

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 1323 OF 2015 IN**  
**CRIMINAL APPLICATION NO. 1322 OF 2015**

Corporation Bank  
having its Branch at Kolhar,  
Tq. Rahata, Dist. Ahmednagar  
Through its Manager  
Dilip Dattatraya Gore,  
Age : 53, Occu. : Service

.. Applicant  
(Orig. Complainant)

**Vs.**

Vijay Ramkrushna Dedgaonkar,  
Age : 62 years, Occu.: Goldsmith,  
R/o : Bhagwatipur,  
Near Jain Sthanak,  
Rahata, Dist. Ahmednagar

.. Respondent  
(Orig. Accused)

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Mr. S.R. Deshpande, Advocate for the applicant  
Mr. P.R. Patil, Advocate for the respondent  
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**CORAM : M.T. JOSHI, J.**  
**DATE : 27/01/2016**

**ORAL ORDER :**

Heard both sides.

2. The complaint filed by the present petitioner for the offence punishable under section 138 of the Negotiable Instruments Act was dismissed in default and the respondent was acquitted of the offence on 24/07/2014.

. Thereafter, the application was filed for restoration of the said complaint. The same was also dismissed on 19/08/2014 by the learned Judicial Magistrate First Class being not maintainable. According to the applicant, therefore, the appeal was filed in the Sessions Court. However, as the objection was raised that it would not be maintainable, the same was withdrawn and, thereafter, the present application for condonation of delay in filing the application for leave to file appeal is filed.

3. According to the applicant, in the first week of October, 2014, it was intimated to the Regional Office at Pune regarding these facts. The Regional Office called the documents. Those were forwarded. The Regional Office, after ascertaining the facts, has

directed that the appeal be preferred in this Court and, therefore, the papers were handed over to the panel Advocate at Aurangabad in the second week of November, 2014.

. In the circumstances, it was submitted that the delay in filing the application for leave to file appeal may be condoned.

4. So far as the merit of the case is concerned, it is found that for three dates preceding the date of dismissal of the complaint in default, the complainant (through some employee) has remained present though it's Advocate was absent and the respondent accused remained absent. Advocate for the respondent on some occasion filed application for personal exemption from appearance of the respondent.

. The learned Judicial Magistrate First Class, finding that there is no progress in the case though it was pending for six years, dismissed the complaint.

5. Mr. Deshpande, learned counsel for the applicant submits that substantial money of the applicant-bank is involved in the case. Since the decision was to be taken at various levels, the delay has occurred. On merit, he submits that since the Advocate remained absent in the trial Court though the employee of the appellant-complainant was present, the complaint was dismissed.

6. Considering all the facts on record in my view, the delay can be condoned and finding that though the employee of the bank was present on many occasions, the Advocate for the complainant remained absent, the application for leave to file appeal can also be allowed and ultimately the Appeal also can be allowed for all the material on record.

7. In that view of the matter, the following order:-

8. Criminal Application No.1323 of 2015, seeking

condonation of delay in filing application for leave to file appeal is hereby allowed. Delay in filing the application for leave to file appeal is hereby condoned.

9. For the similar reasons, Criminal Application NO. 1322 of 2015 seeking leave to file appeal is also allowed.

10. Appeal be registered as per the due procedure.

11. Upon registration the of appeal, the same stands **admitted**.

12. For the reasons already forwarded, Appeal is also allowed.

13. The impugned order of the learned Judicial Magistrate First Class, Rahata, Dist. Ahmednagar dated 24/07/2014 dismissing the complaint of the applicant/appellant and acquitting the respondent is hereby set aside.

. Instead, the complaint is restored to the file

on the condition that the complainant/appellant concludes his evidence within a period of four (4) months from the date of appearance before the learned Judicial Magistrate First Class. No order as to costs.

14. Both the parties are directed to appear in the Court of learned Judicial Magistrate First Class on 23/02/2016.

15. Parties to act on authenticated copy of this order.

**[M.T. JOSHI]**  
**JUDGE**

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