

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 790 OF 2023

Afrojkhan Bashirkhan Pathan ...Petitioner

Versus

Mandodara Madhavrao Kendre ...Respondent

Ms. M. S. Mhase, Advocate for the Petitioner.

Mr. T. M. Venjane, Advocate for Respondent.

CORAM : R.M. JOSHI, J.

DATE : OCTOBER 18, 2023

PER COURT:

1. This Petition takes exception to the order dated 07.10.2022 passed in Criminal M.A. No. 155/2020 filed under Section 142(B) of Negotiable Instruments Act (for short '**NI Act**') for condonation of delay of 1145 days in filing complaint under the provisions of NI Act and confirmation of the said order by Revisional Court by its order dated 02.05.2023 passed in Criminal Revision no. 15/2022.

2. Respondent filed complaint bearing no. 33/2017 before learned JMFC, Nilanga under Section 138 of NI Act. It is the case of the complainant that accused had issued cheque of Rs. 3 lacs which came to be

dishonoured for insufficient funds. The complainant issued notice dated 31.12.2016 by registered post which was refused to be accepted by the accused on 03.01.2017. Hence, complaint came to be filed on 15.04.2017. Petitioner/Orig. Accused appeared before learned Magistrate and filed application under Section 251 of CrPC. The order on said application was challenged before this Court by filing Criminal Writ Petition No. 1127/2018. On 11.12.2019 the said Petition came to be allowed and it is held that the complaint is pre-mature and hence, not maintainable. On 05.03.2020 Respondent filed fresh complaint with an application for condonation of delay under Section 146(B) of NI Act. The delay of 1145 days was sought to be condoned. Application was opposed by the Petitioner. It is specific contention of the Petitioner that the delay of 82 days has not been explained and hence, learned Magistrate fell in error in condoning the said delay. Criminal Revision filed against said order was also rejected. Hence, this Petition.

3. Learned Counsel for the Petitioner submits that the Respondent/Orig. Complainant explained the

delay except for 82 days. Thus, it is her contention that unless there is satisfactory explanation with regard to the said delay, the Court mechanically ought not to have condoned the same. It is also submitted that no reasons are recorded by the learned JMFC while condoning the delay caused in lodging of complaint. It is submitted that this Court had set aside the complaint being pre-mature by holding that it is not maintainable. In such circumstances, it does not stand to any justification that the complainant waits for formal disposal of the previous complaint by learned Magistrate then to claim that the delay occurred on that count be condoned.

4. Learned Counsel for Respondent supported the impugned order.

5. There is no dispute about the fact that the Section 142(B) provides for condonation of delay caused in filing of complaint for offence under Section 138 NI Act after accrual of cause of action. In appropriate cases where the delay is satisfactorily explained and the same is not deliberate or malafide, the delay

caused in lodging of the complaint deserves to be condoned. As far as present case is concerned, initially complaint was made before learned Magistrate and the Magistrate issued process against the Petitioner/accused on 15.04.2017. The said complaint, however, came to be challenged by filing Revision which was allowed on 14.12.2019. This fact itself is sufficient to indicate that there could be no intention on part of complainant to file complaint belatedly. Though technically Respondent ought to have filed complaint immediately after disposal of revision by this Court holding previous complaint not maintainable, however, admittedly learned Magistrate did not formally dispose of the said complaint immediately. In such circumstances, there is justification for Respondent/Orig. Complainant to say that formally SCC No. 33/2017 was not disposed of and it was only disposed of on 31.01.2020 and after obtainment of certified copy of the said order on 12.02.2020, complaint is filed thereafter. These facts are self explanatory.

6. Having regard to these facts, this Court finds

no reason for causing interference in the impugned orders. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani