
(2019) 07 BOM CK 0063

In the Bombay High Court

Case No : Criminal Writ Petition No. 865 Of 2019

Sunil Bhai Sheth

APPELLANT

Vs

M/s. Agricore Commodities Pvt. Ltd And Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141, 143
Code Of Criminal Procedure, 1973 — Section 262, 263, 264, 265

Citation : (2019) 07 BOM CK 0063

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Niranjan Mundargi, Anuj Jhaveri, Hrishikesh Chawan, S.R. Agarkar

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith, with the consent of counsel appearing for the parties petition is being heard finally.

2. This Petition takes an exception to the judgment and order dated 21st January 2019 passed by the learned Sessions Court at Bombay in Misc.

Criminal Application No. 1570 of 2018 in Criminal Revision Application, thereby rejecting the Petitioner's application for condonation of delay in filing

the Criminal Revision Application.

3. It is the case of the Petitioner that, Respondent No. 1 has filed a Criminal Complaint No. 5627/SS/2016 in the Court of Metropolitan Magistrate

23rd Court, Esplanade Court, At Mumbai on 20/12/2016 against the present Petitioner and 8 others, and in said case the trial Court has passed the

order of issuance of process. It is alleged that, the Petitioner herein is the Director of one Anil Mines and Minerals Pvt. Ltd. Company (for short 'said

Company') looking after the day to day affairs and businesses of the said

company. It is alleged in the complaint that, the said company for its operational convenience, requested the Respondent No. 1 to advance invoices with respect of sales contracts in the name of the said company and the said company is controlled by their parent company i.e. Adella Enterprises Pvt. Ltd. In pursuance of the aforesaid contracts various invoices were advanced from time to time towards the supply of maize thereunder. Complainant has delivered goods in terms of the contracts from time to time and the same has been received without any demur or protest. It is alleged that, as per the terms and conditions of the Contracts there was a credit period of 90 days and post dated Cheques (PDC) were to be offered as security for payments under the invoices advanced and thereafter, PDC's were handed over to the Complainant as security by the said Company. As the Contracts a sum of Rs. 7,94,70,512/- (Rupees Seven Crores Ninety Four Lacs Seventy Thousand Five Hundred and Twelve Only) was due and payable to the Complainant. When complainant have presented the PDC's for payment those were not honoured for payment for reasons of "insufficient fund".

4. In view of that, Complainant sent Advocates notice under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') to the said Company and its directors and petitioner is one of the Director of the Company. Thereafter, there were requests made by the said Company not to proceed with proceedings under the NI Act and negotiations were held with Petitioner and other Directors of the said company. Various assurances were given by Petitioner in meetings and requests Complainant to settle the dispute by entering into a Memorandum of Understanding (MOU) and accordingly, an MOU dated 28th July 2016 came to be entered into between the said Company and Complainant. It is the case of the petitioner that, after entering into the MOU, Petitioner vide their Advocates letter dated 19th August 2016 replied to the notice dated 25th July 2016 issued by the Complainant requesting to withdraw the notice. In pursuance of the agreement terms contained in the MOU, the said Company issued various cheques towards dues and payments of the Respondent No. 1. Again, when the Respondent No. 1 presented the cheques for payment those were dishonored. On 23.10.2017 learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai vide order below Exh. 1 in C.C. No. 2305627/SS/2016 issued process

against the petitioner and other Directors of the said company.

5. Being aggrieved by the order of learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai vide order below Exh. 1 Petitioner approached

the City Civil and Sessions Court, Bombay by filing a Misc. Application No. 1570 of 2018 for condonation of delay of 181 days in filing Criminal

Revision Appeal.

6. Learned Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay by order dated 21st January, 2019 rejected the Misc. Application No. 1570

of 2018 filed by the Petitioner on the ground that, Petitioner is resident of Gujarat is not an excuse for condoning the delay. Hence, this Petition.

