

nsc.

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

CRIMINAL APPLICATION NO.1227 OF 2014

Pankaj Shantilal Shah	...Applicant
Versus	
Daxa Praful Khandhar and Anr.	...Respondents

Mr.S.V.Sawant, for the Applicant.

Mr.Shreeram Shirsat a/w Mr.Mehul Hartalkar and Mr.Harsh Parte, for the Respondent No.1.

Mr.V.V.Gangurde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
DATE : 24th NOVEMBER, 2016

P.C. :

1. Heard learned Counsel for the applicant and learned counsel for the respondent no.1 and the learned A.P.P.

2. By this application, the applicant has impugned the Order dated 20th September, 2014, passed by the learned Additional Sessions Judge, Greater Bombay, in Misc. Application No.1854 of 2012, in C.C. No.3/PW/2009, by which the application preferred by the respondent no.1

seeking condonation of delay of 215 days in filing the appeal came to be condoned.

3. Learned Counsel for the applicant submitted that the learned Judge had erred in allowing the application and by condoning the delay of 215 days. He submitted that no grounds were made out in the said application for condoning the delay. He further submitted that the respondent no.1 could not have file an Appeal, inasmuch as, the matter was settled before the Lok Nyayalaya.

4. Learned Counsel for the respondent no.1 opposed the application. He submitted that the delay of 215 days has been rightly condoned by the learned Judge and considering the peculiar facts of the case, no interference is warranted in the said order.

5. Perused the papers. It appears that respondent no.1 filed a complaint before the learned Metropolitan Magistrate alleging offences punishable under Sections 420 and 406 of the Indian Penal Code and prayed for investigation under Section 156(3) of the Code of Criminal

Procedure. Pursuant to the said complaint, the learned Magistrate was pleased to direct investigation under Section 156(3) of Cr.P.C. It appears that investigation was carried out by Malbar Hill Police Station and charge-sheet was filed in the said case. It also appears that when the proceedings were pending before the learned Magistrate, the applicant and the respondent no.1 decided to amicably settle their dispute. The same was brought to the notice of the learned Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, who kept the said matter before the Lok Nyayalaya on 4th March, 2012. On 4th March, 2012 the applicant showed his willingness to compromise the case and hence the parties filed 'Terms of Compromise', before the Lok Nyayalaya, which read thus:-

“I, Pankaj Shantilal Shah, hereby state that, I shall pay dues of Citi Bank and submit original documents to Smt.Daksha Praful Khandhar within six months. Court shall withdraw/dismiss the case on submission of original documents.”

6. It appears that pursuant to the terms of compromise, the applicant was supposed to pay Citi Bank its dues and submit the original documents to the respondent no.1, within 6 months. Admittedly, the applicant neither paid the Citi Bank nor returned the original documents to

the respondent no.1 and as such the compromise recorded by the Lok Nyayalaya was not acted upon by the applicant. In view of the time frame given to the applicant i.e. 6 months, the respondent no.1 did not file an appeal before the Sessions Court. The respondent no.1 filed an appeal only when the compromise was not acted upon by the applicant i.e. after 6 months. The delay thus that has occurred in filing the appeal is bonafide and justified and has been explained by the respondent no.1. The learned Metropolitan Magistrate has rightly condoned the delay of 215 days in filing the appeal. The applicant cannot take advantage of his own wrong, inasmuch as, he has failed to abide by and comply with the order of the Lok Nyayalaya.

7. The application being sans merit, is rejected and is accordingly disposed of. The learned Sessions Judge to decide the Appeal, as expeditiously as possible.

REVATI MOHITE DERE, J.