

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

977 CRIMINAL WRIT PETITION NO.779 OF 2016

GEETA W/O ASHOK DARAK
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Petitioner : Mr. Yogesh G. Somani
APP for Respondent – State : Mr. V.S. Badakh
Advocate for Respondent No.2 : Mr. S.A. Gaikwad h/f.
Mr. S.N. Chavan

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CORAM : R. M. JOSHI, J.
DATE : JULY 19, 2023

PER COURT :

. Heard.

2. This petition takes exception to the order dated 07.04.2016 passed by learned Additional Sessions Judge-3, Jalna in Criminal Revision Petition No.16 of 2016 whereby the order dated 18.12.2015 passed by learned Judicial Magistrate First Class, Jalna in Criminal Misc. Application No.898 of 2014 was set aside.

3. Petitioner is original complainant who approached belatedly to learned JMFC for filing complaint under the provisions of 138 of the Negotiable Instruments Act. According to complainant

complaint ought to have been lodged on 05.09.2014, however as she did not know about the service of the notice on accused on 20.08.2014 the complaint could not be lodged in time. It is further specifically contended that as no intimation was received from the postal department about the service of notice on the accused, she waited for sometime and thereafter made an application to the postal authority seeking information about the said service. She was informed on 13.11.2014 that the enquiry into the complaint is going on. Later on by communication dated 24.11.2014 she was informed about service of the notice being done on the accused on 20.08.2014. It is further stated in the application for condonation of delay that the mother of the complainant is 92 years old and that the complainant was required to go to Jalna for the purpose of filing of the complaint though she is resident of Aurangabad.

4. All the aforesaid facts clearly show that the complainant had given justified reasons for not approaching the Court in time and the delay of 60 days caused in lodging of the complaint is rightly condoned by the learned JMFC by order dated 18.12.2015. The order passed by the learned Additional Sessions Judge clearly shows that

the Court has exceeded revisional jurisdiction and has recorded different finding by re-appreciating the material on record. For the purpose of entertaining an application under Section 397 of Code of Criminal Procedure, the Court was required to see as to whether the Magistrate has not exercised the jurisdiction or exceeded the jurisdiction vested in it. By no stretch of imagination, it was permissible for the revisional Court to record contrary findings on same material by taking different view than the one taken by the learned Magistrate. Even otherwise perusal of the facts and circumstances of the case fully justify the order passed by the learned Magistrate. Hence, the petition deserves to be allowed and is accordingly allowed.

5. Learned counsel for petitioner / original complainant states that he has not withdrawn cost of Rs.1,000/- deposited pursuant to the order dated 18.12.2015 passed by the Judicial Magistrate First Class, Jalna. Learned counsel for petitioner records no objection for the withdrawal of the said cost by the petitioner.

[R. M. JOSHI]
JUDGE

GGP