

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

CRIMINAL WRIT PETITION NO. 3921 OF 2018

1. Vishvanath R. Nayak
2. Mr. Satish P. Bhatt
3. Mr. Dhananjay Satish Bhatt ...Petitioners

Versus

1. State Of Maharashtra
2. M/s. Palm Pharmaceutical &
Allied Machinery Co. Pvt. Ltd.
through Mr. Rahul Chiplunkar ...Respondents

....

Mr. Ashok Kumar Dubey a/w Ms. Shweta Yadav i/by SAVJ Law Solutions, Advocate for the Petitioner Nos. 2 & 3.

None for Respondent No.2.

Mr. A. R. Patil, APP for the Respondent No.1 – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 28th JUNE, 2022.

PER COURT:

1. The Petitioners have challenged the order dated 30th June, 2018 passed by learned Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application No.154 of 2018.

2. The Respondent No.2 filed complaint under Section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate had issued the process. The Petitioners were accused Nos.2 to 4. The complainant had alleged that accused No.1 is a company. Accused No.2 is the Chairman and Managing Director of accused No.1 –

Company. Accused Nos.3 to 6 are directors of accused No.1. Accused Nos. 2 to 6 were engaged in day to day management, administration and business affairs of the accused No.1 – Company. In discharge of liability, cheques were issued by accused No.1 – Company which were dishonoured.

3. Affidavit of evidence of complainant was filed on 2nd April, 2007 through authorised representative of complainant Nilesh Gandhi. The complainant was cross examined on 28th June, 2007. Additional evidence by way of affidavit of examination in chief of Mr. Rahul K. Chiplunkar was filed in 2011. He was cross examined on 26th February, 2016. The complainant filed application for change of name on 7th April, 2016. Application was opposed by filing reply by accused on 29th December, 2016. The complainant filed rejoinder on 10th April, 2017. The learned Magistrate rejected the application by order dated 31st July, 2017. The complainant preferred Criminal Revision Application No.154 of 2018. The said Revision application was allowed by Sessions Court vide order dated 30th June, 2018 and the order dated 31st July, 2017 passed by learned Metropolitan Magistrate 23rd Court, Esplanade, Mumbai has been set aside.

4. Learned Advocate for the petitioners submitted that the order of Sessions Court is contrary to law. The learned Magistrate has

rightly rejected the application preferred by complainant for change of name. The complaint was filed in 2006. The application for change of name was filed on 7th April, 2016. The evidence in chief of complainant was recorded. Thereafter, additional evidence on behalf of complainant was adduced. The evidence was silent about change in name of company. The witness was cross examined after some questions were put to him regarding change in name of company, application was filed belatedly. The name of company was changed in 2010. The trial Court rejected the application by assigning reasons. The Sessions Court should not have entertained revision application against interlocutory order. The complainant has supported the change of name of company for 6 years.

5. The learned Magistrate had rejected the application Exhibit – 121 preferred by the complainant for substitution of new name in the light of certificate of incorporation. While rejecting the application it was observed that the certificate of incorporation was issued in – 2010. The additional affidavit of witness Rahul Chipulnkar was tendered in – 2011. His cross examination was conducted by accused on 26th February, 2016 and at that time some questions were put to the witness relating to the name of the complainant-company and thereafter the application was preferred

by the complainant to change the name. The certificate was in possession of the complainant from – 2010 and it was filed to move such application. There has been delay of six years. No reasons were assigned by the complainant for preferring such application belatedly. PW-1 was silent relating to this change and dishonour when the accused pointed out the lacuna during the course of cross examination, the application was preferred.

6. The learned Sessions Judge however set aside the order of learned Magistrate. In the impugned order dated 30th June, 2018 it was observed that the provisions under Section 397 of Cr.P.C. empowers the Court to look into the correctness, legality, propriety of any findings, sentence or order. The Court considered the decision brought to its notice and held that the revision is maintainable. On the merits of the revision application it was observed that the complaint was filed in – 2006 and the certificate of incorporation was issued in – 2010. Learned Judge referred to Section 23(3) of the Companies Act and observed that the change in the name of the Company does not render defective any legal proceedings. The learned Magistrate had proceeded to reject the application primarily on the ground of delay. Section 23(3) of the Companies Act provides that, *“The change of name shall not effect any rights or obligations of the company, or render defective any*

legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name". Thus, it is clear that when in view of Section 23(3) of the Companies Act change in name of applicant company does not render defective any legal proceedings by it and it shall not effect any rights of the applicant company then mere delay on the part of applicant in making application for substitution of new name of the company is not of much significance and it would not cause any prejudice to these respondents if said application is allowed. Learned Metropolitan Magistrate failed to consider correctly provisions of Section 23(3) of the Companies Act.

7. I do not find any infirmity in the order passed by the Sessions Court. The learned Magistrate had rejected application on the ground of delay. The Sessions Court has rightly set aside the said order by assigning reasons. The petition is devoid of merits and the same is required to be rejected.

ORDER

Criminal Writ Petition No. 3921 of 2018 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)