

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.661 of 2013

(for delay)

IN

CRIMINAL APPLICATION NO..... OF 2013

(Leave to Appeal)

IN

CRIMINAL APPEAL NO..... of 2013

Deepak Kumar Varma

.. Applicant

Versus

M/s.Nidhi Consultants and ors.

.. Respondents

Mr.Datta Mane with Mr.PG. Hartalkar, Advocate for the applicant.

Mr.D.S.Hatle with Mr.Deepak Jamsandekar, Advocate for
respondent nos.1 and 2.

Mrs.S.V.Gajare, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 2nd MARCH, 2015**

P.C. :

1 The applicant had prosecuted the respondent nos.1 and 2 on the allegation that they had committed offences punishable under section 138 of the Negotiable Instruments Act. The respondent no.1 is a partnership firm and the respondent no.2 is one of its partners. It appears that after the affidavit of his evidence had been filed by the appellant, he did not remain present before the trial court for the purpose of cross-examination. The learned Magistrate who was holding the trial, on two occasions, issued notice to the appellant requiring him to remain

present before the Court, but in spite of the service of notice upon him, the appellant remained absent. The Magistrate, therefore, by an order dated 4th May 2013 passed an order of acquittal. Now, the appellant is seeking leave to file an Appeal from the said order of acquittal. However, as the application for leave to Appeal has not been filed within time, he is by the present application, seeking condonation of delay in filing the same which is said to be of 152 days.

2 The respondent nos.1 and 2 have appeared pursuance to the notice issued by this Court and the affidavit of the respondent no.2 opposing the application for condonation of delay, has been filed.

3 Though the question was only of condonation of delay, in view of the arguments advanced, I have also touched the merits of the matter. It is not necessary to reproduce the impugned order, but it must be observed that the impugned order records that the Court had issued notice to the applicant (hereinafter referred to as 'the complainant') requiring him to remain present before the Court on two occasions. It appears that one such notice was received by the Advocate for the complainant, and one was duly served upon the complainant himself. It also appears that the complainant did not remain present before the Court in spite of receipt of the notice which the Court was actually not obliged to issue. Moreover, as there has been a delay in filing an application for leave to Appeal, it is evident that the complainant did not even bother to ascertain as to what had happened in the Court due to his absence.

4 In spite of this, since there was a reference to the merits of the matter, I have gone through the application for Leave to file an Appeal, also. The complainant's case was that he had rendered some services to the respondent no.1 firm, and that as a consideration for these services, the complainant had been assured payment of some amounts, and that the cheque in question had been issued towards paying a part of that amount.

5 It is pointed out by the learned counsel for the respondent nos.1 and 2 that the case of the respondents was that they had agreed to advance a certain loan to the complainant and that for that purpose, had issued 11 cheques to him. That five such cheques were honored, but the payments of the other cheques was stopped by the respondents. According to the respondents, the cheques in question had not been issued in discharge of any legally enforceable debt or other liability, but that actually loan was sought to be given to the complainant by issuing those cheques.

6 It is also submitted on behalf of the respondents that out of the 11 cheques issued by the respondents in favour of the complainant, five cheques had been honored and that recovery of the amount so advanced to the complainant, the respondents had filed a civil suit. The complainant had filed his counter claim in the said suit, but the suit came to be decreed, and the counter claim came to be dismissed.

7 I am informed that the whole of the decretal amount has already been paid by the complainant to the respondents.

8 In the first place, there is no sufficient cause which has been made out for condoning the delay. This is particularly so because it is evident that the complainant inspite of notice did not even try to ascertain immediately as to what had happened in the trial court. Apart from this, as aforesaid, I have considered the merits of the application for leave to Appeal also, and I do not find that a case of grant of leave is made out.

9 In the circumstances, since the question of grant of leave to appeal has been considered on merits, the application for condonation of delay is treated as allowed, and the application for leave to appeal is rejected.

(ABHAY M.THIPSAY, J)