

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.114 OF 2015
WITH
CRIMINAL APPLICATION NO.144 OF 2015
AND
CRIMINAL REVISION APPLICATION (ST.) NO.376 OF 2017
WITH
CRIMINAL APPLICATION NO.325 OF 2017**

Sai Agencies
Through Proprietor
Sou. Mehatab Iqbal Bargir

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....
Mr.Ranjeeth Patil, Advocate for the Applicant.
Ms.r.M. Gadhvi, APP for the Respondent - State.
Mr.Anand S. Patil, Advocate for Respondent No.2.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 10, 2018.

P.C. :

The applicant was tried for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) The trial court vide order dated 25th February, 2012, convicted the applicant and he was sentenced to undergo imprisonment for one month and directed to pay compensation of Rs.2,05,000/-. The applicant challenged the said judgment and order by preferring an appeal before the Court at Sessions at

Kolhapur. However, there was a delay in preferring the said Appeal. Hence, the applicant preferred an application for condonation of delay. The said application was numbered as Criminal Misc. Application No.25 of 2013. Since the applicant was absent on several occasions, the Appellate Court dismissed the application for condonation of delay for default vide order dated 30th December, 2014.

2 The applicant thereafter preferred an application for restoration of application for condonation of delay on 30th December, 2014. The said application for restoration was rejected by the Appellate Court vide order dated 29th January, 2015. Hence, the applicant preferred criminal Revision Application No.114 of 2015, before this Court challenging the order dated 29th January, 2015. However, since the first order of dismissing the application for default dated 30th December, 2014 was not challenged specifically, the applicant preferred Criminal Revision Application No.376 of 2017. The applicant also preferred Criminal Application No.325 of 2017 for condonation of delay in preferring Criminal Revision Application (St.) No.376 of 2017.

3 The learned counsel for the applicant submitted that

the Appellate Court may be directed to restore the application for condonation of delay and the said application may be heard on merits. It is further submitted that the applicant has deposited an amount of Rs.1,02,500/- before the Sessions Court during the pendency of the delay condonation application.

4 The learned counsel for the respondents strongly opposed the reliefs sought by the applicant. It is submitted that the applicant was absent before the Appellate Court on several occasion and as a last resort, the Appellate Court dismissed the said application for want of prosecution. It is further submitted that the trial Court's order was passed on 25th February, 2012, the applicant time and again tried to impress upon the complainant that the matter will be settled, however, till today, the applicant has not shown an indication to settle the matter with the complainant. It is further submitted that the application may be dismissed.

5 I have perused the documents on record and the order under challenge. The applicant is convicted for an offence punishable under Section 138 of NI Act and he has been sentenced to undergo imprisonment for one month and was

directed to pay compensation of Rs.2,05,000/-. There was a delay in preferring Appeal challenging the order of conviction. It is also noted that the applicant was absent on several occasion and did not pursue the application for condonation of delay and, hence, the Appellate Court was constrained to dismiss the said application for want of prosecution. However, considering the fact that the applicant has been convicted by the trial Court, an opportunity will have to be given to the applicant to contest the application. The application for condonation of delay has been rejected for want of prosecution. The Appellate Court can be directed to hear the application for condonation of delay on merits and decide the same in accordance with law. Criminal Application No.325 of 2017 was preferred for condonation of delay in preferring Revision Application (St.) No.376 of 2017. Criminal Revision Application No.114 of 2015 was pending in this Court since 2015 and on account of not challenging the order dated 30th December, 2014, the said Revision Application was preferred. The delay is, therefore, required to be condoned.

6 Considering the aforesaid circumstances, I pass the following order:

:: ORDER ::

- (i) Criminal Application No.325 of 2017 is allowed and delay in preferring Criminal Revision Application (St.) No.376 of 2017, is condoned;
- (ii) The order dated 30th December, 2014, passed by the Sessions Court in Criminal Misc. Application No.25 of 2013, dismissing the application for default as well as the order dated 29th January, 2015, passed by the Adhoc Addl. Sessions Judge-1, Kolhapur, rejecting application below Exhibit-19 in Criminal Misc. Application No.25 of 2013, are quashed and set aside;
- (iii) The applicant is directed to deposit the balance amount of compensation before the Appellate Court within a period of four weeks from today. Subject to depositing the said amount, the Appellate Court is directed to restore the Criminal Misc. Application No.25 of 2013 for condonation of delay and decide the same in accordance with law;

- (iv) Criminal Revision Application No.114 of 2015 and Criminal Revision Application (St) No.376 of 2017 along with Criminal Application No.144 of 2015 and 325 of 2017, are disposed of.

(PRAKASH D. NAIK, J.)