



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

WRIT PETITION NO.421 OF 2020

**JALINDAR MAHADEV SHENDGE
VERSUS
MOGAL SHANKAR PATHARE**

...
Shri Prashant S. Shinde, Advocate for the petitioner (through
VC).
...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 01 December 2025

P. C. :-

1. By this petition, the petitioner prays for quashment of the judgment and order dated 11.02.2020 passed by learned Sessions Judge, Aurangabad, in Criminal Revision No.125/2019 thereby, the order dated 21.02.2019 passed by learned JMFC below exhibit 1 in SCC No.4536/2018 is quashed and set aside and the said SCC No.4536/2018 is directed to be registered as regular criminal case for conducting trial for the offences punishable under Sections 420 and 406 of the Indian Penal Code.

2. Though this petition is filed in the year 2020,

however, it was neither circulated nor listed on the board. Today, this petition is listed for the first time. It is, therefore, clear that the petitioner is not serious and vigilant in pursuing the instant petition, as such, this Court can straight way dispose of the petition on the ground that the petitioner is sleeping over his rights and this Court cannot come to his aid. However, learned advocate for the petitioner Shri Shinde appeared today and requested for hearing in the matter as there are some arguable questions involved in the matter.

3. Acceding to the said request, learned advocate for the petitioner is heard. According to him, initially the petitioner had issued cheque to the respondent on 30.09.2013. Since the said cheque was dishonoured, the respondent had filed the complaint under Section 138 of the Negotiable Instrument Act, 1881. However, there was delay of 32 days in filing the said complaint and as such, the respondent had also filed the application for condonation of delay along with the complaint. The learned JMFC, Aurangabad, vide order dated 12.09.2017 was pleased to reject the said application for condonation of delay. Being aggrieved by the order dated 12.09.2017, the

respondent filed Criminal Revision No.245/2017 before the learned Sessions Judge, Aurangabad, which was allowed vide order dated 17.05.2018 and the delay was condoned. Being aggrieved by order dated 17.05.2018, the petitioner preferred Writ Petition No.1098/2018 and this Court vide order dated 09.01.2019 allowed the said petition and restored the order dated 12.09.2017 passed by the learned JMFC.

4. Learned advocate for the petitioner, therefore, submits that in view of the order dated 09.01.2019 passed by this Court, it is clear that this Court was pleased to restore the order dated 12.09.2017 passed by the learned JMFC wherein, the application for condonation of delay was rejected. However, thereafter, the learned JMFC vide order dated 21.02.2019 had closed the proceedings of SCC No.4536/2018. This order was challenged by the respondent in Criminal Revision No.125/2019 contending that in the earlier orders, the application for condonation of delay was considered in reference to the offence punishable under Section 138 of the Negotiable Instrument Act whereas, the original complaint case No.315/2014 was filed for the commission of offence punishable under Section 138 of the

Negotiable Instrument Act along with offence punishable under Sections 420 and 406 of the IPC and therefore, the order dated 21.02.2019 passed by the learned JMFC ought to have been in reference to offences punishable under the Negotiable Instrument Act and the complaint for offence punishable under Sections 420 and 406 of the IPC should allowed to be continued. The learned Sessions Judge, by the impugned order dated 11.02.2020, has set aside the order dated 21.02.2019 and directed that the complaint in regard to offence punishable under Sections 420 and 406 of the IPC be proceeded further and accordingly, the case be registered as regular criminal case.

5. The learned advocate for the petitioner attempted to contend that there are lot of issues involved in the matter and therefore, this petition be allowed and the impugned order be set aside.

6. After hearing the learned advocate for the petitioner, I have perused the available record. On perusal of the impugned order passed by the learned Sessions Judge, it is clear that the issue which had reached upto this Court in the first round of litigation was pertaining to rejection of the application for

condonation of delay, which was being caused in preferring the complaint for the offence punishable under Section 138 of the Negotiable Instrument Act. However, the limitation prescribed under Section 468(2) of the Code of Criminal Procedure, for taking cognizance of the complaint for offence punishable under Section 406 of the IPC, is of three years from the date of commission of offence. As far as offence punishable under Section 420 of the IPC is concerned, it is punishable upto seven years imprisonment and, therefore, there is no limitation prescribed for the said offence of Section 420. As such, there is no need to seek condonation of delay for the complaint for offences under Sections 406 and 420. Therefore, learned Sessions Judge has rightly passed the impugned order and directed to proceed with the complaint under Sections 406 and 420 of the IPC. After going through the reasoning given by the learned Sessions Judge, I am of the firm view that the proceedings in respect of offences punishable under Sections 406 and 420 shall be allowed to be proceeded since the limitation which is prescribed for taking cognizance in respect of said offence under Section 406 is of three years and, therefore, there is no necessity for the complainant to file the application for

condonation of delay. As such, the impugned order is legal and justified and same does not require interference.

7. It is well settled that the pendency or failure of proceedings under the Negotiable Instrument Act does not bar prosecution for independent IPC offences, provided the complaint discloses necessary ingredients of offence. Therefore, the continuation of proceedings under Sections 406 and 420 IPC is legally permissible and cannot be interdicted merely because the Negotiable Instrument Act complaint was dismissed on the ground of limitation.

8. In view of the above discussion, there is no merit in the present Writ Petition and it is dismissed.

kps

(SUSHIL M. GHODESWAR, J.)