

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2 OF 2016

Samartha Lights Through Proprietor
Shweta Sakharam Mainkar ... **Applicant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

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Mr.Rakesh Pathak i/b. Khandeparkar & Associates, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

Mr.Sudhir Prabhu, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 9th JULY 2018.

P.C. :

1 This is an application for condonation of delay in filing an application for leave to appeal. The respondent herein came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the learned trial Court.

2 Heard the learned Counsel appearing for both the parties as well as the learned Additional Public Prosecutor.

3 The learned Counsel appearing for the respondent No.2/original accused vehemently opposed the application by contending that the application is not supported by affidavit of the Advocate, who had advised the applicant to prefer the appeal before the Sessions Court challenging acquittal. He, therefore, submits that there is no sufficient cause for condoning the delay.

4 The application is on affidavit of the applicant/original complainant. Her duly sworn testimony shows that after dismissal of her complaint, she had supplied all papers for preferring an appeal to the local Advocate, who advised her that the appeal can be filed in the Sessions Court at Kudal. The applicant further stated that on 27/02/2015, her Advocate informed her that the appeal is not maintainable before the Sessions Court and the same is required to be filed before this Court. The applicant further clarified that then she visited Mumbai, contacted the Advocate and then furnished all necessary papers to him by fetching them from her native place.

5 Primary function of the Court is to adjudicate the dispute on its own merit rather than adhering to technicality of law. In the case in hand, the application is by the complainant, whose complaint under Section 138 of the Negotiable Instruments Act, 1881 is dismissed. Averments made in the application are not countered by filing counter-affidavit. Hence, I hold that the

applicant was prevented by sufficient cause for not filing the appeal within limitation. Therefore, the Order :

ORDER

- (i) The delay in filing the application for leave to appeal is condoned.
- (ii) The application is accordingly disposed of.

(A.M.BADAR J.)