

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5735 OF 2025**

Kartik Harshad Jhaveri,

..Petitioner

Age: 47 Years

Proprietor,

Care Comp Computer Solutions

2/41, Samrat Ashok Coop Hsg Society,

7th R.T Marg, Malbar Hill,

Mumbai 400 006.

Versus

1. Charanjit Arora,

Proprietor of Esource Global

D-312, Crystal Plaza, Andheri Link Road,

Andheri (West), Mumbai 400 049.

2. The State of Maharashtra

Through Office of Government Pleader

Appellate Side, High Court,

PWD Building, High Court, Mumbai

...Respondents

WRIT PETITION NO. 5646 OF 2025

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WRIT PETITION NO. 5644 OF 2025

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..Petitioner

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...Respondents

Mr. Ashok Shetty, with Karishma Jhaveri, i/b Navdeep Vora &
Associates, for the Petitioner in all Petitions.

Mr. Bhagwan Mishra, for Respondent No.1 in all Petitions.

Smt. R.S. Tendulkar, APP, for the Respondent No.2-State in all
Petitions.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 11th NOVEMBER 2025

PRONOUNCED ON : 16th DECEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. These Petitions under Article 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assail the legality, propriety and correctness of the judgment and order dated 12th August 2025 passed by the learned Additional Sessions Judge in Criminal Revision Application Nos. 102, 103 and 104 of 2024, whereby the Revision Applications preferred by the Petitioner-Accused in the complaints for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I. Act, 1881), against an order dated 8th February 2024 passed by the learned Magistrate thereby dismissing the Applications for dismissal of the complaints on the ground of bar of limitation, came to be dismissed.

3. The background facts leading to these Petitions can be stated, in brief, as under:

2.1 The Respondent No.1-complainant lodged three complaints for the offence punishable under Section 138 of the N.I. Act, 1881 on 10th July 2007, initially, in the Court of Judicial Magistrate, First Class, at Ulhasnagar.

2.2 By an order dated 5th July 2010, the learned JMFC, Ulhasnagar was persuaded to dismiss the complainants for want of jurisdiction.

2.3 Being aggrieved, the complainant preferred Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010 before this Court. By an order dated 18th October 2011, this Court while affirming the view of the learned Magistrate, Ulhasnagar, that the said Court had no jurisdiction to entertain, try and decide the complaints, modified the said order to the effect that the complaints be restored to the file of the learned JMFC, Ulhasnagar, and thereupon the learned JMFC shall pass a formal order returning the complaints to the complainant for presentation to the proper Court with an endorsement made thereon to that effect.

2.3 It appears that since the complainant did not turn up to take back the complainants for presentation to the proper Court, by a notice dated 2nd December 2011, the learned Magistrate called upon the complainants to take back those complaints.

2.4 The complainant took back the complainants and lodged the complaints in the Court of Metropolitan Magistrate, Andheri on 9th February 2012 along with the Applications for condonation of delay in filing those complaints. The said Applications for condonation of delay were resisted by the accused. The complainant led evidence therein. It seems the evidence was closed on 21st February 2014.

2.5 On 7th February 2019, the complainant sought leave to withdraw the Applications for condonation of delay asserting that there was no delay in filing the complaints. Thereupon, the learned Magistrate

allowed the complainant to withdraw the Applications for condonation of delay.

2.6 The accused preferred Application for dismissal of the complaints contending that the complaints were barred by limitation. The complainant contested the said Applications. By an order dated 8th February 2024, the learned Magistrate rejected the Applications opining *inter alia* that in view of the provisions contained in Section 14 (2) of the Limitation Act, 1963, the time during which the complainant had been prosecuting with due diligence other proceedings was required to be excluded.

2.7 The learned Magistrate was also of the view that in the intervening period, the learned Magistrate had taken cognizance and issued process against the accused for an offence punishable under Section 138 of the N.I. Act, 1881. Thus, at that stage, the complaints cannot be dismissed on the ground of bar of limitation.

2.8 Being aggrieved, the accused preferred Criminal Revisions before the learned Sessions Judge.

2.9 By the impugned judgment and order, the learned Additional Sessions Judge rejected the Revision Applications opining that the accused had not challenged the order of issue of process and, therefore, the said order attained finality, and whether or not the complaints were

barred by limitation was to be decided at the trial after giving an opportunity to the parties to adduce evidence.

2.10 Being further aggrieved the accused has preferred these Petitions.

4. I have heard Mr. Ashok Shetty, the learned Counsel for the Petitioner, Mr. Bhagwan Mishra, the learned Counsel for the Respondent No.1 and Smt. R. S. Tendulkar, the learned APP for the Respondent-State, in all the Petitions.

