325/Misc. 2004. Factual matrix of the case is that the Securities and Exchange Board of India (SEBI) filed complaint before the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai against the present petitioners seeking to prosecute the accused for violation of regulation 3 and 4 of the (SEBI) Prohibition of Fraudulent and Unfair Trade Practices

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relating to Securities Market) Regulations, 1995 read with 3 and 4 of Clause A of Schedule 2 of (Stock Brokers and Sub-Brokers) Regulations, 1992 read with section 24(1) and 27 of SEBI Act, 1995 read with 120 of IPC, bearing SEBI SPL Case No. 0100156/2014.

3 Alongwith the complaint, the complainant had filed an application seeking condonation of delay. In the application seeking condonation of delay, it was mentioned that the report was received from Bombay Stock Exchange on April, 2002 and preliminary investigations were initiated. It is stated that in fact, there was no delay, since the sanction to prosecute was accorded in 2004 and thereafter, complaint was filed.

4 Be that as it may, notice was issued to the proposed accused person at the stage of condonation of delay. The learned Magistrate after considering the merits of the matter had allowed the application seeking condonation of delay by an order dated 8th November 2006.

5 It is pertinent to note that the accused persons being aggrieved by the said order of condonation of delay had filed Criminal Revision Application No.662 of 2007 before the Court of Sessions, Greater Bombay. Learned Sessions Court had by an

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order dated 21/6/2007 had remanded the matter to the Magistrate Court for reconsideration on the point of condonation of delay and pass necessary orders in the light of the observations made therein. That the accused persons had then filed an application seeking fresh hearing of the application for condonation of delay filed by the SEBI and for orders to be passed thereon on 10/5/2019. The said application was rejected on 24/6/2019 and Special Court has observed that the delay application was disposed of by order dated 8/11/2006 and that the delay is already condoned.

6 It is the contention of the learned Counsel for the Petitioners that in fact, the application seeking condonation of delay ought to have been heard afresh on the basis of the directions of the learned Sessions Judge in Criminal Revision Application.

7 In fact, at the stage of issuance of process or prior to the stage of issuance of process, an accused has no locus. That the issue of condonation of delay was between the court and the complainant and it was not for the accused to contest at the stage of condonation of delay, more particularly, when there was a specific contention of the complainant that there was no delay and it may be condoned “if any”.

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8 This Court is of the opinion that the revision itself was not maintainable. The Court has issued process against accused on 29/3/2007 and prior to issuance of process, the Petitioners herein had filed revision application challenging the order dated 8/11/2006, thereby condoning the delay, although they had no locus to do so. There is no reason to quash and set aside the order dated 21/6/2019. Hence, the Writ Petition being sans merits stands rejected. The Writ Petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]