

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

**REVISION APPLICATION NO.125 OF 2021
WITH
REVISION APPLICATION NO.126 OF 2021
WITH
REVISION APPLICATION NO.127 OF 2021**

1. M/s. NETC & Company
Office at 1st Floor, 11-12 Commerce
House, Louis Miranda Road, Margao,
Goa Pin – 403601

2. Mr. Riyaz Shaikh
Age: 51 years, Occ: Business,
Authorised representative of
M/s. ETCO & Co.,
office at 1st Floor, 11-12,
Commerce House,
Louis Miranda Road, Margao,
Goa Pin 403601
[At present Talaja Jail]

...Applicants

Vs

1. The State of Maharashtra
Through High Court, Mumbai

2. Mr. Sudhir Amritlal Kotak
Age:74 Years, Occ: Business,
Address at Puri Villa, Ground
Floor 20, Labrnum Road,
Mumbai 400007 and
Office at L Navsari Building,
240, D.N.Road, Mumbai 400 001
Through his constituted attorney

Mr. Deepak Borkar

... Respondents

...

Mr. Vishwanath Patil i/by Kewal Ahya for the Applicants in all matters.

Smt.S.V.Sonawane, APP for the Respondent-State.

Mr. Dinesh Kothari for Respondent No.2 in all matters.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON ____ : DECEMBER 07, 2021.

PRONOUNCED ON: DECEMBER 13, 2021

P.C. :

Aggrieved by the order of conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881, passed in CC No.725/SS/2017; CC No.1332/SS/2017 and CC No.267/SS/2017, all dated 8th May, 2019, applicants/convict preferred appeals in the Court of Sessions for Greater Mumbai along with the Miscellaneous Application Nos.1233 of 2020, 1232 of 2020 and 1231 of 2020 seeking condonation of 525 days' delay occurred in filing appeals against the order of conviction and sentence. The learned Additional Sessions Judge, vide orders dated 29th April, 2021, declined to condone the delay for the reason, that applicants could not make out any '*sufficient cause*' to justify inordinate delay of 525 days. Correctness of these orders is challenged in these Revisions.

2 Heard the learned counsel for the applicants and the learned counsel for the respondent no.2-Complainant.

3 It may be stated that applicant no.2 is authorised representative of applicant no.1 and in execution of the sentence, he is undergoing imprisonment since 26th March, 2021. The amount of compensation awarded in three complaints is more than Rs.3 Crores.

4 Applicants would contend that after recording the order of conviction and sentence on 8th May, 2019, applicant no.2 was bed-ridden with severe fever and cough and was advised complete bed-rest. Initially, diagnosis indicated the symptoms of Tuberculosis. He had undergone several tests. Additionally, applicant no.2 is severe diabetic patient with HbA1c value of 7.9 units. It is applicant no.2's contention that his father was cancer patient and underwent operation in the year 2015. Since then, he was totally dependent on the applicant no.2. That since his father had other severe comorbidities, he succumbed to Covid-19 virus in the month of May,

2021. The learned counsel also contended that, due to ban on mining of iron ore imposed by the Hon'ble Supreme Court in March, 2018, the applicant no.2 sustained heavy losses, which forced him to close the business. Therefore, according to the learned counsel, appeals against the conviction and sentence, could not be preferred within the permissible period. The learned counsel, thus, argued that delay of 525 days, was neither deliberate nor intentional. Therefore, in the interest of justice, delay may be condoned by imposing reasonable cost and appeals be directed to be heard on merits.

5 The learned counsel for the respondent no.2 (Complainant) vehemently opposed the revisions. He would rely on affidavit-in-reply dated 14th June, 2021. It was argued that the medical case-papers relied on by the applicants do not suggest, that the applicant no.2 was incapacitated, for even giving instructions to advocate, to file appeals against the conviction and sentence. Thus, it was argued that '*sufficient cause*' has not been shown, for condoning the delay and, therefore, impugned order be not interfered with in revisional jurisdiction.

6 In consideration of the facts of the case, in my view, illness of the applicant no.2; illness of his father; ban on mining imposed by the Supreme Court, if taken together, would constitute ‘*sufficient cause*’. Even otherwise applicants are willing to compensate the complainant by paying the cost of Rs.4 Lakhs.

7 It may be noted that in three complaints, fine imposed by the trial Court is more than three crores and since applicants were prevented by the noted circumstances from preferring the appeal within the period of limitation prescribed therefor, in my view, in the interest of justice, right of the applicants to prefer substantive appeal, against the conviction and sentence cannot be denied, especially when the applicants are willing to compensate the complainant by paying the cost of Rs.4 Lakhs.

8 For the reasons, stated here-in-above, revisions are allowed.

9 In the result, the impugned orders dated 29th April, 2021 passed in Miscellaneous Application Nos.1233 of 2020, 1232 of 2020 and 1231 of 2020 are quashed and set aside. Miscellaneous Application Nos.1233 of 2020, 1232 of 2020 and 1231 of 2020 are allowed. Appeals are directed to be registered forthwith.

10 Applicants shall deposit the cost in the Registry of this Court within a week from today.

11 Respondent No.2 (Complainant) shall withdraw the cost.

12 Revision Applications are allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)