5. Mr. Shetty, the learned Counsel for the Petitioner, submitted that, the learned Additional Sessions Judge as well as the learned Magistrate approached the issue of bar of limitation raised by the Petitioner from an erroneous perspective. Once it was demonstrated that the complaints were lodged before the jurisdictional Court, clearly beyond the period of limitation, the learned Magistrate could not have taken cognizance of the offence. Therefore, the view of the Courts below that since cognizance of the offence had already been taken, the issue of bar of limitation could be decided at the trial only, was incorrect.

6. Mr. Shetty would urge that what accentuates the situation in the case at hand is the fact that the complainant had filed Applications for condonation of delay in filing the complaints and after the evidence was led, chose to withdraw those Applications.

7. In the absence of an order condoning the delay in filing the complaints, the Magistrate has no jurisdiction to proceed further and

take cognizance of the offence. A very strong reliance was placed by Mr. Shetty on an order passed by the Supreme Court in the Case of **H.S. Oberoi Buildtech Pvt Ltd and Ors Vs MSN Woodtech**,¹ wherein the Supreme Court enunciated that though the Court is empowered to condone the delay under Section 142 of the N.I. Act, 1881, the first requirement is that the Court has to take note of the fact that there is a delay and, thereafter, it had to go on the point whether the reasons which have been furnished by the complainant are sufficient to condone such delay and only then move on to take cognizance and proceed for issuance of summons.

8. Mr. Shetty further urged that the fact that there was delay in lodging the complaints with the jurisdictional Court is self-evident. This Court had ordered the learned Magistrate to pass a formal order of return of the complaint for presentation to the proper Court on 18th October 2011. The complainant did not appear before the learned Magistrate, Ulhasnagar and, therefore, the learned Magistrate had issued notice on 2nd December 2011. Yet, the complaints were lodged in the Court of Metropolitan Magistrate at Andheri on 9th February 2012.

9. In the backdrop of these facts, the Courts below could not have brushed aside the bar of limitation in filing the complaints on the spacious ground that, in the intervening period, the learned Magistrate

1 Manu/SCOR/68073/2025.

had taken cognizance of the offence and issued process against the accused.

10. Mr. Shetty submitted that the provisions contained in Section 142 of the N.I. Act, 1881, prescribing the time limit for filing the complaints are substantive provision. In the event of default on the part of the payee to lodge the complaint within the stipulated period, substantive right accrues in favour of the drawer and unless the delay is condoned under sub-Section (2) of Section 142 of the N.I. Act, 1881, the Magistrate has no jurisdiction to proceed with the complaint.

11. To this end, Mr. Shetty placed a very strong reliance on the judgment of the Supreme Court in the case of **Subodh S Salaskar Vs Jayprakash M Shah & Ors**,² wherein, the Supreme Court enunciated that the provisions contained in Section 142 are substantive provisions and not procedural one.

12. Per contra, Mr. Bhagwan Mishra, the learned Counsel for the Respondent No.1 supported the impugned order. It was submitted that the initial lodging of the complaints in the Court of JMFC at Ulhasnagar was within the period of limitation. Therefore, the alleged delay in taking back the complaints from the Ulhasnagar Court and filing the same before the jurisdictional Court is of no consequence. In that view of the matter, the complainant had justifiably withdrawn the

2 (2008) 13 SCC 689.

Applications for condonation of delay as there was no delay, as such, in filing the complaints.

13. At any rate, Mr. Mishra would urge, since the cognizance of the offence has already been taken and process issued, the accused can very well agitate the defence of bar of limitation at the trial. The learned Magistrate and the learned Additional Sessions Judge, therefore, took a correct view of the matter in repelling the challenge to the tenability of the complaints on the count of bar of limitation. Since the said issue can be determined at the trial, in exercise of extraordinary jurisdiction, this Court may not entertain the Petitions, at this stage, submitted Mr. Mishra.

