

(2008) 06 BOM CK 0003

In the Bombay High Court

Case No : Criminal Revision Application No. 20 of 2008

Mahabaleshwar R. Hegde, Chartered Accountant

APPELLANT

Vs

Lakshmi A. Salgaocar, Sameer A. Salgaocar, Arjun A.
Salgaocar and Rakhee A. Salgaokar

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 06 BOM CK 0003

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S.D. Lotlikar and Mr. P. Lotlikar, for the Appellant; M.S. Sonak, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Challenge in this revision is to the order dated 26/11/2007 by which the learned Additional Sessions Judge has declined to condone the delay of 1 year, 11 months, and 4 days in filing a revision application against order dated 11/2/2005 of the learned Chief Judicial Magistrate, Margao. The petitioner herein is the complainant in CC No. 22/0A/NI/2005/III and shall be referred to as such, herein after. The complaint was filed against 6 accused and the respondents herein are accused nos. 3 to 6 in the said case. The complaint was filed u/s 138 of the Negotiable Instruments Act, 1881.

2. Some more facts are required to be stated to dispose of the present revision. On 7/01/2005, the complainant filed an affidavit and on 11/02/2005, the learned CJM passed an order issuing summons against accused nos. 1 and 2 only. That order was passed on the body of the complainant and is otherwise reflected in the roznama of the same date. However, it appears that the concerned clerk whilst issuing process issued summons to all the accused instead of A1 and A2, as ordered. Accused no. 1 appeared before the Court on 11/03/2005 and accused no. 2 appeared on 1/07/2005.

3. On 30/07/2005, the complainant filed an application stating that summons were issued against all the accused but summons to accused nos. 2 to 6 were returned unserved. Accordingly, by order dated 1/09/2005, the learned CJM was pleased to issue summons to the said accused nos. 3 to 6. It may be noted here that at the time of passing the said order dated 1/09/2005, the learned CJM observed that earlier as the cheque was found to have been signed by A2 as Director of A1, summons were issued to A1 and A2, but since the 11th document filed along with the complainant disclosed the names of other Directors and accused no. 6 was in charge of financial management of the company, process against accused nos. 3 to 6 was required to be issued. The learned CJM also noted that the order dated 11/02/2005 did not specifically mention that the complaint against accused nos. 3 to 6 was dismissed.

4. Against the said order dated 1/09/2005 of the learned CJM, the said accused nos. 3 to 6 preferred a revision being Criminal Revision Application No. 65/2005 of which notice was served upon the complainant in mid December, 2005 and which came to be decided by order dated 31/01/2007 of the learned Additional Sessions Judge, thereby quashing the process issued against the said accused nos. 3 to 6.

5. The complainant did not challenge the said order dated 31/01/2007 as, as per the complainant, he has been advised that it cannot be faulted.

6. The complainant then filed a revision petition to challenge the order dated 11/02/2005 with an application for condonation of delay which came to be dismissed by the impugned order.

7. Learned Senior Counsel on behalf of the complainant contends that there was no occasion for the complainant to challenge the order dated 11/02/2005 earlier, and the occasion to challenge the said order arose only after the order dated 31/01/2007 of the learned Additional Sessions Judge. In other words, the learned Senior Counsel contends that the cause of action to file the revision petition against the said order dated 11/02/2005 arose only after the order dated 31/01/2007 of the learned Additional Sessions Judge. Learned Senior Counsel further submits that this is not a case where there has been negligence or lack of bonafides on the part of the complainant and, therefore, the learned Additional Sessions Judge ought to have liberally construed sufficient cause shown by the complainant and condoned the delay.

8. On the other hand, the learned Counsel on behalf of the respondents contends that the complainant has made gross factual misstatements and nothing had prevented the complainant from challenging the said order dated 11/02/2005 earlier, and all that the complainant was doing was only taking chances till the order dated 31/01/2007 came to be passed by the learned Additional Sessions Judge, quashing the process issued against the said accused.

9. The complainant's contention that the complainant learnt for the first time in mid-December that the impugned order had directed the issuance of summons

only against accused nos. 1 and 2, upon receipt of the Criminal Revision Application No. 65/2005 cannot be accepted. The complainant's statement that the learned Magistrate pronounced in open Court that process was issued against "the accused" is again a false statement. Admittedly, the order was pronounced in the open Court in the presence of the complainant and the complainant's Advocate and it clearly had stated that prima facie case was made out against accused nos. 1 and 2 to answer the charge for the offence punishable u/s 138 of the Negotiable Instruments Act. If the order was pronounced issuing process against accused nos. 1 and 2, there was no particular reason for the learned CJM to have pronounced that process was issued against "the accused". It is not the case of the complainant that it is how the complainant had understood it. If it was so, it would have been different matter. Likewise, the complainant ought to have known, in any event, that process was issued only against accused nos. 1 and 2, after the order dated 1/09/2005, when the CJM by a judicial order, ordered summons to be issued against accused nos. 3 to 6. That the complainant did not apply for the certified copy of the said order dated 1/09/2005 only reflects complainant's carelessness, if not negligence. Even after the order dated 31/01/2007 of the learned Additional Sessions Judge, the explanation given in not approaching the Court before 16/04/2007, is far from convincing. The explanation given is that he had received legal advise only on 4/04/2007, that the order dated 31/01/2007 could not be faulted and that the impugned order was required to be challenged. The said explanation lacks conviction. One does not know why the said legal advice could not be obtained earlier.

10. There is no doubt that the expression "sufficient cause" has always been construed liberally and in doing so, it is not the length of the delay which matters but the explanation offered in support thereof. However, this does not mean that the Court should readily accept whatever is stated by the party to explain his default. Sufficient cause cannot be condoned on sympathetic grounds when delay is not properly, satisfactorily and convincingly explained as stated by the Apex Court in the Case of D. Gopinathan Pillai Vs. State of Kerala and Another, . In view of the above, the conclusion arrived at by the learned Additional Sessions Judge cannot be faulted. There is no merit in this revision. Consequently, the same is hereby dismissed.