



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

50 CRIMINAL WRIT PETITION NO. 1833 OF 2023

SHAIKH HAIDER SHAIKH CHUNU

VERSUS

SHASHIKANT KRUSHNA YADAV

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Mr. Kachru Ananda Ingle, Advocate for the Petitioner

Mr. Akshay Subhash Tilve, Advocate for the Respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.11.2024

ORDER :-

1. Leave granted to invoke Section 482 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.). Necessary amendment be carried out within period of 14 days from today .

2. Rule. Rule made returnable forthwith and heard finally with consent of both the sides.

3. By the present Petition under Article 227 of the Constitution of India read with Section 482 of Cr.P.C., the Petitioner/original complainant has challenged the order dated 19.10.2023 passed by the learned Additional Sessions Judge in

Criminal Misc. Application No. 265 of 2022, whereby the learned Additional Sessions Judge refused to condone the delay of 86 days caused in lodging the revision against the order of dismissal of the complaint for want of prosecution.

4. The learned Counsel for the Petitioner canvassed that the Petitioner had filed a criminal complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short N.I. Act). However, delay of 70 days was caused in lodging the said complaint. Therefore, the Petitioner had moved an application bearing Criminal Misc. Application No. 822 of 2017 and thereby prayed for condonation of delay of 70 days. However, on 04.04.2022, the learned J.M.F.C., Aurangabad dismissed the said application for want of prosecution. Therefore, the Applicant filed a Revision Application under Section 397 of Cr.P.C. However, there was delay of 86 days in lodging the Revision on the ground that due to illness of the Petitioner, he could not contact with his Counsel, but in the month of August 2022 when the Petitioner contacted with his Counsel, thereafter he came to know about dismissal of the petition on 04.04.2022. Then he applied for the certified copies and after obtaining the certified copies, he filed revision. However, on

19.10.2023, the learned Additional Sessions Judge, rejected the said application only on the ground that the Petitioner has neither filed an affidavit nor any documents have been produced.

5. The learned Counsel for the Petitioner has placed reliance on the case of *N. Balakrishnan Vs. M. Krishnamurthy, 1998 Mh.L.J. Online (Cri.) (S.C.) 9; (1998) 7 SCC 213*, wherein it is held that sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory.

6. He further relied on the case of *Hiren Ashwin Shah Vs. State of Maharashtra and another – 2024(4) Mh.L.J. 171*, wherein after service of mandatory notice under Section 138 of the N.I. Act, some talks were going on between the complainant and the accused, and as such, the accused had executed M.O.U., accepting the liability and promising to pay the amount in five installments. Therefore, considering the said request, the delay was caused while lodging the complaint and the condonation of delay was sought. Therefore, considering the peculiar facts and circumstances of the case, the

learned Magistrate had condoned the delay. By exercising the discretionary power and the revisional Court refrained from interfering with the order passed by the learned Magistrate.

7. Per contra, the learned Counsel for the Respondent canvassed that the initial complaint filed by the Petitioner itself barred by limitation and the Petitioner/complainant filed an application and sought condonation of delay of 70 days in filing complaint under Section 138 of N.I. Act, however, said application came to be dismissed for want of prosecution.

8. Being aggrieved by the said order, the Petitioner had filed Criminal Revision before the Sessions Court, however said revision was delayed by 86 days. The Petitioner/complainant fail to explain the delay. Further, the Petitioner/complainant has not filed an affidavit or any other document to prove his ailment. Therefore, the learned Additional Sessions Judge, passed the impugned order and rejected the application. Therefore, prayed for dismissal of the Petition.

9. To buttress his submission, the learned Counsel for the Respondent placed reliance on the case of *Lingeswaran Etc. Vs.*

Thirunagalingam, 2022 LiveLaw (SC) 227, wherein it is held that even after finding that in absence of any material evidence, it cannot be said that the delay has been explained and that there are no merits in the Application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. In the cited case, the Hon'ble Apex Court referred the case of *Popat Bahiru Goverdhane Vs. Land Acquisition Officer, (2013) 10 SCC 765*, wherein it is held that the law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party, the Court has no choice but to enforce it giving full effect to the same.

10. In case of *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157*, wherein it is held thus:-

“The law of limitation is founded on public policy. The limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the

expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

11. In the case in hand, the learned Additional Sessions Judge rejected the application for condonation of delay of 86 days caused in lodging the revision only on the ground that the present Petitioner/complainant has not filed an affidavit and documents to support his claim. Needless to say that the present Petitioner/complainant lodged a complaint under Section 138 of N.I. Act, but there was a delay of 70 days. Therefore, the Petitioner filed Criminal M.A. No.822 of 2017 and prayed for condonation of delay. However, said application came to be dismissed for want of prosecution, because the Petitioner and his Counsel were remained absent.

12. In the case of ***Rafiq and another Vs. Munshilal and another, AIR 1981 SC 1400***, the Hon'ble Apex Court held that the parties should not be suffered for the act of the litigants. However, the application for condonation of delay presented by the present Petitioner, came to be dismissed for want of prosecution as on the fixed date the Counsel for the accused did not appear in the matter. So also, while presenting the revision against the order of dismissal of

the application for condonation of delay, there were delay of 86 days. The applicant has given reason that he was not feeling well and he did not approach to his Counsel. Therefore, the delay has been caused.

13. Section 5 of the Limitation, 1963 Act provides the discretionary power upon the Court for condoning the delay. It is trite settled principle of law that the litigant should not be deprived from receiving the substantial justice on the technical ground of delay. Since, the petitioner/ complainant assigned reason that he was not well and could not approach to his Counsel within limitation, which appears to be *bona-fide* and substantial. Therefore, the delay of 86 days caused while lodging the revision could have been granted. However, the learned Additional Sessions Judge passed the impugned order and declined to condone the delay of 86 days caused in lodging the revision. Therefore, to my judicious mind, the impugned order is not sustainable in the eyes of law as it is passed without considering the scope of Section 5 of the Limitation Act, 1963 hence, it needs to be quashed and set aside.

14. In view of above discussions, the present Writ Petition needs to be allowed. Accordingly, rule is made absolute in terms of prayer clause (B). The impugned order dated 19.10.2023 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Misc. Application No. 265 of 2022, is hereby quashed and set aside. The delay of 86 days caused in lodging the revision is hereby condoned. The revision be registered and be heard finally on its own merits.

[Y. G. KHOBRADE, J.]

SMS