14. To start with incontrovertible facts. Firstly, the demand notice was served on the accused on 31st May 2007. The cause of action under Clause (c) of the proviso to Section 138 arose on 16th June 2007. Under the provisions of Section 142(1)(b) of the N.I. Act, 1881, the complainant was to be lodged within one month of the date on which the cause of action arose. Secondly, the complaint was lodged in the Court of Magistrate at Ulhanager on 10th July 2007. Thirdly, by an order dated 5th July 2010, the learned Magistrate dismissed the complaint for want of jurisdiction. Fourthly, on 18th October 2011, in the Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010, this Court modified the said order of dismissal of the complaints, restored the complaints to the

file of the learned Magistrate, Ulhasnagar with a direction to pass a formal order returning the complaints to the complainant for presentation to the proper Court. Lastly, the complainant did not take back the complaints at least till 2nd December 2011 and, therefore, notice was issued by the learned Magistrate to the complainant to appear and take back the complaints. Though the exact date on which the complainant collected the complaints from the Court of Magistrate at Ulhasnagar is not clearly evident, yet, it is incontrovertible that on 9th February 2012, the complainant lodged complaints alongwith the Applications for condonation of delay in the Court of Metropolitan Magistrate at Andheri. There is not much controversy over the fact that evidence was led in the said Applications and, while the said Applications were at an advanced stage of hearing, on 7th February 2019, the complainant withdrew the said Applications for condonation of delay.

15. In the backdrop of the aforesaid uncontroverted facts, legality and correctness of the impugned orders is required to be tested. The learned Magistrate was of the view that in view of the provisions contained in Section 14(2) of the Limitation Act, 1963, the time during which the complainant had been prosecuting with due diligence the other proceedings was required to be excluded. To what extent the provisions contained in Section 14(2) of the Limitation Act come to the

aid of the complainant, in a case of the present nature, is the moot question.

16. First and foremost, it is necessary to note that, hardly five days of period of limitation had remained unexhausted when the initial complaints were lodged by the complainant in the Court of the Magistrate at Ulhasnagar. Secondly, the time that elapsed between the date of the order passed by this Court in Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010, i.e., 18th October 2011 and the date of presentation of the complaints before the jurisdictional Magistrate thus assumed significance.

17. Whether the entire period from the date of the order passed by this Court on 18th October 2011 to the filing of the complaints before the learned Magistrate at Andheri gets completely excluded was the question which the learned Magistrate was required to pose unto himself.

18. The position in law, in this regard, seems to be well settled. What gets excluded from the computation of the period of limitation is the date of presentation of the proceeding before the Court, which had no jurisdiction, and the date on which such Court passes an order and makes an endorsement on the Plaint returning it for presentation to the proper Court. If the Plaintiff allows time to elapse from the date of such order and endorsement on the Plaint to the actual presentation of such

returned Plaint to the jurisdictional Court, the said intervening period is not covered by sub-Section (2) of Section 14 of the Limitation Act, 1963.

19. In the case of **Firm Jiwan Ram Ramchandra Vs Jagemath Sahu**,³ the Plaintiff had instituted the Suit in the Court which had no jurisdiction on the last day of limitation. The said Court ordered the Plaint to be returned to the Plaintiff on 26th September 1991 for being presented to the proper Court on or before 9th October 1931. A submission was canvassed that since the Court which had no jurisdiction had granted time to the Plaintiff to present the Plaint before the jurisdictional Court on or before 9th October 1931 and the Plaint was accordingly presented on 9th October 1931, the bar of limitation would not apply.

20. The Patna High Court upheld the view of the Courts below that in computing the period of limitation the Plaintiff was entitled to exclude only the period during which the Plaint was pending in the Court which had no jurisdiction and the Plaintiff was not entitled to exclude the period between 26th September 1931 and 9th October 1931. It was held that where the Court has no jurisdiction to try the case, it has also no jurisdiction to pass an order to the prejudice of one of the parties.

3 AIR 1937 Patna 495.

21. In the case of **Subbu Naidu Vs Varadarajulu Naidu**,⁴ a Division Bench of the Madras High Court held that an order of return of the Plaint and endorsement on the Plaint that the plaint was returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 (“the Code”) is an essential formality and the Plaint cannot be returned before it is made. The proceedings in former Suit cannot reasonably be said to have ended before such endorsement is made. But the Plaintiff is not entitled to any deduction thereafter except perhaps where the Plaintiff can show that the Court delayed the return of the Plaint in spite of his endeavour to take it back.

22. In the case of **Amar Chand Inani Vs Union of India**⁵ the facts were that a Suit for damages was filed in the Court of Karnal on the next working day as on the last day of expiry of period of limitation, the Court was closed. By an order dated 28th October 1959, the Plaint was returned for presentation to the proper Court. The Plaint was thereafter presented in the Court at Ambala on 29th October 1959. When the question of limitation arose, it was contended on behalf of the Plaintiff that the Plaintiff would be entitled to the benefit of the provisions contained in Section 14 of the Limitation Act, 1963.

