



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.455 OF 2026**

Chetan Rajinder Nath Dogra ... Applicant
versus
State of Maharashtra and Anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO.463 OF 2026**

Chetan Rajinder Nath Dogra ... Applicant
versus
State of Maharashtra and Anr. ... Respondents

Mr. Subhash Jha with Ms. Prachi Kabra, Ms. Hetal Jain, Mr. Chetan for
Applicant in both matters.
Mr. P.P.Malshe, APP for State.

**CORAM: N.J.JAMADAR, J.
DATE : 13 MARCH 2026**

P.C.

1. Heard the learned Counsel for the parties.
2. These applications under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS 2023) assail the legality, propriety and correctness of the orders of issuance of process passed by the learned Magistrate for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
3. Respondent No.2 filed complaints for the offence punishable under Section 138 of the Act, 1881 in the year 2007 alleging that the Applicant herein had drawn the cheques towards discharge of the liability arising out of the transactions of the sale of the shares. The initial order of issue of process

for an offence punishable under Section 138 of the Act, 1881 was challenged by the Applicant by filing Criminal Application Nos.855 and 856 of 2011.

4. By an order dated 19 March 2012, this Court allowed those applications as it was found that the learned Magistrate has not conducted an inquiry as envisaged by Section 202 of the Code of Criminal Procedure, 1973, as amended by Act 25 of 2025. Learned Magistrate was, thus, directed to complete the inquiry contemplated by Section 202 of the Code, and proceed further in the matter. By the impugned order dated 2 January 2013, the learned Magistrate was persuaded to again issue process observing that, after conducting inquiry as envisaged by Section 202 of the Code, the perusal of the complaints, the documents annexed with it, and the statement of the complainant on oath, there were sufficient grounds to proceed against the accused for the offence punishable under Section 138 of the Act, 1881.

5. Mr. Jha, learned Counsel for the Applicant, would urge that, the impugned order is a non-speaking order. It does not indicate as to what was the nature of the inquiry conducted by the learned Magistrate under Section 202 of the Code, as it simply records that the Magistrate conducted inquiry under Section 202 of the Code, 1973.

6. The Court cannot loose sight of the fact that, the impugned orders of issuance of process were passed on 2 January 2013. The Applicant is assailing the orders of issuance of process after 13 years. The delay is huge

and inordinate, by any standard. The court was anxious to consider, whether any explanation is offered in the applications for such huge and inordinate delay and laches. In the applications, no endeavour is made by the applicant to even acknowledge the factum of delay, much less account for the same. Indeed, there is a reference to the order of NBW issued against the Applicant by the learned Magistrate and the proceedings filed before the Sessions Court in the year 2025 for pre-arrest bail. However, the applications are singularly silent on the aspect of delay in approaching this Court.

7. The exercise of the power under Section 528 of BNSS 2023 or even the writ jurisdiction is discretionary in nature. Undoubtedly, the bar of limitation does not strictly apply to proceedings under Section 528 of BNSS 2023, or the exercise of the writ jurisdiction under Article 226 / 227 of the Constitution. However, it is well recognized that a person who invokes extraordinary or inherent jurisdiction of the Court should approach the Court within a reasonable time. Inordinate delay or laches in seeking the relief is a justifiable ground for refusal to exercise the discretionary or inherent jurisdiction.

8. A useful reference in this context can be made to a three-judge Bench judgment of the Supreme Court in the case of **Chairman/Managing Director, Uttar Pradesh Power Corporation Ltd. V/s. Ram Gopal**¹, wherein the

1 (2021) 13 SCC 225

following pertinent observations were made :

“11. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and the writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In **S.S.Balu V/s. State of Kerala**², this Court observed thus :

17. It is also well-settled principle of law that ‘delay defeats equity’.....It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.” (emphasis supplied)

9. In the case of **Mrinmoy Maity V/s. Chhanda Koley and Ors.**³, the Supreme Court enunciated the position, as under :

“11. For filing of a writ petition, there is no doubt that no

² (2009) 2 SCC 479

³ 2024 LiveLaw (SC) 318

fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of **Tridip Kumar Dingal v. State of W.B.**⁴ has held to the following effect :

“56 We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

4 (2009) 1 SCC 768

57. *If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110], Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).*

58. *There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."*

12. It is apposite to take note of the dicta laid down by this Court in **Karnataka Power Corportion Ltd. v. K. Thangappan**⁵, whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to

5 (2006) 4 SCC 322

assert his right. It has been further held thereunder :

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

.....”

10. What accentuates the situation in the case at hand, is the total absence of any explanation for such huge delay. The court must be cognizant of the fact that the complaints were initially lodged in the year 2007. The challenge to the order of issuance of process is sought to be laid in the year 2026. Therefore, this being a gross case of delay and laches, this Court is unable to persuade itself to entertain the applications.

11. The Applications, thus, stand dismissed.

12. The learned Magistrate is requested to hear and decide the complaints in accordance with law, as expeditiously as possible.

(N.J.JAMADAR, J.)