

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4084 OF 2022

SUPRIYA
PRAMOD
JAWARE

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1. M/s. Pagadandi Education Foundation
A Registered Charitable Trust
Through its Managing Trustee
Mr. Vivek Omprakash Chandel
Having its office at Yashwant Niwas,
1st Floor, N. C. Kelkar Road,
Dadar (West), Mumbai -400 028
2. Mr. Vivek Omprakash Chandel
Age : 50 years, Occupation : Business,
An Indian inhabitant,
Having address at 91/3, Shashiprabha,
Goradia Nagar, Ghatkopar (East),
Mumbai -400 077.
3. Mr. Tushar Chhotalal Joshi
Age : 58 years, Occupation : Business
An Indian inhabitant,
C-5, 2nd Floor, Laram Center,
M. A. Road, Andheri (W),
Mumbai 400 058

... Petitioners

V/s.

1. M/s. Jivartna Medi Treat Pvt. Ltd.
(A company incorporated under the
Companies Act, 1956)
Having its address at 2/11, Hira Kunj, Sane Guruji Marg,
Tardeo, Mumbai – 400 034.
Through its Director, Mr. Jay Himat Gala
Aged- 45 years, Occ.- Business,
An Indian inhabitant,
Resident of Tardeo, Mumbai.

2. The State of Maharashtra

... Respondents

Mr. Nitin Rai a/w Mr. Yash Desai i/by Mr. Ramchandra Rane for the Petitioners.

Mr. Jatin Karia (Shah) a/w Adv. Snehankita Munji, Dipti Jatin Karia, Shraddha Kamble, Vaishnavi Jhaveri for Respondent No.1.

Mrs. Manisha Tidke, A.PP for Respondent -State.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 10th JULY 2026.

PRONOUNCED ON : 11th SEPTEMBER 2026.

JUDGMENT :-

1) By the present Petition, filed under Article 226 and 227 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973 (for short 'CrPC') (now 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the Petitioners seek to challenge the Order dated 15th October 2022 passed by the Sessions Court, Mumbai in Criminal M.A. No. 1472 of 2022 in Criminal Revision Application thereby rejecting the Petitioners Application for condonation of delay. The Petitioners further seek to also set aside the impugned Order dated 15th October 2022 passed by Sessions Court, Mumbai thereby rejecting Application bearing No. Criminal M.A./1473/2022 to stay the proceedings i.e. C.C. No.40/SS/2022 pending before Metropolitan Magistrate, 7th Court, Bhoiwada, Mumbai wherein by Order dated 21st February 2022 process was issued against the Petitioners under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 (NI Act).

2) Heard, Mr. Nitin Rai for the Petitioners, Mr. Jatin Karia (Shah) for Respondent No.1, Mrs. Manisha Tidke, A.PP for Respondent.

3) Some of the relevant facts of the case are as under: -

3.1) The Respondent No.1/original Complainant is a company incorporated under the Companies Act. The Petitioner No.1 is a non-government organization registered under the Companies Act, 1956. The Petitioner Nos. 1 to 4 are the original Accused Nos. 1 to 4 in C.C. No.40/SS/2022 pending before the learned Metropolitan Magistrate, 7th Court at Bhoiwada. The Respondent No.1 filed a complaint under Section 138 read with 141 of the Negotiable Instruments Act, 1881 being C.C. No.40/SS/2022 pending before the learned Metropolitan Magistrate, 7th Court at Bhoiwada, Mumbai. Process was issued by Order dated 21st February 2022.

3.2) The Petitioners being original Accused Nos. 1 to 4 challenged the said Order of issuance of process by filing Criminal Revision Application before the Sessions Court. The Petitioners also preferred an application for condonation of delay being Criminal M.A./1472/2022 and an application seeking to stay proceedings being Criminal M.A. No. 1473/2022. That, in filing of the said Criminal Revision Application, there was a delay of 72 days. The learned Sessions Court by Order dated 15th October 2022 rejected the Petitioners Application for condonation of delay. Further by Order dated 15th October 2022, the Sessions Court was pleased to reject the Application for stay of proceedings of C.C. No.40/SS/2022. It is these Orders that, the Petitioner has sought to challenged.

