

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO. 1138 OF 2018

Mohd. Siraj s/o. Mohd. Yahya Parekh

vs.

Akbar Khan Pro. G. K. Timber and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Amit Khare, Advocate for petitioner.
Mr. A.R.Chutke, APP for respondent No.2 State.

CORAM : MANISH PITALE J.

DATE : 08/07/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition, the petitioner has challenged order dated 09/08/2018, passed by the Court of Additional District Judge – 1 and Additional Sessions Judge, Nagpur, whereby an application for condonation of delay in preferring revision has been rejected.

3. The petitioner is the original complainant, who had preferred a complaint under Section 200 of the Criminal Procedure Code against respondent No.1, alleging that offences under Sections 504, 506,

and 420 read with Section 34 of the Indian Penal Code had been committed, in the facts and circumstances of the present case. The petitioner claimed that he had supplied timber to the respondent No.1 and despite receipt of the supplied material, the respondent No.1 did not make payment with the intention to cheat the petitioner. It was further alleged that respondent No.1 sent two persons to the office of the petitioner to threaten him if he pursued the matter regarding aforesaid payments before the police.

4. By order dated 16/01/2017, the Court of Judicial Magistrate First Class (Court No.3), Nagpur dismissed the complaint of the petitioner under Section 203 of the Criminal Procedure Code, by concluding that default in payment in regular business transaction was being given the colour of a criminal complaint, while the dispute essentially was of civil nature.

5. The petitioner was aggrieved by the said order. But, the revision application filed by the petitioner before the Court below suffered from a delay of 188 days and therefore, the petitioner filed an application for condonation of delay in filing the revision application. By the impugned order, the

Court below has rejected the application, not being satisfied with the explanation sought to be given on behalf of the petitioner.

6. This Court issued notice in this writ petition on 14/01/2019. Since the respondent No.1 could not be served in the usual course, this Court permitted the petitioner to serve the respondent No.1 through paper publication. The office note shows that the respondent No.1 was served through paper publication, yet, the respondent No.1 failed to appear before this Court.

7. In this backdrop, the learned counsel for the petitioner and the learned APP appearing for respondent No.2 State were heard. The learned counsel for the petitioner submitted that the petitioner is in the business of supply of timber and that he was not aware about the niceties of law, as a consequence of which he failed to file revision application before the Court below within the period of limitation. It was submitted that the petitioner frankly stated this reason in the application before the Court below and it was evident from the material on record that the petitioner himself had nothing to gain by approaching the Court below in a delayed manner. It was submitted that the case of the petitioner

deserved to be considered by the Court below, in order to demonstrate the error committed by the Court of Magistrate in dismissing the complaint.

8. This Court has perused the material on record. By the impugned order the Court below has refused to condone the delay of 188 days, because it was not impressed by the explanation sought to be given on behalf of the petitioner. It was found that merely because the petitioner was not aware about limitation period for filing revision application, sufficient explanation for condonation of delay could not be said to have been made out.

9. Considering the facts and circumstances of the present case, particularly, the aspect that the petitioner had nothing to gain by approaching the Court below in a delayed manner, this Court is of the opinion that the prayer for condonation of delay could have been considered in a sympathetic manner. The order passed by the Magistrate dismissed the complaint filed by the petitioner and it was only in the interest of the petitioner that he should have approached the Court below at the earliest. But, it appears that the petitioner, not being aware of the niceties of law and not having been advised correctly, failed to approach the Court below within the period

of limitation. Strictly speaking, the explanation given on behalf of the petitioner need not explain delay of each day, but on an overall view of the matter, this Court is of the opinion that the petitioner could be given a chance before the Court below to place his contentions on merits, so as to demonstrate the alleged error committed by the Magistrate in dismissing his complaint. It has been noted above that the respondent No.1 has chosen not to appear before this Court, despite service of notice, in order to oppose the prayer made in the present writ petition.

10. In view of the above, the present petition is allowed.

11. The impugned order dated 09/08/2018 passed by the Court below is set aside.

12. The application for condonation of delay (Exh.1) filed on behalf of the petitioner is allowed.

13. Accordingly, the Court below is now directed to consider the revision application of the petitioner on merits.

JUDGE