

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 695 OF 2013

Waqar Mohd. Hanif Qureshi

.. Applicant

v/s.

Asma Mohammed Afzal & Ors.

..Respondent/s

Mr.Vasim Shaikh h/f. Majid Banderkar for the Applicant

Ms.Ruchita Patel h/f. Taraq Sayed for the Respondent

Mrs. R.V. Newton APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 24th AUGUST, 2015**

P.C. :

1. Heard Mr. Vasim Shaikh for the applicant and Ms. Ruchita Patel for the respondent.
2. By this application the applicant has sought leave to condone the delay of 23 days in filing the appeal along with the application for leave to file appeal.
3. Learned Counsel for the respondent has vehemently objected the said application on the ground that the applicant has not shown sufficient cause

for condoning the delay. She submitted that a perusal of the impugned judgment placed on record shows that the applicant had applied for copy of the judgment within four days, and that the copy was ready and delivered to the applicant on the same day. She submits that the statement made in para 5 of the application that the applicant had applied for copy of the judgment after 90 days period, is a false statement and in view of the false statement made by the applicant, the application for condonation of delay deserves to be dismissed.

4. On perusal of the record, it can be seen that the applicant was complainant in Criminal Case No. 3891 /SS/2010 filed under Section 138 of the Negotiable Instruments Act, before the Metropolitan Magistrates, 3rd Morning Court, Mazgaon, Mumbai. The said complaint was dismissed by judgment dated 26.9.2013. The present appeal has been filed on 10.12.2013 with delay of 23 days. The applicant has stated in para 5 of the application that he was informed that the period of limitation for filing the appeal was 90 days and he had not approached the lawyer for filing the appeal. He submitted that thereafter he had applied for certified copy of the impugned judgment and order and subsequently contacted the advocate for filing the appeal. He further submitted that on the collecting the

voluminous documents he was unable to file the appeal within the period of limitation.

5. The averments made in para 5 of the application do not indicate that he had applied for certified copy after 90 days. I am therefore unable to agree with the submission of the learned Counsel for the respondent that the applicant made a false statement. In my considered view, the reasons stated in para 5 and 6 of the application constitute sufficient ground for condoning the delay. Refusal to condone the delay would result in grave miscarriage of justice. Hence, application is allowed. Delay in filing application for leave to appeal is condoned.

6. Registry is directed to register the application for leave to appeal and place it on board on 14th September, 2015.

[ANUJA PRABHUDESSAI, J.]