

VRJ

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

WRIT PETITION NO.4312 OF 2019

B.V. Satya Sai Prasad

... Petitioner

V/s.

State of Maharashtra & Anr.

... Respondents

Mr. Shushant S. Prabhune for the petitioner.

Mr. A.R. Patil, APP for the respondent No.1/State.

Mr. Rajesh Kanojia a/w Ms. Nikita Singh for RES JURIS
for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2022

P.C.:

1. The petitioner is an accused in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. The order of issuance of process was passed by the learned Metropolitan Magistrate 7th Court, Dadar, Mumbai in C.C. No.0700461/SS/2017 on 31st March 2017. According to the applicant, he received knowledge about the order of issuance of process only on 16th March 2018, when he got notice from the Economic Offences Wing. He thereafter filed revision application before the learned Sessions Judge challenging the order of issuance of process along with an application for condonation of delay. The application for condonation of delay along with the revision application was filed on 8th October 2018. In the application, the petitioner stated that

there is delay of 560 days.

2. The learned Sessions Judge by the impugned order rejected the application mainly on the ground that the petitioner was aware of the order from the date of its passing and the petitioner is trying to delay the proceedings by filing such proceedings. The said order is subject matter of present petitions.

3. On perusal of the application filed by the petitioner seeking condonation of delay, it appears that though the petitioner was not diligent in mentioning the dates when he entered appearance before the court and the application for seeking certified copies in paragraph No.15 of the application. The petitioner specifically stated that he got knowledge about the complaint only through EOW Office, Mumbai, when the complainant filed a complaint against the applicant. The applicant produced on record a copy of the communication dated 16th March, 2018 made by the Senior Inspector of Police, Economic Offences Wing, General Cheating-1, Mumbai. The said application was not opposed by the complainant by filing reply.

4. On perusal of the impugned order, it appears that the learned Sessions Judge in paragraph 6 recorded a finding that the petitioner had knowledge of the date of order on the same day itself. While arriving at the said conclusion, the learned Sessions Judge placed reliance on the averments made in the application wherein the applicant mentioned delay of 560 days. The learned Sessions Judge in the impugned order construed the period of delay mentioned in the application as knowledge of the order.

5. In my opinion, merely because the applicant has stated that there is delay of 330 days in filing the application, the same would not permit the learned Sessions Judge to infer that the petitioner had knowledge of the order on the day of passing of the order unless there is any other material either produced by the complainant or on the basis of record, such finding was permissible. The mentioning of 330 days period in the application *ipso facto* would not entitle the learned Sessions Judge to draw an inference that the petitioner had knowledge of the order of issuance of process on the same day.

6. The learned Sessions Judge rejected the application on the ground that the petitioner is trying to delay the trial by filing such proceedings. In absence of filing of reply and pointing out the conduct of the petitioner, the learned Sessions Judge could not have recorded such finding in the absence of any material based on which such inference can be drawn.

7. Even otherwise, it is well settled principle of law that delay in filing a revision against the order of issuance of process under the provisions of section 138 of the Negotiable Instruments Act, 1881 needs to be considered liberally. It is not the case of the complainant that the delay was intentional or with the *mala fide* motive. At the most, it can be said that the petitioner was casual by not giving details about the date of appearance or the date of filing of application for supply of certified copy. The casual approach on the part of the petitioner can be compensated by imposing cost.

- 8.** In the result, therefore, following order:
- a. The impugned order passed by the learned Sessions Judge dated 20th July , 2019 in Miscellaneous Application No.2101 of 2018 passed by the learned Additional Sessions Judge, Greater Mumbai is quashed and set aside.
 - b. The learned Sessions Judge shall decide the revision application of the petitioner within three (3) months from the date of appearance of the parties.
 - c. The parties shall appear before the learned Sessions Judge on 21st November, 2022.
 - d. The learned Sessions Judge shall thereafter grant liberty of hearing to both sides and shall dispose of the revision application in accordance with law.
 - e. In the circumstances the petitioner shall pay cost of Rs.25,000/- to the respondent No.2 within a period of four (4) weeks from today.
- 9.** The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)