

AGK

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

CRIMINAL REVISION APPLICATION NO.349 OF 2022

Sabhajit Ramyash Yadav

...Applicant

V/s.

Nice Communication & Ors.

...Respondents

Mr. Vikram Jakhadi with Ms. Archana D. Malvankar for
the applicant.

Ms. G. P. Mulekar, APP for respondent no.3/State.

CORAM: AMIT BORKAR, J.

DATE: OCTOBER 3, 2022

PC.:

1. By this criminal revision application, the applicant is challenging order dated 5th April 2022 passed by the Judicial Magistrate, Vashi to condone the delay caused in issuing demand notice as contemplated under Section 138 of the Negotiable Instruments Act, 1881 (“the Act” for short).

2. There is no dispute on the facts which are as under :

In January 2018 complainant deposited a cheque issued by the accused. On 30th January 2018 the cheque was returned with the remark “funds insufficient”. On 19th January 2021 a statutory demand notice was issued. The statute requires such notice to be issued within thirty (30) days of the intimation received from the

Bank by the complainant. Undisputedly, on the date of issuance of notice thirty (30) days' period as required under the provisions of section 138 of the Act had expired. Despite such delay, the applicant filed a complaint under section 138 of the Act. In the complaint, the applicant filed an application for condonation of delay in issuing statutory demand notice under section 138 of the Act. The learned Magistrate after considering the judgments of the Apex Court and section 473 of the Criminal Procedure Code recorded a finding that the delay can be condoned in relation to filing of complaints and not for issuance of statutory demand notice.

3. Having considered the scheme of section 138 and other provisions of the Act, and after considering the judgment in the case of **B.K. Sarkar v. State of Gujarat** reported in 2008 Cri.L.J. 1230, in my considered opinion, the learned Magistrate was fully justified in rejecting the application for condonation of delay in issuing statutory demand notice under section 138 of the Act. Neither there is perversity nor there is error of jurisdiction committed by the Magistrate.

4. The revision is devoid of merits. It is dismissed. No costs.

(AMIT BORKAR, J.)