

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

**CRIMINAL APPEAL NO.352/2017**

Ashok Aaratmal Kriplani,  
aged about 63 Yrs., Occu. Business,  
Proprietor of M/s Shri Sai Auto,  
Mohata Market, Wardha.

**..Appellant.**

..Vs..

Atul Babanrao Dhote,  
R/o Behind Vikas Vidyalaya,  
Gandhi Nagar, Wardha,  
Tah. and Distt. Wardha.

**..Respondent.**

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Shri J.R. Kidilay, Adv. for the applicant / appellant.

Shri D. Pathak, Adv. for the respondent.  
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**CORAM : Z.A.HAQ, J.**

**DATE : 26.7.2017.**

**CRIMINAL APPLICATION (APPA) NO.672/2016**

1. The complaint filed by the applicant under Section 138 of the Negotiable Instruments Act was dismissed for want of prosecution on 15<sup>th</sup> June, 2015. This order was challenged by the complainant before the Sessions Court in revision which was filed on 1<sup>st</sup> September, 2015 i.e. within the prescribed period of limitation. The revision was dismissed on 30<sup>th</sup> July, 2016 as untenable. After dismissal of the revision application, the complainant has filed the appeal alongwith prayer for grant of leave to file appeal. This appeal is filed on 6<sup>th</sup> October, 2016. According to the applicant, because of filing of Criminal Revision Application No.61/2015 before the Sessions Court, delay of 417 days has occurred.

The application is opposed on the ground that computation of number of days by which the appeal is delayed is not proper and the applicant has not properly explained the delay.

Considering the facts of the case, delay of 417 days in filing the appeal is condoned. Criminal application is **allowed**.

**CRIMINAL APPLICATION (APPA) NO.593/2017**

2. For the reasons stated in the application and considering the grounds raised in the memorandum of appeal, the applicant is granted leave to file appeal to challenge the order passed by the learned Magistrate. Criminal application is **allowed** accordingly.

**CRIMINAL APPEAL NO.352/2017 : JUDGMENT**

3. The appellant / original complainant had filed a complaint under Section 138 of the Negotiable Instruments Act which is dismissed by the impugned order. The learned Magistrate has recorded that after the complainant filed affidavit (Exh. No.19) on 3<sup>rd</sup> March, 2015 he had not been diligent in prosecuting the matter, he has not entered the witness box for verification and consequently, he could not be cross-examined by the non-applicant / accused. It is recorded that the complainant was absent on the date prior to 15<sup>th</sup> June, 2015 and then again on 15<sup>th</sup> June, 2015. In these facts, the complaint is dismissed.

Though the appeal is opposed by the respondent on the ground that

the impugned order cannot be faulted with and though I find that the learned Magistrate has not committed any illegality or error of jurisdiction in dismissing the complaint for want of prosecution, I find that the respondent has not been able to point out that the submission made on behalf of the appellant in the application (Exh. No.27) filed on behalf of the complainant praying for an adjournment on the ground that health of complainant is not good, is not correct.

4. In view of the facts on record, the interests of justice would be sub-served by passing the following order:

The impugned order is set aside.

Summary Criminal Case No.4136/2014 filed by the appellant under Section 138 of the Negotiable Instruments Act is restored to the file of Judicial Magistrate First Class (Court No.6) Wardha.

The learned Magistrate shall proceed with the complaint and dispose it according to law.

The appellant and the respondent shall appear in the Court of Judicial Magistrate First Class, Court No.6, Wardha on 15<sup>th</sup> September, 2017 at 11 a.m. and abide by further instructions / orders in the matter.

The appeal is **allowed** in the above terms.

JUDGE