

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

CRIMINAL APPLICATION (APL) NO.760 OF 2016

Smt. Sadhana Prakash Gawande

..VS..

Vinod Vasantrao Shahade

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

Court's or Judge's Order

Shri V.D. Darne, counsel for the applicant.
Shri R.S. Nagpure, counsel for the non-applicant.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 24, 2017.

Heard learned counsel for both the sides.

This application is filed under Section 482 of the Criminal Procedure Code praying to quash and set aside the impugned order passed by learned Additional Sessions Judge, Yavatmal in Criminal Revision No.34 of 2015 by which order passed by learned J.M.F.C., Yavatmal in Misc. Criminal Application No.241 of 2013 rejecting delay caused in filing complaint under Section 138 of the Negotiable Instruments Act came to be set aside.

It appears that non-applicant initiated complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 against applicant and as there was delay of 19 days in filing the same, the application was filed for condonation of delay which

came to be dismissed by the Trial Court observing that according to the case of the complainant/non-applicant, he was unable to file the complaint within stipulated period as he was suffering from typhoid and in support thereof he had relied upon medical certificate issued by Dr. M.I. Khan wherein it is stated that non-applicant was suffering from fever from 13.9.2013 to 4.10.2013 and was advised to take rest. However, learned Trial Judge noted that on 16.9.2013 applicant was present in the High Court at Nagpur for filing anticipatory bail application. Learned Trial Judge thus finding that the certificate was bogus rejected the application for condonation of delay.

Learned Sessions Judge had considered the fact and in paragraph No.10 of its order had noted that the medical certificate issued by Dr. M.I. Khan clearly shows that applicant was suffering from enteric fever from 13.9.2013 to 4.10.2013 and was under treatment. It is rightly noted by learned Sessions Court that from the above contents of the certificate it cannot be said that applicant was bedridden or was admitted in the hospital and, therefore, held that the medical certificate issued by Dr. M.I. Khan to be reliable as said doctor has only stated that applicant was only under his treatment. Admittedly, the said certificate is not on record. However, from the order of the Trial Court it is found that as per this certificate, non-applicant was also

advised to take rest. In the absence of certificate thus there is nothing to establish if non-applicant was advised to take rest as mentioned in paragraph No.8 of the order of the Trial Court.

Considering the facts as aforesaid, though from the medical certificate non-applicant was found suffering from fever, he does not appear to be bedridden and thus it is rightly held by learned Sessions Judge that applicant to avoid his arrest approached to the Honourable High Court. In fact, it is also correctly noted that the apprehension of non-applicant of his arrest also might not have permitted him to attend the Court at Yavatmal to file complaint within time.

Having considered facts as aforesaid, there appears no reason to set aside the impugned order passed by learned Sessions Judge, Yavatmal wherein short delay of 19 days in filing the complaint is condoned on payment of costs of Rs.2,000/-.

In the circumstances, the application stands disposed of as dismissed.

JUDGE

!! BRW !!

C E R T I F I C A T E

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

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