7. Learned counsel appearing for the Petitioner submits that, the Learned Magistrate erred while passing the order of issuance of process as the

Petitioner ceased and resigned as a Director from the said Company on 15th June 2016. Petitioner was an "Additional Director" for the said

company from 02.09.2013 which can be clearly seen from the extracts of the Registrar of Companies. It is submitted that, a bare perusal of the

document would make it clear that with effect from 15.06.2016, the Petitioner ceased to be an "Additional Director". The said company also

provided with an authenticated copy of the Form DIR 12 on record reporting the cessation of Directorship of the Petitioner along with the receipt of

filing the relevant documents with the Registrar of Companies. It is submitted that, the company has provided the list of Directors as per the extracts

from the registrar of Companies website which clearly indicates the names of the persons who are presently the Directors of the said Company. It is

pertinent to note that the name of the Petitioner does not appear therein and thus no cause of action arises against the Petitioner. It is submitted that,

the Accused No. 1 company by their letter dated 16.12.2016 addressed to the 1st Respondent in reply to the Notice dated 25.10.2016, and clearly

stated in its Para 6 that "it is to be noted that even otherwise issuance of Notice is wholly non-maintainable as Mr. Sunil Sheth (present Petitioner)

and Ms. Anita Lalvai have resigned from the post of Additional Director with effect to 15th June 2016." Therefore, the learned Metropolitan

Magistrate ought to have considered the aforesaid reply while passing the order of issuance of process. It is pertinent to note that no cause of action

arises against the present Petitioner. Therefore, on this ground, the order of

issuance of process be set aside.

8. It is submitted that, it is clear that the Petitioner was in no way involved in any of the transaction referred to in the complaint, and it is no where

stated that, he was in charge of the business and was responsible for the conduct of the business of the Company in terms of the Section 141 of the

said Act, nor was there any other allegation made against the Petitioner that he had connived with any other Accused in the matter of issuance of

cheque. The Learned Metropolitan Magistrate failed to consider that the Complainant themselves has mentioned in last 2 lines of Para 2 of the

Complaint that "the Accused No. 6 & 8 are also responsible for the day of day activities and business affairs of the Accused No. 1" even after

the aforesaid the learned Metropolitan Magistrate issued process against the present Petitioner. Therefore, the Petitioner at the time when the said

cheque was dishonoured, was not a Additional Director in the said Company and thus the present Petitioner was not in charge of the day to day

affairs of the said Company, therefore, no cause of action would reflect on him. On this ground also, the said order of issuance of process be set

aside. It is submitted that, reading the averments in the complaint in their entirety without adding or subtracting anything there from, no offence under

Section 138 of the Negotiable Instruments Act, 1881 (for Short NI Act) is made out as against the Petitioner.

9. It is submitted that, there is not a single averment or a statement to show that the Petitioner was in charge of the day to day conduct and

business affairs of the said Company. The Petitioner states that on this very ground the order issuing process be set aside. It is submitted that,

Petitioner has neither drawn nor issued the cheque in question and therefore, the complaint against the Petitioner was not maintainable. The

complainant has not specified or elaborated the role of the petitioner in conduct of the business of the Company. Learned counsel appearing for the

Petitioner in support of the aforesaid contentions placed reliance on the following decisions, in the case of Subramnium Sethuraman Versus State of

Maharashtra and Anr 2004 AIR SCW 5326, Harshendra Kumar D. Versus Rebatilata Koley Etc 2011 (1) UC 478 and also in the case of Indian

Bank Association and Ors. Versus Union of India and Ors 2014 DGLS 389.

10. On the other hand learned counsel appearing for second Respondent has

tendered across the bar copy for the Criminal Application for condonation of delay in filing the Revision by the present petitioner, same is taken on record. It is submitted that, there was delay of 181 days filing the said Revision which was not explained. There was considerable delay of 181 days in filing the Revision and therefore, Sessions Court has rightly rejected application for condonation of delay. It is submitted that, complaints / cases filing under Section 138 of the NI Act are required to be heard expeditiously and endeavor shall be made to conclude the trial within six months from the date of filing the complaint. The learned counsel invites attention of this Court to the impugned order and submits that, the Petitioner herein has admittedly received the summons of the proceedings pending before the learned Metropolitan Magistrate on 17th February 2018.

