

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

917. CRI.APPLN/1938/2014 In CRI.APPLN/1937/2014 WITH
CRI.APPLN/1937/2014

VINOD UTTAM JAIN
V/S
KRUSHNA ONKAR PATIL

Mr. A. A. Mukhedkar, Advocate for applicant.

Mr. A.G. Magare, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 24th July, 2015.

ORDER :

1. The application is filed for condonation of delay of 334 days caused in filing the application for granting leave to file appeal against the judgment and order of dismissal of the complaint filed under section 138 of Negotiable Instrument Act. Both the sides are heard.

2. It is the case of complainant that initially matter was pending in the Court of Chief Judicial Magistrate and then it was allotted to the J.M.F.C., his advocate was not aware of it and advocate did not inform it to the complainant. It is the case of complainant that the matter was dismissed on 7.7.2013 and his advocate had not given information about the dismissal. It is his case that only after inquiry, the complainant came to know

about the dismissal of the matter in the month of November 2013. When he collected certified copy of order of dismissal, some advocates gave advise that the proceeding needs to be filed in Sessions Court and some other advocates gave advise that the proceeding lies in High Court. It is his case that due to this confusion, he could not file proceeding in time and so, further delay was caused.

3. The learned counsel for respondent submitted that ignorance of law cannot be excused. Though it is true that there cannot be such excuse, there was confusion in the minds of the Judges of this Court also and some orders were made by this Court also in which it was held that the proceeding lies in the Sessions Court. There was confusion in existence in the minds of advocates also at the relevant time and so, this Court holds that explanation given for the delay needs to be accepted. In respect of other period, the blame is put on the advocate. There was no reason for complainant not to prosecute the matter which was filed for bouncing of cheque and cheque amount was more than Rs. 1,65,000/-. In view of these circumstances, this Court holds that sufficient cause is shown. However, due to the aforesaid circumstances, the accused is required to spend on one more proceeding like present one. This Court holds that delay needs to

be condoned subject to condition that complainant should pay the cost amount of Rs. 5000/- to accused. So, the following order.

O R D E R

Application is allowed. Delay is condoned, subject to deposit of cost of Rs. 5000/- (Rupees five thousand) which is to be paid to the respondent by the complainant and which is to be deposited on or before 24.8.2015 in this Court. If the complainant fails to deposit the aforesaid amount on or before 24.8.2015, the present proceeding shall stand dismissed automatically without back reference to the Court.

[T.V. NALAWADE, J.]

ssc/