

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [APPLN] NO.97 OF 2015

M/s. India Industrial Enterprises	..Applicant
<i>Versus</i>	
M/s. Arrow Macco (India) Limited and others.	..Respondents

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Mr. Nilesh S. Das, for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent-State.
Mr. Kishor Mhatre i/b. Mhape & Associates, for respondent
Nos.1 & 2.

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CORAM : A. R. JOSHI, J.

DATE : 26th JUNE, 2015

P.C.

1. Heard rival submissions on this application for condonatin of delay of 174 days delay in preferring appeal along with application for leave.

2. The facts of the case are very peculiar in nature inasmuch as there were initially two cases lodged by the present applicant and one by his other proprietary concern. Three cases were proceeded before the concerned Magistrate against the present respondent for the offence punishable under Section 138 of Negotiable Instruments Act. So far as the present matter

is concerned, the stage of the case was that evidence of the present applicant was over. Even 313 Cr.P.C. statements of the respondent/accused were also over and the respondent was to enter into the box for giving his evidence. In between it, it so happened that the respondent was not found and the processes were issued including non-bailable warrant. It was got cancelled after change of the Counsel and the matter was again taken for further proceeding, but, at that juncture in June, 2014 the trial Court chose it fit to dismiss the complaint in the present matter which is C.C. No.2472/SS/2005. In fact, the stage of the matter was that the respondent/accused was to enter into his defence and if it was not so feasible due to his absence then the matter should have been fixed for arguments on whatever evidence already brought before the Court and then the matter should have been disposed of on merits. However, that course was not adopted by the trial Court and the matter was dismissed and this order has been challenged.

3. The delay in preferring the application for leave has occurred and apparently there was misunderstanding under the belief that the matter will be settled. But this submission has

been repudiated by the learned Counsel for the respondent. Apparently considering the above circumstances, in the opinion of this Court there is scope for the present applicant to succeed in appeal and as such in the interest of justice present application for condonation of delay is required to be allowed and the same is allowed and disposed of accordingly.

IN CRIMINAL APPLICATION NO. OF 2015
[Application for leave to appeal]

1. Application for condonation of delay is disposed of and present application for leave to appeal is taken up forthwith for final disposal.
2. Heard rival submissions at length on the present application for leave to file appeal challenging the acquittal of the respondent passed by the M.M. Court No.6, Mazgaon, Sewri, Mumbai dated 5th June, 2014. It is curious to note that when the matter was before the trial Court at the stage of the respondent/accused entering into defence after recording of his statement under Section 313 of Cr.P.C., the matter came to be dismissed for want of prosecution when evidence on the part of the complainant was already over. Though the complainant and his Counsel, so also the accused and his Counsel were absent on

that day, it was not proper for the trial Court to take recourse to dismiss the complaint which has resulted in acquittal of the respondent. This is more so in the factual position that two other cases against the present respondent were then seized of by the same Court and those two cases were proceeded further. In any event, the order which is impugned in the present matter cannot be sustained in the eyes of law. As such, application for leave is required to be allowed and the same is accordingly allowed. Even on the explanation and reasoning given above, in the opinion of this Court this is a matter in which the appeal is required to be admitted and also allowed. Same is being done in order to not to waste any further time so that the present matter can reach before the trial Court on remand for taking further steps from the stage it was there before the trial Court when it was dismissed. This is more so in the interest of both the parties and in fact considering the purpose for which the relevant provisions for action in dishonoured cheque under the Negotiable Instruments Act have been promulgated. In any event said appeal is allowed. The impugned order dated 5th June, 2014 is quashed and set aside. CC No.2472/SS/2005 is restored to file of the concerned Magistrate to deal with the said case in

accordance with law from the stage which was then pending as on 5th June, 2014. Both the parties are directed to appear before the concerned Magistrate on 10th August, 2015. Needless to mention that the trial Court shall give opportunity to both the parties to lead evidence, in case, if any party choses to that effect.

(A. R. JOSHI, J.)

Deshmane (PS)