

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.250 OF 2016

**M/S.RIGVED PROPRIETORSHIP CONCERN)
REPRESENTED BY ITS SOLE PROPRIETOR)
NIRVAN DILIP SOMAIYA)...APPLICANT**

V/s.

**M/S.GATHA INDIA PVT. LTD. AND/OR)
M/S.GATHA APPARELS PVT. LTD. AND ORS.)...RESPONDENTS**

Mr.Kedar Patil, Advocate for the Applicant.

Mr.Dinesh Kumar A. Dubey a/w. Mr.Ravi Agarwal, Advocate for
Respondent Nos.1 to 3.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th JUNE 2018

P.C. :

1 This is an application for condonation of delay which according to the applicant is that of 1382 days in preferring the application for leave to appeal for challenging the judgment and order dated 4th April 2012 passed by the learned Metropolitan

Magistrate, Kurla, Mumbai, in Summary Criminal Complaint Case No.10446/SS/2009. By this judgment and order, the complaint filed by the applicant alleging offence punishable under Section 138 of the Negotiable Instruments Act came to be dismissed and respondent/accused came to be acquitted thereof.

2 Facts in nutshell are thus :

The applicant is the sole proprietorship firm doing business of designing, furnishing and decoration. It filed a complaint alleging offence punishable under Section 138 of the Negotiable Instruments Act with a submission that cheque of Rs.2,93,820/- issued by the respondent/accused towards discharge of legally enforceable debt came to be dishonoured for the reason “insufficient funds”. After due trial, the said complaint came to be dismissed on 4th April 2012. The applicant is desirous of challenging the said judgment and order of acquittal and therefore, the instant application seeking condonation of delay of 1382 days in preferring the application for leave to appeal.

3 Heard the learned Advocate appearing for the applicant/original complainant. In tune with averments made in the application, he argued that the applicant was not aware about his legal right to challenge the judgment of acquittal nor he was advised by the advocate to approach the higher court. The applicant became aware of his right to challenge the judgment and order of acquittal when he was attending some other proceeding before the same learned Metropolitan Magistrate. The new advocate engaged by the applicant advised the applicant to challenge the judgment and order of acquittal. The earlier advocate refused to hand over papers despite several efforts and subsequently, certified copy was applied for and that is how the delay in lodging the application was caused.

4 The learned advocate appearing for respondent nos.1 to 3 opposed the application by contending that reasons so advanced are totally incorrect. The learned advocate, who was representing the applicant, was ably handling the complaint and some points are also answered in favour of the applicant. The

learned advocate for the respondent further argued that apart from the complaint under Section 138 of the Negotiable Instruments Act, in respect of the same transaction, another complaint alleging the offence punishable under Section 420 read with 34 of the Indian Penal Code is still pending in the court of the learned Metropolitan Magistrate, Kurla, and therefore, it cannot be said that the applicant was unaware about his right to challenge the judgment and order of acquittal before the higher court.

5 I have carefully considered the rival submissions. Quantum of delay is not material and what is material is whether sufficient cause is shown for condoning the same. Undoubtedly, the court is supposed to take liberal approach, once sufficient cause is shown, by condoning the delay, as primary function of the court is to adjudicate the dispute on its own merit, rather than adhering to the technicalities of law. However, once the limitation expires, it gives right to the other side to consider that the judgment so rendered has attained finality, and therefore, it is

expected of the litigant to demonstrate sufficient cause in approaching the court belatedly.

6 In the case in hand, the applicant being the complainant, had adduced his evidence apart from examining another witness by name Balu Pingale. He placed reliance on documentary evidence also. The respondent/accused has examined himself apart from examining one witness by name Radhelal Goyal i.e. banker of the complainant. Both these witnesses were cross-examined by the learned advocate for the applicant. The learned advocate for the applicant had also advanced arguments and thereafter, the subject complaint came to be dismissed in presence of the learned advocate for the applicant.

7 The applicant is not a rustic villager or an illiterate person who may say that he is unaware about his right to challenge the judgment and order of acquittal. In respect of the same transaction, the applicant is prosecuting his complaint before the learned Metropolitan Magistrate where he has alleged

commission of the offence punishable under Section 420 read with 34 of the Indian Penal Code by the respondent/accused person. The applicant/original complainant is an Interior Designer by profession and as such, he cannot plead and contend ignorance of law, which otherwise is also not an excuse.

8 Apart from bald allegation that the earlier advocate of the applicant had not given proper advise or that he had not returned the papers, nothing tangible is placed on record to substantiate this contention. It is seen that the applicant after dismissal of his complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, was sleeping over his right for a period of more than three years, though he was prosecuting another complaint in respect of the same transaction before the learned Metropolitan Magistrate himself.

9 In the light of foregoing reasons, it cannot be said that sufficient cause is made out by the applicant seeking condonation of delay in filing the application for leave to appeal.

10 In the result, the application for condonation of delay and consequently, the application for grant of leave to appeal, are rejected.

(A. M. BADAR, J.)