

Nandkumar s/o Ventadidas
Chowdhary ...Respondent

Prakash s/o Purushottam Mehta ...Applicant

Nandkumar s/o Ventadidas
Chowdhary ...Respondent

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h/f
for ap
for sc
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DATED : 28th September, 2016

Since identical issue is involved in all these applications they are heard together and are being decided by this common order. The facts for the purpose of decision of these Criminal Applications, are as under : -

Criminal Application No. 5199 of 2015 is
filed by the applicant seeking leave to file
appeal against the judgment and order, dated

14.6.2010, passed by the 8th Judicial Magistrate, First Class, Aurangabad, in S.C.C. No. 9603 of 2007, whereby the learned Magistrate dismissed the complaint under Section 256 of the Code of Criminal Procedure. As there is delay of 1858 days in filing this Application, the applicant has preferred Criminal Application No. 5200 of 2015 for condonation of the said delay.

Criminal Application No. 5201 of 2015 is filed by the applicant seeking leave to file appeal against the judgment and order, dated 20.2.2010, passed by the 10th Judicial Magistrate, First Class, Aurangabad, in S.C.C. No. 9604 of 2007, whereby the learned Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure. For condonation of delay of 1972 days in filing this Application, the applicant has preferred Criminal Application No. 5202 of 2015.

Criminal Application No. 5351 of 2015 is filed by the applicant seeking leave to file appeal against the judgment and order, dated 6.8,2012, passed by the 13th Judicial Magistrate, First Class, Aurangabad, in S.C.C. No. 9238 of 2007, whereby the learned Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure. To condone the delay of 1088 days occurred in filing this Application, the applicant has preferred Criminal Application No. 5352 of 2015.

Criminal Application No. 5380 of 2015 is filed by the applicant seeking leave to file appeal against the judgment and order, dated 22.11.2013, passed by the 13th Judicial Magistrate, First Class, Aurangabad, in S.C.C. No. 9237 of 2007, whereby the learned Magistrate dismissed the complaint under Section 256 of the Code of Criminal Procedure. The applicant has filed Criminal Application No. 5381 of 2015 for condonation of delay of 615 days caused in filing

the Application for leave to file appeal.

2. The present applicants filed proceedings under Section 138 of the Negotiable Instruments Act against the respondent alleging that in 2007 a cheque for an amount of Rs.2,50,000/- was issued towards part payment of loan amount of Rs.10,00,000/-, which was dishonoured and as such the respondent committed an offence punishable under Section 138 of the Negotiable Instruments Act. After recording verification, the Court issued summons to the respondent/accused.

3. The learned Magistrate dismissed the respective complaints since for couple of dates none appeared for the complainant.

4. Being aggrieved by the orders passed by the learned Magistrate dismissing the complaints, the complainant have preferred the present Criminal Applications for setting aside the impugned orders and since there is considerable

delay in moving the applications, the applications for condonation of delay have been filed.

5. This Court, so as to ascertain the views of the other side, had issued notice.

6. Heard the learned counsel for the respective parties.

7. The learned counsel for the applicants submits that the delay caused in preferring the present applications is bona fide and unintentional. The learned counsel would urge that admittedly, the cheque was dishonoured which prompted the applicants to initiate proceedings under Section 138 of the Negotiable Instruments Act. According to him, after verification was recorded, summons came to be issued to the accused person, and as such, the learned Magistrate had initiated proceedings against the respondent. According to him, subsequent thereto, the applicants have time and again tried to contact

the lawyer, however, the lawyer had not given any information as regards status of the cases. The learned counsel then would urge that the lawyer had also not issued any written communication. It is only when the applicants started shifting of the office, they noticed the papers in respect of the complaints filed under Section 138 and as such they contacted another lawyer.

8. While relying upon the judgments of this Court in the case of **Rajendra Shantilal Mistry vs M/s Ajanta Printpack Industries and others**, reported in 2012 ALL MR (Cri) 391 and in the case of **Dinesh Govindrao Mahalle vs State of Maharashtra and another**, reported in 2010 ALL MR (Cri) 1220, the learned counsel for the applicants submits that since the order of dismissal of complaints is a technical order, the Court should condone the delay, as, for the fault of advocate, the applicants cannot be put to loss or prejudice. He would then submit that, in the interest of justice and looking to the bona fides of the

applicants, the delay needs to be condoned.

9. Per contra, learned counsel for the respondent/accused would submit that the delay is not at all explained and he would harp upon the contradictory grounds taken in the applications for condonation of delay. He would urge that it is very easy to blame the advocate, however, there is hardly any step taken by the applicants in the matter. Accordingly, the delay is inordinate and applications need to be rejected.

10. Having bestowed my thoughts to the submissions made, it is required to be noted that the proceedings before the learned Magistrate came to be initiated in 2007. Thereafter, the Court had issued summons to the respondent/accused. Since issuance of summons till the order of dismissal of the complaints, the complainants/present applicants remained absent for no good reasons. The applicants have not explained their absence from the date of recording

of the verification till the date of dismissal of the complaints and have rather tried to blame their advocate.

11. Apart from above, the fact remains that the complainants have in categorical terms stated in the applications that it is only in 2015 they came to know about the transfer proceedings when they discovered certain copies of the complaints, and as such, on inquiry with some other advocate about the issue, they initiated the proceedings. The above statement on the part of the applicants, prima facie, falsifies their stand that advocate had not communicated about the matter in question from its inception till 2015.

12. Prima facie, what could be observed from the contents of the applications for condonation of delay is that the applicants were not diligent and were having casual approach to the court matter. There are no good grounds explaining the inordinate delay, so as to form an opinion that

there was bona fide approach on the part of the applicants.

13. As such, all Criminal Applications for condonation of delay in preferring applications for leave to appeal fail and stand rejected.

14. Consequently, all Criminal Applications, seeking leave to file appeals against the orders of dismissal of the complaints, stand disposed of.

(N.W.SAMBRE, J.)

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