

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.529 of 2015**

**Tuljabhavani Rural Non-agricultural Co-operative
Society Ltd.)...Applicant**

**V/s.
Shri Vilas M. Murtadak & Anr.)...Respondents**

Mr. Rahul Motkari, Advocate for the Applicant.

Mr. Kalpesh Patil, Advocate for R.No.1.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th FEBRUARY 2017.

P.C. :

This is an application for condonation of delay of 4 years and 147 days in filing an application for leave to file appeal for challenging the judgment and order of acquittal of the Respondent in complaint case for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2 Heard learned Advocate appearing for the Applicant/Original Complainant. He argued that within a period of limitation, Criminal Appeal bearing no.22 of 2011 was filed

before the Sessions Court challenging the acquittal of Respondent of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 recorded by the learned Judicial Magistrate First Class on 6.1.2011 under bonafide belief that appeal is maintainable in view of the amended provisions of Section 372 of Cr.P.C. However, subsequently, it is revealed that complainant cannot be a victim as envisaged by Section 372 of Cr.P.C. and, therefore, appeal was withdrawn with liberty to file appropriate proceedings before this Court. My attention is drawn to the order dated 5.1.2015 passed by the learned Sessions Judge, Nashik permitting applicant to withdraw the appeal with liberty to present the appeal before this Court.

3 As against this, the learned Advocate appearing for the Respondent No.1-Original Accused argued that the Applicant was not prosecuting remedy under bonafide belief. He further argued that even if it is accepted that on 5.1.2015 appeal was withdrawn from the Sessions Court then also present proceedings are not filed by showing due diligence. He argued that after withdrawal of the appeal from the Sessions Court, there is again delay in

presenting the application for leave to appeal and, therefore, it cannot be said that the Applicant was prevented by 'Sufficient Cause' in not filing application for leave to appeal within a period of limitation.

4 I have carefully considered the rival submissions and also perused the record.

5 After acquittal of Respondent No.1 on 6.1.2011, the complainant had chosen to challenge the same by filing an appeal before the Sessions Court by invoking the provisions of Section 372 of Cr.P.C. During the pendency of that appeal, a motion was moved for withdrawal of the appeal by the present Applicant by contending that Court of Sessions has no jurisdiction to entertain the appeal as complainant in the case under Section 138 of the Negotiable Instruments Act, 1881 is not a victim as defined by the Cr.P.C. Ultimately, on 5.1.2015, leave to withdraw the appeal was granted with liberty to present appropriate proceedings before this Court by the learned Sessions Judge, Nashik. It is seen from the records that it was on or about 13.8.2015 application for leave to appeal is filed with present application for condonation of delay. It

is thus, apparent that Applicant sat idle after withdrawal of the appeal from the Sessions Court on 5.1.2015 till presentation of proceedings before this Court on or about 13.8.2015. This conduct prima-facie does not reflect due diligence on the part of Applicant in prosecuting his remedy after acquittal of Respondent No.1 from the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

6 However, considering the fact that complaint was for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the Applicant is a rural non-agricultural co-operative society, Respondent No.1 can be compensated by awarding some cost in order to get subject matter decided on merits. Hence, the order:

(1) Application for condonation of delay is allowed subject to payment of cost quantified at Rs.5,000/- to the Respondent No.1 within a period of two weeks from today. If the cost is not paid within prescribed time, application shall be deemed to have been dismissed.

(A. M. BADAR, J.)