

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram,	Court's or Judge's orders.
--	--	---------------	----------------------------

CRIMINAL APPLICATION NO. 7061 OF 2014

VENKAT S/O SHIVAPPA KAMTHANE
VERSUS
VEERBHADRA TRADING COMPANY, UDGIR DIST LATUR

...
Advocate for Applicant : Supriya L. Pansambal, Advocate
h/f Mr. Gunale V. D.

Advocate for Respondent: Mr. S. V. Chillarge.

CORAM: T. V. NALAWADE, J.
DATED: 28th JULY. 2015.

PER COURT:

1. The application is filed for grant of leave to file appeal against the judgment and order of acquittal given by learned J.M.F.C., Udgir delivered in R.C.C. No.161 of 2006. The case was pending in the Court of learned J.M.F.C., Udgir, District Latur. The accused, respondent is acquitted of the offence punishable under section 138 of Negotiable Instruments Act and Section 420 of I.P.C. Both the sides are heard.
2. Learned counsel for the Respondent, accused

mainly submitted that this proceeding is filed against the judgment and order in Criminal Appeal No.12 of 2011 and so such proceeding is not tenable. It appears that instead of filing the proceeding under section 378 (4) of Cr.P.C. the complainant, applicant had filed appeal in Sessions Court and the Sessions Court has dismissed the appeal by holding that it is not maintainable in Sessions Court.

3. In the present proceeding the leave is claimed under the aforesaid provision. It can be said that wrong proceeding was prosecuted in Sessions Court. The Sessions Court had no jurisdiction. The learned counsel for the accused submitted that the provision of Section 372 (2) of Cr.P.C. is applicable and the appeal would lie in Sessions Court. This submission is not at all acceptable. The word "victim" used in the provision shows that the provision is applicable to the police case where the informant and others can be treated as victim. Section 378 (4) Cr.P.C. is provided to enable the original complainant from private complaint to file proceeding in High Court and so this Application is filed.

4. It can be said that some delay is caused in filing

the present proceeding but wrong proceeding was prosecuted before wrong forum and the Sessions Court has no jurisdiction to entertain the said proceeding. In this view of the matter, this Court holds that the delay caused in filing the proceeding needs to be condoned and it is condoned accordingly.

5. The learned counsel for the accused submitted that no separate application for condonation of delay is filed. This Court has considered the aforesaid circumstances and this Court holds that the delay needs to be condoned in view of the peculiar facts and circumstances, submissions made by learned counsel for the Applicant, even if no separate application is filed.

6. The trial Court has acquitted the accused by holding that the complainant has not made entry about the giving of the amount to accused by the complainant in accounts of the shop. There is no other convincing reason. Not only there is evidence of complainant, there is other material and there are the provisions raising presumption in favour of the complainant. This Court holds that there is good and arguable case. In the appeal, the learned counsel for the applicant is to add

the prayer of condonation of delay in the present proceeding itself. Amendment is to be carried out immediately.

7. Leave is granted. Application is allowed and disposed of.

8. Appeal is admitted.

9

. Notice. Learned counsel for the Respondent waives notice.

[T. V. NALAWADE, J.]

Dt.28/07/2015
ans/7061