

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.16 OF 2016**

Mr. Shaikh Jilani Yasin	...Petitioner
v/s.	
The State of Maharashtra.	..Respondent

Mr. Javed Shaikh a/w Dipika Bathya i/b Mr. Pravin U. Gaikwad for the petitioner.
Mr. Arfan Sait, APP for the State.
Mr. J. B. Singh, Advocate for the Intervenor.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 19, 2016.**

P.C.

. The applicant herein has challenged the order dated 5/1/2016 whereby the learned Additional Sessions Judge has dismissed the application for condonation of delay in Misc. Application No.3291/2015.

2. The applicant was accused in case No.4675/SS/2009 filed by respondent No.2 under section 138 of NI Act. By judgment and order dated 17/12/2011, the applicant/accused was held guilty and was sentenced to undergo simple imprisonment for a period of 9 months and to pay fine of Rs.50,00,000/- and in default to undergo simple imprisonment for 3 months. The applicant/accused had not challenged the said order within the stipulated period of limitation.

The applicant had filed an appeal alongwith application for condonation of delay of 4 years in filing the appeal. The learned Additional Sessions Judge has dismissed the said application vide order dated 5/1/20016. Aggrieved by the said order the applicant has filed this application.

3. Heard learned counsel for the applicant and learned APP for respondent No.2. I have perused the records and considered the submissions advanced by the learned counsels for the respondent parties.

4. A perusal of the impugned order reveals that the applicant had sought to condone the delay on the ground that he was not in a financial position to seek professional assistance and could not afford to file an appeal. Hence after the conviction he had entered into settlement talks with the respondent No.2 and that he had also executed power of attorney in favour of respondent no.2/complainant for sale of the property. The applicant has placed on record copy of the power of attorney executed by him in favour of respondent No.2.

5. The records reveal that the applicant was unable to file the appeal due to financial constraints and had therefore tried to settle

the matter by selling the property in favour of the complainant. Considering the facts and also considering the fact that the applicant is sentenced to imprisonment for a period of 9 months and has been directed to pay fine of Rs.50,00,000/-, the delay needs to be condoned in the interest of justice.

6. Hence, the application is allowed subject to cost of Rs.20,000/- to be paid to the respondent No.2 as condition precedent. The learned Sessions Judge is directed to dispose of the appeal as expeditiously as possible preferably within 6 months from the date of the order.

(ANUJA PRABHUDESSAI, J.)