

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPA) No. 127 of 2015
in
Criminal Appeal No. of 2015
Ashokkumar Bhavarilal Purohit
..VS..
Dattatraya Shriram Wayal and another.

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

Court's or Judge's orders

Mr. M.G. Sarda, advocate for applicant.
Mr. V.K.Paliwal, advocate for respondent no.1.
Mr. J.Y. Ghurde, APP for respondent no.2/State.

CORAM : N.W. SAMBRE, J.
DATED : 22nd JULY, 2016.

The present application is for condonation of delay in filing appeal against the order dated 1.11.2011 passed in SCC No.12775/2003 which was dismissed in default and accused was acquitted of the offence punishable under section 138 of Negotiable Instruments Act. The delay caused is of 1147 days. The delay is sought to be explained on the ground that after the complaint came to be dismissed by the learned Magistrate on 1.11.2011, the applicant-complainant was pursuing the matter before the learned Sessions Court, Akot from 2.2.2012 to 15.1.2015.

Apart from above, when the learned counsel for the applicant is confronted on the merits of the matter, he would submit that the matter was transferred from the file of Judicial Magistrate First Class to the file of Court No. 2 Akola. According to him, as the matter being a summary trial, a de-novo trial was expecting de-novo trial in the matter and as such the matter remained unattended.

So far as the ground as is sought for seeking

condonation of delay is concerned, in my opinion, the delay needs to be condoned as it is not in dispute that the applicant was pursuing his remedy before the wrong forum.

As such the delay caused in filing the appeal stands condoned.

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So far as matter on merits is concerned, it is to be noted that the complaint case was initiated in 2003 and the plea of the accused was recorded on 31st January, 2006. The complainant thereafter filed his affidavit in support of the complaint at Exh. 39 on 20th October, 2007.

Thereafter since the date of dismissal i.e. 1.11.2011 the complainant remained absent almost for a period of more than 4 years without any explanation whatsoever.

The only excuse that is pleaded by the complainant in the application is, he was expecting De-novo trial.

The ground would be of hardly any assistance in the present case particularly in the case of the applicant as the matter before the learned Magistrate was at the stage of cross-examination of the present applicant. In view thereof, the ground as is sought to be raised by the applicant that there should have been any de-novo trial will be of hardly any assistance.

Apart from above, it is required to be noted that on the date of decision of the complaint the matter was pending before the Magistrate for more than 8 years i.e. at the behest of the applicant. It prima facie appears that the applicant was not co-operating with the Magistrate till disposal thereof.

In any case, the applicant cannot be permitted to

take benefit of his own wrongs. As such, no case for grant of leave is made out. The application as such is rejected.

JUDGE

Hirekhan

CERTIFICATE

I certify that this Judgment uploaded is a true and correct copy of original signed order.

Uploaded by : R.B. Hirekhan.
P.A.

Uploaded on : 22-07-2016.