23. Repelling the contention, a Three Judge Bench of the Supreme Court enunciated that :

4 AIR 1948 Madras 26.

5 AIR 1973 SC 313.

“8.....Section 14 of the Limitation Act only provided for the exclusion of the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Courts, the suit would not be within time as the filing of the suit in the Karnal Court was beyond the period of limitation. It was, however, argued by counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial Court. We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in **Hirachand Succaram Gandhi and Ors Vs G.I.P. Rly. Co. A.I.R. 1928 Bom 421, Bimla Prasad Mukherji Vs Lal Moni Devi and Ors A.I.R. 1926 Calcutta 355, and Ram Kishun Vs Ashirbad, ILR 29 Patna 699**. Therefore, the presentation of the plaint in the Karnal Court on March 2,

1959, cannot be deemed to be a presentation of it on that day in the trial Court.

24. In the case of **Hanamanthappa and Anr. V/s. Chandrashekharappa and Ors.**⁶, the Supreme Court rejected the contention that once the plaint is returned by the Court having no jurisdiction and is presented before the Court of competent jurisdiction, it must be treated to be continuation of the earlier suit. The Supreme Court held :

“3.....In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the court fee.... At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law.”

25. In the light of the aforesaid exposition of law, if the facts of the case at hand are appraised, a factor which is of critical salience is the inaction on the part of the complainant to take back the complaints after the order dated 18th October 2011 was passed by this Court in Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010. As noted above, since the complainant did not appear before the Court of Magistrate at Ulhasnagar on 2nd December 2011, the learned Magistrate issued a notice to the complainant to appear before the Court to take back the complaints. Moreover, considerable time elapsed even after the said notice dated 2nd December 2011, as the complaints were eventually

6 (1997) 9 SCC 688

lodged before the Court of Metropolitan Magistrate at Andheri on 9th February 2012. The balance period of limitation, which had remained unexhausted was of only five days.

26. Therefore, the fact that the learned Magistrate took cognizance of the offence does not infuse life into the complaints which were prima facie barred by limitation. On that count, in the considered view of this Court, the challenge raised by the accused could not have been thrown overboard by the learned Magistrate and the learned Additional Sessions Judge.

27. Having taken the aforesaid view, the issue that bothers this court is the relief to be granted in these petitions. Should the complaints be dismissed straightway ? Such a course would bring to naught the orders passed by this Court directing the return of the complaints for presentation to the proper court and the entire process in the applications for condonation of delay in filing the complaints.

28. It is true, those applications were withdrawn on behalf of the complainant. Thus, it could be urged that the complaints as of now are not accompanied by the applications for condonation of delay. However, the court cannot lose sight of the circumstances in which the said applications appeared to have been withdrawn.

29. It appears that on 7 February 2019, learned Advocate for the complainant made an endorsement on the application for condonation

of delay that the former Advocate for the complainants had filed the application for condonation of delay as a precautionary measure and as there was no delay, the Advocate for the complainant requested the Court to permit the complainant to withdraw the said application. Thereupon, the learned Magistrate made the following endorsement thereon :

“Adv. For complainant withdraw this application.
Hence, filed.”

30. Evidently, the learned Magistrate did not apply his mind to the prayer for withdrawal of the applications made on behalf of the complainants, and made an endorsement as a matter of course. The fact that in the said application, evidence was adduced and it had reached an advanced stage, and, more importantly, there was a time lag between the order passed by this Court directing return of the complaints and the actual presentation of the complaints before the jurisdictional Magistrate, did not engage the attention of the learned Magistrate.

31. In the aforesaid view of the matter, the dictates of the command of justice persuades this Court to adopt a just measure. Having regard to the circumstances of the case and the time and efforts spent by the parties in prosecuting the proceedings, it would be appropriate to quash and set aside the order of withdrawal of the applications for

condonation of delay also and restore the said applications to the file of the learned Magistrate, for a decision on merits. Resultantly, the Writ Petitions deserve to be partly allowed.

32. Hence, the following order:

: O R D E R :

- (i) The Petitions stand partly allowed.
- (ii) The impugned order dated 12th August 2025 as well as the order passed by the learned Magistrate on *8th February 2024* stand quashed and set aside.
- (iii) The orders passed by the learned Magistrate taking cognizance of the offence and issue of process also stand quashed and set aside.
- (iv) The orders of withdrawal of the applications for condonation of delay also stand quashed and set aside.
- (v) The Applications for condonation of delay stand restored to file of the learned Magistrate.
- (vi) The learned Magistrate shall decide those Applications from the stage at which those Applications were withdrawn, after providing an opportunity of hearing to the parties and in accordance with law, as expeditiously as possible and, preferably, within a period of three months from the date of communication of this order.

(vii) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]