Learned counsel further submits that the learned Metropolitan Magistrate perused the complaint, verification statement and documents on record and thereafter has issued the process after recording prima facie satisfaction. It is submitted that, the order of issuance of process has been passed on

23rd October 2017 and the petitioner received the summons on 17th February 2018 however, he filed Revision with application for condonation of

delay before the Sessions Court in the month of July 2018. Learned counsel submits that the defence of the accused can be considered only during

trial and contention of the petitioner that he tendered the resignation from the post of Director has been accepted or admitted by the complainant.

Upon production of the certified copy of the form No. 32, the accused will have to prove the truthfulness of the contents of the certified copy and the

factum of his resignation, during the trial before the Trial Court. Therefore, learned counsel prays that petition may be rejected.

11. I have given due consideration to the submissions of the counsel appearing for the Petitioner, learned counsel appearing for the second Respondent

i.e. Original Complainant. With their able assistance perused the grounds taken in the Petition, annexures thereto and also the order passed by the

Sessions Court as well as the learned Metropolitan Magistrate issuing the process. In the present Petition an exception is taken to the order dated

21.01.2019 passed by the Sessions Court thereby rejecting the Application filed by the Petitioner for condonation of delay in filing the Revision

application. Upon perusal of the order passed by the Sessions Court, it appears

that, the Sessions Court has not appreciated the contentions on merits and rejected the application filed by the Petitioner on the ground of delay.

It appears that, learned Metropolitan Magistrate, issued the process on 23.10.2017 and the Petitioner received the summons on 17.02.2018. Upon

careful perusal of the averments in the application for condonation of delay, there is no sufficient cause disclosed in the said application as to why the

Petitioner could not file Revision within time from the date of receipt of summons i.e. 17.02.2018 till July 2018. There is no explanation except that, the

petitioner is residing at Ahmedabad. As rightly contended by the learned counsel for the second Respondent that, cases under Section 138 of the NI

Act are required to be tried summarily and trial is required to be conducted as expeditiously as possible and endeavor shall be made to conclude the

trial within six months from the date of filing of complaint. It would be apt to reproduce herein below Section 143 of the Negotiable Instruments Act,

1881, which reads as follows:

1[143. Power of Court to try cases summarily.â?

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial

Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as

may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of

imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the

nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason,

undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness

who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its

conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months

from the date of filing of the complaint.

12. The aforesaid provision would make it abundantly clear that the legislature intended to expedite the trial of the cases arising out of dishonor of

cheque for 'insufficiency of funds' in the account, and conclude the trial within six months from the date of filing of the complaint. In the present

case the Petitioner belatedly filed the Revision after six months from the date of issuance of process by the learned Metropolitan Magistrate. As

already observed, there was no sufficient cause disclosed before the Sessions Court to condone the delay and therefore, the Sessions Court has rightly

rejected the Application of the Petitioner for condonation of delay. As already observed the order of issuance of process is dated 23.10.2017 and the

petitioner has received the summons on 17.02.2018. Belated attempt of the Petitioner to invoke Revisional jurisdiction cannot be countenanced.

learned counsel for 1st respondent is right in his submission that, showing an indulgence and entertaining the proceedings, which are filed after six

months of issuance of process, would amount to defeating the legislative intent reflected in Section 143 of the NI Act, in as much as, the trial shall be

conducted as expeditiously as possible and an endeavor shall be made to conclude the trial within six months from the date of the filing of the

Complaint. IN the case of Indian Bank Association and Others (Supra), while issuing direction, for appropriately dealing with the cases under Section

138 of the NI Act, the Hon'ble Apex Court in Para 21(5) directed as under:

(5) The Court concerned must ensure that examination in chief, cross examination and re-examination of the complainant must be conducted

within the three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court.

Witnesses in the complaint and accused must be available for cross examination as and when there is direction to this effect by the Court.

13. In that view of the matter, this Court is not inclined to entertain the Petition. The Petitioner will have an opportunity to put forth his contention on

merits before the learned Metropolitan Magistrate. No case is made out to cause

interference in the impugned orders.

14. The Writ Petition stands rejected accordingly.