

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3387 OF 2014
IN
CRIMINAL APPLICATION NO. 3386 OF 2014

Usman s/o Rasool Tamboli,
Age : 56 years, Occu. Business,
R/o Yermala, Tq. Kallam,
District Osmanabad

APPLICANT
(Orig. Complainant)

VERSUS

1. The State of Maharashtra,
through Police Inspector,
Yermala Police Station,
Tq. Kallam, Dist. Osmanabad

2. Adinath s/o Bhagwan Baraskar,
Age : Major, Occu. Agri.,
R/o Yermala, Tq. Kallam,
District Osmanabad

RESPONDENTS

Mr. Balaji S. Shinde, Advocate for the applicant
Mr. S.R. Palnitkar, A.P.P. for the respondent-State
Mr. V.C. Solshe, Advocate for respondent No. 2

CORAM : M.T. JOSHI, J.
DATE : 15/06/2015

ORAL ORDER :

1. Heard both sides.

2. By the present application, the applicant is seeking condonation of delay of 2478 days in filing the appeal against the acquittal of respondent No. 2.

3. The admitted facts on record would show that aggrieved by the dishonour of cheque, the present applicant filed complaint bearing R.C.C. No. 58/1996 for the offence punishable under section 138 of the Negotiable Instruments Act against present respondent No. 2. He has also filed another complaint against present respondent No. 2 for the offence punishable under section 420 of the I.P. Code. On the basis of the said complaint, ultimately, the chargesheet was filed. In the circumstances, the respondent No. 2 was facing two prosecutions for dishonour of one and the same cheque.

. Both the cases, filed by the present applicant/complainant, were merged into one by the learned Judicial Magistrate First Class, Kallam, on the application of the applicant. The respondent No. 2 was acquitted of both the offences by the learned Judicial Magistrate First Class, Kallam vide order dated 12th

July, 2007. Aggrieved by the same, the State has filed the appeal in the Sessions Court. The order of the learned Judicial Magistrate First Class was confirmed by the learned Sessions Judge. Thereafter, the present applicant filed Criminal Revision Application No. 73 of 2013 in this Court. The same was decided by this Court on 5th December, 2013 wherein it was held that the complainant i.e. the present applicant ought to have directly filed an appeal in this Court against the said acquittal of respondent No.2 by the learned Judicial Magistrate First Class from the offence punishable under section 138 of the Negotiable Instruments Act. Therefore, thereafter, the applicant has filed application i.e. Criminal Application No. 3386/2014 for grant of leave to file appeal, alongwith the present application for condonation of delay, on 25th June, 2014.

4. By this application, the applicant has explained that besides the time taken in prosecution of the revision application, as detailed supra, though this Court has granted liberty to file an appeal, the appeal could not be preferred till 23rd June, 2014, as, in the meantime, the applicant was not feeling well and was

suffering from fracture dislocation of right shoulder. He was under treatment of Dr. Vilas Deshmukh from 10.12.2013 and was advised to take complete bed rest from 11.03.2014 to 11.05.2014. The true copy of the medical certificate is filed on record.

5. Learned counsel for respondent No.2 opposed the application, submitting that the false statements are made in the application. The true copy of the roznama of Special Civil Suit No. 40/2012, which was then pending in the court of Civil Judge Senior Division, Osmanabad is filed on record. It would show that from 12.12.2013 till 12.06.2014, the present applicant on many dates was present in the said court as his cross-examination was to be undertaken by the counsel for the defendant in the said suit. He had attended the said court for five times during that period at Osmanabad. In the circumstances, it was submitted that in the present application, false statements are made that the applicant was advised bed rest.

6. Learned counsel for the applicant submits that the court of Osmanabad is only 20 kms. away from the

place of applicant's residence and therefore, he was able to attend that court at Osmanabad, but it was not possible for the applicant to come to Aurangabad to file criminal appeal within that period.

7. Upon hearing both sides, it is clear from the record that the applicant was very much in contact with his lawyer for the above period at Osmanabad where he attended the civil suit. The case of bed rest is made out in the medical certificate only for a period from 11.03.2014 to 11.05.2014. The same is also false. To file an appeal, physical presence of the appellant/applicant is not required. As already pointed out, the applicant was in continuous contact with his advocate at Osmanabad during the relevant period and even attended the court at Osmanabad. In that view of the matter, no sufficient reasons are made out for condoning the delay caused in filing the application for grant of leave to file appeal, from the date of decision in the criminal revision application till the date of filing of the present application/appeal alongwith the present application for condonation of delay.

8. In the result, the present application for condonation of delay is hereby dismissed without any order as to costs. Consequently, criminal application No. 3386/2014 does not survive and hence, stands dismissed accordingly.

[M.T. JOSHI]
JUDGE

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