

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APPA) NO.76 OF 2015

IN

CRIMINAL APPEAL NO. OF 2015

(Pradip s/o Manoharrao Nilewar ..vs.. Ashok s/o Hirasingsh Rathod)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 01-03-2016

Heard Shri S.K. Thengari, Advocate for the applicant/appellant and Shri S. Raisuddin, Advocate for the non-applicant/respondent.

The applicant/appellant has filed this application praying that the delay of about 303 days in filing the application seeking leave to appeal be condoned.

The applicant filed proceedings under Section 138 of the Negotiable Instruments Act, which are dismissed by the learned Magistrate by the judgment dated 25-03-2014.

The application under Section 378(4) of the Code of Criminal Procedure is filed before this Court on 03-02-2015. The explanation for delay in filing the appeal is given in paragraph No.5 of the present application as follows :

“5. That, the counsel of the appellant before the trial Court did not advise the appellant to prefer an appeal, however the appellant came to Nagpur on 30-01-2015 for his personal work alongwith his relevant documents and contacted the present counsel and sought advice regarding the present subject matter, the present counsel advised the appellant to prefer an appeal against the said judgment and accordingly appellant entrusted the whole brief to the present counsel for the purpose of filing appeal and therefore, the same is filed today.”

The memorandum of application under Section 378(4) of the Code of Criminal Procedure and the solemn affirmation supporting the present application show that the memorandum of appeal and the present application were drafted in May 2014 at Nagpur. Considering these facts, it is apparent on the record that the explanation given by the applicant/appellant for delay is not correct and cannot be accepted.

Hence, the application praying for condonation of delay is rejected. Consequently, the application under Section 378(4) of the Code of Criminal Procedure is also dismissed. In the circumstances, the parties to bear their own costs.

JUDGE