

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

CRIMINAL WRIT PETITION NO. 2034 OF 2022

Harshvardhan Parikh ...Petitioner
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Amey Deshpande a/w Mr. Harsh Nishar i/by Ms. Asha Shah,
Advocate for the Petitioner.

Mr. Sanjay Chaturvedi, Advocate for Rrespondent No.2.

Mr. Y. Y. Dabake, APP for Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd JANUARY, 2024.

P.C.:

1. The Petitioner has challenged the Order dated 11th April, 2019 passed by the Court of learned Metropolitan Magistrate, 50th Court, Vikroli, Mumbai in C.C. No.918/SS/2015 and the Order dated 21st February, 2022 passed by learned Additional Sessions Judge, City Civil Court and Sessions Court of Greater Bombay in Criminal Revision Application No.632 of 2019.

2. The Respondent No.2 filed a complaint for offence under Section 138 of Negotiable Instruments Act (for short 'N.I. Act') before the Court of learned Magistrate. There was delay of 3 days in filing complaint. The complainant filed an application for

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condonation of delay. The Accused filed reply opposing the Application for condonation of delay.

3. The Petitioner filed an application before the Court of learned Magistrate for taking strict action against the complainant or Advocate for complainant. It was contended that on the basis of documents supplied by complainant, the Petitioner filed reply and written argument. After going through the proceedings, it appeared that in the Court copy of the complainant have added some pages and corrected Page No.10, Page No.17 and last document is corrected from Page Nos.11 to 18. It appears that after filing reply complainant realized that he has not filed medical paper and that makes his case poor. Therefore, he has manipulated those documents and without knowledge of the Court or without following procedure has played mischief.

4. The Respondents No.2 filed reply to the said Application. Advocate for Respondent No.2 filed affidavit.

5. Learned Magistrate vide Order dated 11th April, 2019 rejected the application preferred by the Petitioner. The said Order was challenged by the Petitioner before the Sessions Court by preferring Criminal Revision Application No.632 of 2019. The revision application has been dismissed by the learned Additional

Judge by Order date 21st February, 2022.

6. Learned Advocate for the Petitioner submitted that the complainant had filed an application for condonation of delay in lodging the complaint under Section 138 of N.I. Act. Notice was issued to the Petitioner. Pursuant to receipt of the notice, the Petitioner filed reply opposing the Application for condonation of delay and it was contended that delay has not been explained by the complainant. The Respondent No.2 sought adjournment in proceedings. The Petitioner compared the copy which is supplied to the Petitioner and the index of the Court papers which indicated that the complainant has placed on record additional document by tampering with Court papers. The medical certificate was subsequently brought on record. The grounds urged in the application is falsified with the contents of the medical certificate and the ticket relied upon by the complainant which indicate that false explanation was given by tampering with the Court record. The Courts below ought to have initiated action against the Petitioner in accordance with provisions of law reliance is placed on the decision of Supreme Court in the case of *Iqbal Siingh Marwah V/s. Meenakshih Marwah*¹.

1 (2005) AIR (SC) 2119

7. Learned Counsel for Respondent No.2 submitted that there was delay of three days in filing the complaint under Section 138 of N.I. Act. There is no tampering with the Court record. In Paragraph No.8 of the application for condonation of delay, reference is made to the health condition and medical certificate issued to the Petitioner. The Advocate for the complainant has filed affidavit before the trial Court. The learned Magistrate as well as the learned Sessions Judge has rejected the applications preferred by the Petitioner by assigning cogent reasons. Hence, the Petition may be dismissed.

8. The Respondent No.2 filed a complaint for offence under Section 138 of N.I. Act and apparently there was delay in filing the complaint hence an application for condonation of delay was preferred. The said application is pending before the trial Court and it would not be appropriate to make any observations on the merits of that application. The Petitioner filed an application for seeking action against the complainant and his Advocate on the ground that there is tampering with the Court record as the complainant had tried to give an explanation for delay in filing complaint by relying upon the medical certificate. The application was opposed by Respondent No.2 by filing reply. The Advocate representing

Respondent No.2 filed affidavit. In the reply filed on behalf of Respondent No.2 it was stated that, when the Advocate on record came for filing condonation of delay application she did not have all the exhibits in her possession. In view of the same she told the complainant to bring the remaining documents to Court. Accordingly, the complainant brought the remaining documents to Court i.e. Page Nos.11 to 17. The said documents were annexed to the Application for condonation of delay and accordingly the numbering was changed. There was already delay in filing the complaint. So to avoid further delay, the Advocate on record filed the Application for condonation of delay without taking a photocopy for office record and for the Accused. The above statement will be fortified by perusing the Court record. It is a practice that while filing any document/application every exhibits is to be attested as true copy on the last page. This practice is followed to rule out the addition of documents and or to verify the documents. The fact that Page No.10 of Exhibit-B is not attested but Page No.17 of Exhibit-B is attested, itself shows that all documents have been annexed at the time of filing itself. Unfortunately the Advocate on record has not taken extra photocopy due to paucity of time as the filing was done in second half, leading to delay of one more day. There is no manipulation in

the Court record.

9. Learned Magistrate while rejecting the application preferred by the Petitioner has observed that the complainant has filed delay condonation application on the ground of medical treatment taken by complainant prior to filing of case. The averments about this reason appear in the application of the complainant which is served on the Accused and the medical documents on record produced by the complainant are in consonance with the application. The averments about medical ground of complainant is already mentioned in the application of delay condonation filed by the complainant and documents on which complainant relies also mentioned in the said application. If the complainant has subsequently produced or added new medical documents of complainant to show the reason of illness of complainant, the averments about it would have been again mentioned by the complainant in delay condonation of application. There is no addition of averment in delay condonation application. Thus, there is no substance in the contention of the Accused that Advocate for the complainant has subsequently added some medical documents in proceedings of case after filing say by the Accused. The learned Session Judge while dismissing the revision

application preferred by the Petitioner confirming the Order of learned Magistrate has observed that the reply given by the complainant appears to be probable and logical and therefore the Order of Magistrate is just and proper. There is nothing on record to indicate tampering of the Court record. Merely, because on earlier occasion adjournment was sought on the ground that Respondent No.2 wants to file more documents, but does not file documents conclusion cannot be drawn that the complainant has tampered the record and tactfully inserted the documents without obtaining permission of the Court. When the Respondent No.2 had sought adjournment citing reason for filing documents, the Respondent No.2 on given date could have filed the documents. By no stretch of imagination, it can be held that after getting adjournment the documents were inserted.

10. I do not find any reason to interfere with impugned Orders. The Courts below had passed reasoned Orders. The explanation given by complainant and his Advocate is probable. There is no reason to draw inference about tampering of evidence by Respondent No.2 or Advocate. The Petition is devoid of merits.

ORDER

. Criminal Writ Petition No.2034 of 2022 stands dismissed
and disposed off.

(PRAKASH D. NAIK, J.)