

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

CRIMINAL WRIT PETITION NO.2711 OF 2023

Mahesh Devram Patil

.... Petitioner

versus

Raju Dak & Anr.

.... Respondents

.....

- Mr. Ganesh Bhujbal i/b. Mr. Baburav D. Shinde, Advocate for Petitioner.
- Mr. Arfan Sait, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 4th SEPTEMBER 2023

P.C. :

1. The Petitioner has challenged the order dated 25/09/2018 passed by the Metropolitan Magistrate, 28th Court, Esplande, Mumbai issuing process u/s 138 of the Negotiable Instruments Act. Learned counsel for the Petitioner submitted that the complaint is filed against the partnership firm, which is shown as accused No.1. The present Petitioner is the accused No.2.
2. Learned counsel states that he has not approached the

Sessions Court for challenging the order of issuance of process. He submitted that he was served with summons only on 18/04/2023. He submitted that before that no summons was served on him.

3. Learned counsel prays for withdrawal of this petition to exhaust alternate remedy to approach the Court of Sessions by way of Revision Application.
4. The fact that summons was served only in April 2023 can be taken into consideration for condonation of delay if any. Similarly, the time taken by the Petitioner in prosecuting this Writ Petition can be also considered for condonation of delay. Therefore, I am inclined to grant permission to the Petitioner to approach the Court of Session by way of Revision Application as prayed for by him. Hence the following order :

ORDER

- (i) The Petition is allowed to be withdrawn with liberty to the Petitioner to approach the Court of Session challenging the order of issuance of process.
- (ii) If such Revision Application is filed, it shall be decided

in accordance with law.

(iii) If the question of condonation of delay arise, the Court shall take into consideration the date of service of summons and also the fact that the Petitioner was pursuing the remedy of the present Petition before this Court.

(iv) With these observations and liberty, the Petition is allowed to be withdrawn and is disposed of.

(SARANG V. KOTWAL, J.)