4) Mr. Nitin Rai, learned Advocate appearing for the Petitioners

submits that: -

4.1) The Sessions Court failed to consider the fact that, on 4th May 2022, the Metropolitan Magistrate, 7th Court, Bhoiwada, had issued a bailable warrant against the Petitioner and adjourned the matter to 18th July 2022. That, the Petitioners came to know of the bailable warrant and of the pendency of the C.C. No.40/SS/2022 before the Metropolitan Magistrate, 7th Court at Bhoiwada only on 22nd June 2022. That, on 23rd June 2022, Petitioners obtained certified copies of the entire proceedings. That, due to the aforesaid facts, Revision Application could not be filed within a period of 90 days. That, there is no deliberate or intentional delay on the part of the Petitioners. That, if the period of limitation is calculated from the date of knowledge i.e. 22nd June 2022, then there is no delay in filing the Revision Application.

4.2) The Sessions Court has rejected the Application inter alia on the ground that, the certified copies of the impugned Order passed by the learned Metropolitan Magistrate in respect of the C.C. No.40/SS/2022 was not placed on record and that, the Petitioner had not disclosed the exact date on which they came to know about the passing of the impugned Order. On the said basis, it was erroneously concluded that, the Petitioner had not come to the Court with clean hands.

4.3) In the Application for condonation of delay, the Applicant has specifically stated that, on 22nd June 2022 they came to know about the

issuance of bailable warrant and of the pendency of the C.C. No.40/SS/2022. That, on the very next date, the Petitioners obtained the certified copy of the entire proceedings. That, the Petitioner had in fact clearly stated the date of knowledge.

4.4) Learned Advocate for the Petitioner relied on the following Judgments in support of his submissions:

(i) Judgment of the Hon'ble Supreme Court in the case of *State (NCT of Delhi) Vs. Ahmed Jaan* reported in *2008 AIR SCW 5692*, to submit that if refusal to condone delay results in a grave miscarriage of justice, the delay should be condoned.

(ii) The judgment of the Hon'ble Allahabad High Court in the case of *Jitendra Alias Dhansu Vs. Laxmi Narayan Agarwal* reported in *AIR OnLine 2018 All 345*, particularly paragraph 1 thereof to contend that, Courts should be liberal in condoning the delay as no litigant would stand to benefit by deliberately delaying the filing of a proceedings and prejudicing his case before the appellate Court.

5) Mr. Jatin Karia, the learned Advocate for the Respondents submitted that :-

5.1) The intention of the Petitioners is to delay the criminal prosecution. That, the Petitioners have given their registered address as B-822, 8th Floor, Pranik Chambers, Saki Naka, Andheri (East), Mumbai 400 072. The copy of the complaint along with all the exhibits was duly served upon

each of the Petitioners along with the service of summons on 20th April 2022 at the said address. That, the summons was served on the correct address and the address was not disputed by the Petitioners till date.

5.2) The contention of the Petitioners that, they have not received the summons is completely incorrect and false statement. That, the warrants were issued against the Petitioners for securing their presence by the trial Court. Warrants are issued only after valid service of the summons. That, despite the service of summons in April 2022, the Petitioners willfully and deliberately chose not to appear before the trial Court. No Application for certified copies was made till 22nd June 2022. That, the delay on the part of the Petitioners are willful and intentional.

5.3) The Petitioners have made incorrect and misleading statements in the Application for condonation of delay. The bailable warrant was issued on 4th May 2022. On 18th July 2022, the Petitioners instead of appearing before the Court for cancellation of the bailable warrant appeared through their Advocates and gave an undertaking that they will be personally present on the next date. Neither did the Petitioners apply for cancellation of warrant nor appeared in person before the Court. The matter was then adjourned to 2nd August 2022, when the Advocate for the Petitioners remained present but the Petitioners were absent and did not apply for cancellation of warrant.

