

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.511 OF 2010

Vinod s/o Mahadeorao Kharkate,
Aged about 40 yrs., Occu: Cultivator,
R/o Tah. Lakhandur, Dist. Bhandara. **PETITIONER**

...V E R S U S...

M/s Samadhan Stores,
Main Road Sakoli,
through
Prakash s/o Rajkumar Tanwani
Aged 37 yrs., Occu: Business,
R/o Sakoli, Tah. Sakoli,
Dist. Bhandara, P.S. Sakoli. **RESPONDENT**

Mr. A.S. Dhore, Advocate for Petitioner.
None for Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **2nd FEBRUARY, 2021.**

ORAL JUDGMENT:

Heard Mr. A.S. Dhore, the learned counsel for the
petitioner.

2. The petitioner is the accused in Summary Criminal
Case 2717 of 2003 instituted by the respondent herein under
Section 138 of the Negotiable Instruments Act ('Act').

3. The respondent – who shall be referred to as the complainant – initiated proceedings under Section 138 of the Act against the petitioner – who shall be referred to as the accused – on 18.09.2003. The complaint was registered as Summary Criminal Case 2717 of 2003, the verification statement was recorded on 28.06.2004 and the learned Magistrate took cognizance of the complaint and issued process.

4. It appears that the complaint was preferred beyond the period of limitation and on 21.03.2005 the complainant preferred an application seeking condonation of delay. This application was allowed by the learned Magistrate vide order dated 21.03.2005, without issuing notice to the accused.

5. The accused preferred Criminal Revision 31 of 2006 before the learned Sessions Judge, Bhandara challenging the order of the learned Magistrate of taking cognizance of the time barred complaint and the order of issuance of process.

6. The learned Sessions Judge allowed the revision vide order dated 18.07.2007 and directed the learned Magistrate to hear the accused and then pass order on the application seeking

condonation of delay.

7. The learned Magistrate granted opportunity to the parties to lead evidence on condonation of delay. The complainant stepped into the witness box and explained the cause of the delay, which the parties assumed then to be of two days.

8. The learned Magistrate rejected the application seeking condonation of delay vide order dated 26.09.2008. The complainant challenged the order of the learned Magistrate in Criminal Revision 97 of 2008 which is allowed by the judgment impugned.

9. It must be noted that while the parties proceeded on the premise that the delay is of two days, as a fact, the complaint is delayed by only one day, since the day on which the statutory notice was served will have to be excluded. Be that as it may, in exercise of extraordinary jurisdiction under Article 226 and 227 of the Constitution of India, I am not inclined to interfere with the judgment impugned since the delay is of one day.

10. Mr. Dhore does make a strenuous effort to persuade

me to interfere on the premise that the versions and justification of the complainant in support of the application for condonation of delay is not consistent. Mr. Dhore would submit that the evidence is at variance with the reason pleaded in the application. The submission of Mr. Dhore is not entirely without substance. Indeed, there is some variance between what is pleaded and what is testified. However, notwithstanding the variance, the learned Sessions Judge has given sound reasons for exercising discretion. The discretion is neither arbitrary nor whimsical and I would be loath to interfere in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

11. The petition is dismissed.

JUDGE