

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6891 OF 2014
IN
CRIMINAL APPLICATION NO. 6890 OF 2014
WITH
CRIMINAL APPLICATION NO. 6890 OF 2014

Sandip s/o Yeshwant Patil,
Age : 35 years, Occu. Pvt. Service,
R/o Pachora, Taluka Pachora,
District Jalgaon

APPLICANT

VERSUS

Ramdas s/o Karbhari Chavan,
Age : 49 years, Occu. Business,
R/o Shri Swami Samarth Adhyapak
Vidyalaya, Edgaon, Tq. Vaibhavwadi,
District Sindhudurg

RESPONDENT

Mr. B.D. Deshmukh, Advocate for the applicant
in both the applications

Mr. P.S. Pawar, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 02/09/2015

ORAL ORDER :

1. Heard both sides.
2. The present applicant is seeking condonation of delay of 1191 days caused in filing the application for grant of leave to file an appeal against the order of dismissal in default of the complaint under section 138

of the Negotiable Instruments Act.

3. The applicant submits that the advocate had not intimated him regarding the stages of the case till July, 2012 and thereafter, promised that the Revision Application would be filed in the Sessions Court. However, even the said Revision was not filed and under these circumstances, the present appeal is preferred.

4. The learned counsel for the respondent, however, submits that it was a delay of more than 2 years and 6 months.

5. However, for the reasons stated in the present application (Cri. Application No.6891/2014) and considering the fact that the party should not suffer for the lapses of the advocate, in my view, the delay deserves to be condoned. Accordingly, delay is condoned and the application is allowed.

6. With consent of both sides, Criminal Application No. 6890 of 2014 is taken up for hearing. The record would show that the present applicant has

filed complaint for the offence punishable under section 138 of the Negotiable Instruments Act, as allegedly, the cheque issued by the present respondent for an amount of Rs.3,72,546/- was dishonoured. The copy of rojnama filed on record would show that the present respondent/accused remained absent in the trial Court. Therefore, the applicant/appellant was left with no other alternative but to take steps for issuance of non-bailable warrant against the respondent. The police, however, did not even bothered to submit the report. In the circumstances, when ultimately, no steps were taken for issuance of non-bailable warrant, the learned Judicial Magistrate First Class has dismissed the complaint.

7. The facts would thus show that the present respondent has got the premium on his absence in the Court while the present applicant/appellant was penalized for non submission of the report by the police regarding non-bailable warrant. In that view of the matter, leave to file an appeal is hereby granted. The application (Cri. Application No. 6890/2014) stands allowed accordingly. The Office to register the appeal as per the due procedure of law.

8. Upon registration of the appeal, the appeal stands admitted and heard with consent of both sides. For the reasons already forwarded, the appeal is allowed. The impugned order dated 14.07.2011 passed by the Judicial Magistrate First Class, Pachora, in S.C.C. No. 924 of 2007, is hereby set aside.

. Instead, the case is remanded back to the learned Judicial Magistrate First Class, Pachora, District Jalgaon, for decision afresh. The parties are directed to remain present before the learned Judicial Magistrate First Class, Pachora, on 22nd September, 2015. The learned Judicial Magistrate First Class to take steps for early disposal of the case.

. In case there are any laches on the part of any of the parties in proceeding in the case, it is necessary to observe that the learned Judicial Magistrate First Class would be strict while dealing with the parties or police officials in case any report regarding service of summons or warrants is not submitted by the concerned police official/s.

. With these observations both the present applications as well as the Criminal Appeal that is now directed to be registered are allowed and stand disposed of.

[M.T. JOSHI]
JUDGE

npj/criapln6891-6890-2014