

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 260 OF 2022

SANGRAM SHEKHAR GURAV

VERSUS

BALAJI DIGITAL PHOTO LAB, THROUGH ITS PROPRIETOR NANDKISHOR
CHAVAN AND ANOTHER

...

Advocate for Petitioner : Mr. Khot Abhinay D.

APP for Respondent No.2 : Smt. D. S. Jape

Advocate for Respondent No.1 : Mr. Nitin Trimbak Tribhuwan

...

CORAM : KISHORE C. SANT, J.

DATE : 1st DECEMBER 2022.

Per Court :

1. This petition is filed challenging the impugned order dated 19.01.2022 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Miscellaneous Application No. 201/2021. By way of impugned order, Miscellaneous Application that was filed praying for condonation of delay came to be rejected. The petition is filed challenging the order dated 19.07.2019 of issuance of process in a complaint filed under Section 138 of the Negotiable Instruments Act,

passed by the learned Judicial Magistrate First Class (Court No.4), Aurangabad.

2. The Respondent No.1 filed a complaint bearing S.C.C. No.8310/2019. From the averments of the said complaint, it is seen that the cheque, that was issued by the Petitioner, was dishonored and the cheque was returned vide memo dated 12.04.2019. From Paragraph No.8, it is seen that the statutory notice i.e. for demand itself was issued on 22.05.2019, that is beyond period of 30 days. However, in spite of this position, the order was passed by the learned JMFC (Court No.4), Aurangabad dated 19.07.2019 observing that the demand notice was issued within stipulated time.

3. It is this order that was challenged by the Petitioner in Revision in the Sessions Court, however since there was delay, which was around 01 year, 08 months and 23 days delay, an application came to be filed for condonation of delay. It is pointed out that the Petitioner in the delay condonation application has clearly stated that he could not file the application because of the Covid period. Considering till the Covid

period started, the delay is only 147 days. However, learned Sessions Judge by judgment and order dated 19.01.2022 rejected the said application holding that the delay is total of 01 year 09 months and 05 days. It is further observed that there is nothing on record. Another ground that was raised that the Petitioner hence from Sangli and Sangli District was badly suffering from heavy rains. Thus, the Criminal Miscellaneous Application came to be rejected. It is against this order, the petition is filed.

4. Looking at the prayers in the petition, it is seen that by prayer Clause 'D', the Petitioner has also prayed for quashing of the proceeding of S.C.C. No. 8310/2019 by invoking the powers vested in this Court under Section 482 of the Criminal Procedure Code, 1973. Thus the Petitioner has argued on both the counts, first that the learned Sessions Judge has erroneously passed the order and thereby rejected the application for condonation of delay. Secondly that there is bar to take cognizance of the complaint as notice of demand is sent after the period of 30 days.

5. This Court finds that looking at the ground and looking at the

relaxation of limitation period granted by the Hon'ble Apex Court, the delay should have been considered only of 147 days and the same should have been condoned. However, without going into much details, this Court deems it fit to consider the averments in the complaint, which have been already observed from the averments in Paragraph No.6 and 8, it is clear that the complaint was not maintainable for want of essential requirements as provided under Section 138(b) of the N.I. Act. This Court certainly can consider exercising the inherent powers.

6. The learned Advocate for the Respondent No.1 vehemently opposes the petition by filing reply. It is submitted that for condoning the delay, there must be a strong ground made out in the application itself. There is no sufficient ground made out in the application i.e. Criminal Miscellaneous Application and learned Sessions Judge has rightly passed the order. He further submitted that this Court need not go directly into the merits of the complaint, as the evidence of the Complainant is already started, this Court need not exercise the powers vested under 482 of Cr.P.C.

7. Considering the fact that the Complain itself was not maintainable and a case is made out before this Court and looking that the continuation of the proceeding certainly be an abuse of process of law, this Court is passing the following order.

ORDER

- (i) The Writ Petition is allowed in terms of prayer clause 'D' and disposed off accordingly.

[KISHORE C. SANT, J.]

Najeeb.