

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.112 OF 2016

M/s.Star Rays	...	Applicant
V/s.		
The State of Maharashtra & Ors.	...	Respondents

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Ms.Bindal K. Bhatia i/b. Mr.Kishor N. Bhatia, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 25th OCTOBER 2018.

P.C. :

1 This is an application for condonation of delay of about
four years and 328 days in preferring application for leave to
appeal in challenging dismissal of the complaint under Section
138 of the Negotiable Instruments Act, 1881 preferred by the
applicant.

2 Heard the learned Counsel appearing for the
applicant. She argued that after filing of the complaint for the
offence punishable under Section 138 of the NI Act, the process

was issued on 18/09/2007 and the case was fixed for recording plea of the accused persons. She further argued that the applicant presumes that the said complaint tagged with another complaint filed by the applicant. The other complaint was pending on the file of the learned Metropolitan Magistrate. It is further argued that because of mis-understanding in taking the dates in the matter, the applicant could not attend the dates for hearing. It is further argued that in the light of the Judgment in the matter of *Dashrathsing Roopsing Rathod v. the State of Maharashtra*, the applicant/accused went to the Court for collecting the complaint for presenting the same before the proper Court. At that time, it was learnt that the subject criminal complaint was dismissed. This, according to the learned Counsel for the applicant, amounts to sufficient cause and, therefore, delay needs to be condoned.

3 Quantum of delay is not material, but what is material is showing of sufficient cause. Want of due care and attention cannot be termed as bona fide conduct on the part of the applicant. In the case in hand, the applicant never care to prosecute the subject criminal complaint. It was ultimately dismissed on 10/01/2011 by resorting to the provisions of Section 256 of the Code of Criminal Procedure. The applicant was not even knowing of this fact of dismissal of the complaint as the applicant never cared to prosecute it. There is no justification

reflecting sufficient cause for seeking condonation of inordinate delay of about four years and 328 days in filing an application for leave to appeal. The application, as such, is devoid of merit. Therefore, the Order :

ORDER

- (i) The Application is rejected.

(A.M.BADAR J.)