5.4) The Petitioners have raised frivolous and baseless grounds. That, the Petitioners have suppressed relevant and vital material and have not

approached the Court with clean hands.

6) Mrs. Manisha Tidke, learned A.P.P. appearing for the Respondent - State adopted the arguments advanced by Mr. Jatin Karia, learned Advocate appearing for the Respondent No.1.

7) Perused the entire record. The Application for condonation of delay would indicate that, the Petitioners have only stated that after the process was issued on 21st February 2022, the matter was adjourned to 4th May 2022. It is the contention of the Petitioners that, on 22nd June 2022, the Petitioners came to know about the issuance ofailable warrant and the pendency of the C.C. No.40/SS/2022 before the Metropolitan Magistrate, 7th Court, Bhoiwada, Mumbai. On this ground, the Application seeking condonation of delay has been filed. The summons were served to the Petitioners on 20th April 2022 and on 4th May 2022, the Metropolitan Magistrate, 7th Court, Bhoiwada, Mumbai issuedailable warrants against the Petitioners. It is only after the issuance of summons and non-appearance of a party thatailable warrants are issued. The matter was then adjourned to 18th July 2022.

8) Perusal of the record would indicate that, theailable warrant was issued against the original Accused Nos. 2, 3 and 4 on 4th May 2022. On 18th July 2022 the Advocate for the Petitioners was present in Court and filed the vakalatnama at Exhibit-8 and an undertaking at Exhibit-9 on behalf of the Petitioners. The matter was then adjourned to 2nd August 2022. On 2nd August

2022, the Advocate for the original Complainant filed an Application for issuance of non-bailable warrants against the Petitioner Nos. 2, 3 and 4 at the new address. The Petitioners remained absent and their Advocate filed an Application seeking adjournment. The matter was then adjourned to 26th September 2022. On 6th October 2023 again the Petitioners remained absent and the Advocate for the Petitioners filed an exemption Application. The plea on behalf of the original Accused Nos. 1 to 3 was recorded.

9) On 18th July 2022 the Advocate for the Petitioners filed the vakalatnama on behalf of the Petitioners and also an undertaking. On 2nd August 2022, the Advocate of the Petitioners filed an application seeking an adjournment. This indicates that, the Petitioners had appeared before the learned trial Court through their Advocates but did not take any steps for cancellation of the warrant. The Application for condonation of delay has been filed on 2nd August 2022. No steps had been taken between 22nd June 2022 to 2nd August 2022. The delay application was filed only on 2nd August 2022. This conduct of the Petitioners indicates that the intention of the Petitioners is to delay and frustrate the ongoing proceedings.

10) Learned Advocate for the Respondent No. 2 had contended that, the bailable warrants were issued only after verification that the summons have been duly served. The Order of issuance of process is dated 21st February 2022 and the bailable warrants have been issued on 4th May 2022 after ensuring that the summons is served. In this view of the matter, the contention

of the Petitioners that they got knowledge of the issuance of bailable warrant only on 22nd June 2022 prima facie does not appear to be correct. In the Application for condonation of delay, the Petitioners have not stated the manner in which they came to know about the issuance of the bailable warrant and the pendency of the case bearing C.C. No.40/SS/2022 before the Metropolitan Magistrate, 7th Court, Bhoiwada.

11) I also find that, the Petitioners in their Application for condonation of delay have contended that, the notice under Section 138 of the NI Act was not served upon or received by them. The record indicates that, the Petitioners through their Advocates vide notice dated 14th December 2021 have replied to the notice issued under Section 138 of the NI Act. The said statement, in the Application for condonation of delay prima facie appears to be incorrect, misleading and false. During the course of the hearing, the Petitioners were specifically asked as to how the Petitioners got knowledge of the issuance of bailable warrant and the pendency of the complaint U/s 138 of the NI Act. The Petitioners have chosen not to give any explanation in respect of the same. The service of the summons and the appearance before the Court of the Magistrate through the advocate has not been disputed.

