

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

CRIMINAL WRIT PETITION NO.2170 OF 2022

Anil Harbans Ahluwalia & Ors.

.... Petitioners

versus

YES Bank Limited & Anr.

.... Respondents

.....

- Mr. Aabad Ponda, Senior Advocate i/b. M. K. Kocharekar, Advocate for Petitioners.
- Mr. Yashpal M. Thakur, Advocate for Respondent No.1.
- Mr. R. M. Pethe, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th AUGUST, 2022

P.C. :

1. In this Writ Petition, the Petitioners are challenging the order dated 31/03/2022 passed by the Court of Sessions, Greater Bombay, in Criminal Miscellaneous Application No.48 of 2022, whereby the prayer for condonation of delay in filing the Revision Application was rejected. The Revision Application was for challenging the order condoning delay in filing the main complaint by the original complainant. It is necessary to record in brief, the pending proceedings between the parties.

2. The parties are referred to by their original status in the complaint before the Magistrate, for the sake of convenience to avoid confusion. The Petitioner Nos.1, 2 and 3 were the original accused Nos.4, 5 and 6. The Respondent No.1 was the original complainant in CC No.1029/SS/2020 pending before the Metropolitan Magistrate, 7th Court, Dadar, Mumbai. The complainant had filed this complaint for commission of offence punishable u/s 138 r/w 141 of Negotiable Instruments Act, 1881 (for short 'N.I. Act'.) The complaint was filed against six accused in all. In the complaint it was mentioned that after dishonour of the three cheques, the statutory demand notice was issued on 09/03/2020. It was sent under RPAD on 11/03/2020 and the accused were served on or about 13/03/2020. The complaint was filed on 05/09/2020. One of the averments in the complaint was that considering the Covid-19 pandemic the Hon'ble Supreme Court in Suo-Moto Writ (Civil) No.3 of 2020 had issued instructions, wherein the limitation of the cases u/s 138 of the N.I. Act whose limitation expired after 15/03/2020

and during lockdown, had been extended till 15 days after the lockdown was lifted and as such the complaint was well within the period of limitation. That averment is made in paragraph No.15 of the complaint.

3. After the complaint was filed, there were two orders passed on 06/11/2020. Vide one order, process was issued against the accused u/s 138 r/w 141 of N.I. Act. Vide a separate order passed on the same day i.e. 06/11/2020 passed in a separate application for condonation of delay in filing the complaint, the delay was condoned. It was mentioned in that order that there was delay of 170 days as averred in the application filed by the complainant. Learned Magistrate accepted the reasons mentioned in that application and condoned the delay by invoking powers u/s 142 (b) of N.I. Act and the delay of 170 days, was condoned.

4. The accused/present Petitioners initially preferred a Revision Application before the Sessions Court, Greater Bombay,

challenging issuance of process. Along with that Revision Application, Criminal Miscellaneous Application No.1531 of 2021 was filed for condonation of 123 days in filing that Revision Application against the order dated 06/11/2020 issuing process. That Criminal Miscellaneous Application No.1531 of 2021 was allowed by the learned Additional Sessions Judge vide order dated 09/12/2021 and delay of 123 days in filing the Revision Application by the accused/Petitioners in challenging the order dated 06/11/2020 issuing process against them, was condoned. In that order, learned Sessions Court had referred to the submissions advanced by the learned advocate for the Accused. It was submitted on behalf of the accused that, the application for condonation of delay in filing the complaint by the complainant was allowed by learned Metropolitan Magistrate without hearing the accused and therefore the application for condonation of delay preferred by the accused in filing Revision Application needed favourable consideration. Learned Judge further observed that the order of condoning delay passed by learned Magistrate was not challenged.

Considering the order of the Hon'ble Supreme Court in Suo-Moto Writ Petition No.3 of 2020, extending the period of limitation, the delay of 123 days in filing the Revision Application by the accused Nos.4, 5 and 6 was condoned. This order was passed on 09/12/2021.

5. After this order was passed, the present Petitioners/accused preferred another Revision Application before the Sessions Court, Mumbai. In that application, there was delay in approaching the Court and therefore Miscellaneous Application No.48 of 2022 was filed in that Criminal Revision Application praying for condonation of delay in filing that other Revision Application. That application was filed on 06/01/2022. Learned Additional Sessions Judge rejected that Criminal Miscellaneous Application No.48 of 2022 for condonation of delay vide her order dated 31/03/2022. This particular order is under challenge in this Writ Petition. It was observed in that impugned order that the condonation of delay application in filing the first Revision Application challenging order of issuance

of process was allowed vide order dated 09/12/2021 by the Sessions Court. With reference to the observations made in that order, that the accused had not challenged the order of condoning the delay in filing the complaint; this particular Revision Application was filed. It was observed by the learned Judge that the entire approach of the Accused was very casual and was negligent on their part and therefore this particular application for condonation of delay was rejected.

6. Now the grievance of the Applicant as submitted by learned Senior Advocate Mr. Aabad Ponda is that the order passed by the learned Additional Sessions Judge in effect closed the doors for the Applicant to challenge the order condoning the delay in filing the original complaint. According to him, learned Magistrate could not have condoned the delay in filing the complaint without hearing the accused. This is an important consideration which goes to the root of the matter and which also affects the order of issuance of process.

7. Learned original complainant Mr. Yashpal M. Thakur submitted that at the first instance there was no delay in filing of the complaint in view of the orders passed by the Hon'ble Supreme Court. Therefore all this exercise was not necessary. The complaint was filed well within the time. The complainant is in a position to satisfy the Revisional Court about this contention. Filing of the two Revision Applications on two different grounds is not needed for the same prayer of challenging the complaint and the process issued; as it is unnecessarily creating confusion and unnecessarily prolonging the trial before the Magistrate.

8. I have considered these submissions. In my opinion, it is really not necessary for the Sessions Court to entertain another separate Revision Application as the first Revision Application is pending before the Sessions Court challenging the order of issuance of process. Such order can also be challenged on the ground of the filing of the complaint beyond limitation. For that purpose, no separate Revision Application is really

necessary. It unnecessarily multiplies the proceedings. This can be avoided. Same ground can be raised in the Revision Application which is already pending before the Sessions Court challenging the issuance of process. Learned counsel for the complainant has no objection if such ground is added in the Revision Application, which is already pending before the Sessions Court. A separate Revision Application is really not needed. In my opinion, the second Revision Application is not necessary at all. The grounds whether the complaint was filed within the period of limitation and whether the accused needed to be heard at the time of condonation of delay, can be considered in the Revision Application which is pending before the Sessions Court. For that purpose, permission can be granted to the accused to amend the Revision Application and the original complainant can be given an opportunity to meet all these grounds. In view of this permission, learned Senior Advocate for the Petitioner does not press this Petition.

9. Hence, the following order :

ORDER

- (i) The Petitioners are permitted to add grounds in the Revision Application No.691 of 2021 pending before the Sessions Court. They can challenge condonation of delay in filing the original complaint. The Petitioners are also at liberty to raise grounds whether they should have been heard at the time of condoning the delay in filing the complaint.
- (ii) All the contentions raised by both the parties are left open to be decided in the same Revision Application No.691 of 2021 pending before the Sessions Court.
- (iii) In view of these observations, the present Writ Petition is not pressed by the Petitioners and accordingly is disposed of with above observations.

(SARANG V. KOTWAL, J.)