12) In any event, the Petitioners have appeared before the trial Court through their Advocate on 18th July 2022 and 2nd August 2022. The Petitioners have knowledge of the proceedings. The Application for condonation of delay

is only filed on 2nd August 2022 when the Complainant had already served the summons and the bailable warrant at the new address. The conduct of the Petitioner is prima facie indicative of the fact that, the Petitioner is trying to delay the proceedings.

13) The record would indicate that, the Petitioners are avoiding to appear before the trial Court and seek to take time/adjourn the matter on one ground or the other. This conduct prima facie indicates that, an attempt has been made to delay and frustrate the entire criminal proceedings. The record indicates that, the complaint is of the year 2022 and the plea of the accused has been recorded on 6th October 2023. That, despite of giving an undertaking to the trial Court of appearing before the Court, the Petitioners/Accused have failed to appear before the trial Court and initiate the process of cancellation of the bailable warrants. Due to the said conduct, non-bailable warrants have been issued against the Petitioners.

14) The Petitioners have not explained even though an opportunity was given as to how they came to know of the issuance of the bailable warrant and the filing of the complaint. Only a bald statement is made in respect of knowledge. No details have been given in respect of the knowledge. It appears that, the Petitioners have not disclosed the true and correct facts. Even I find that, there is no ground or sufficient reason mentioned in the Application for allowing the condonation of delay.

15) Perusal of the Order dated 15th October 2022 clearly records a

finding that, the material on record does not indicate as to in what manner and which of the Petitioners came to know on 22nd June 2022 of the issuance of the bailable warrant against them. The Order records that, no reason has been given by the Petitioners for not appearing before the Court for getting the bailable warrants cancelled. On the basis of the said facts, the Court has come to the conclusion that the Petitioners have not approached the Court with clean hands but with dishonest intention to delay the proceedings pending before the Metropolitan Magistrate. In this background, the Petitioner was asked to explain the delay and the manner in which the Petitioner got knowledge. On being repeatedly asked, no further details or explanation is offered by the Petitioners.

16) This Court is conscious of the fact that, an Application for condonation of delay should be considered liberally and as long as reasonable and sufficient cause is shown for the delay, the same should be condoned. At the same time, it is also equally well settled that, a litigant who sleeps over his rights, or does not place before the Court the complete, true and correct facts and then seeks condonation of delay without giving any sufficient or reasonable cause for the delay or a litigant who misleads the Court while seeking a prayer for condonation of delay ought not to be shown any leniency. From the facts of the present case and the conduct of the Petitioners it appears that the Petitioners are misusing the legal process and Court mechanism to delay the entire criminal proceedings. The matter pertains to a prosecution

under the NI Act. The Object of the said Act is to provide for special procedure in cases where the obligation under the instrument is not discharged. It relates to financial matter. Delaying proceedings under the NI Act will prove counter productive to the objects of the NI Act. The parameters to be applied in such cases would be different. A litigant cannot be permitted to take advantage of his own wrong nor should he be permitted to use the legal process and remedy available in law as tools to delay and frustrate the entire proceedings and the rights of the other party.

17) In the facts of the present case, it appears that, the Petitioners have not disclosed all the relevant and material facts. Further the conduct of the Petitioners in appearing before the trial Court through the Advocates, seeking time, filing undertakings and then filing a Revision Application and seeking condonation of delay without disclosing true and correct facts is a conduct which cannot be accepted. In any event, no sufficient cause or reason is given by the Petitioner. In view of the aforesaid facts, this Court is of the opinion that, the Petitioners have failed to make out any ground or a sufficient cause for seeking condonation of delay. This not a fit case to exercise the powers under Section 482 of the CrPC or to interfere in the matter/ with the Session Court's Orders.

18) In view of the above, Petition is dismissed.

(RANJITSINHA RAJA BHONSALE, J.)