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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 574 OF 2017**

1. Stonemann Royale Ltd.Applicants
2. Mr. Jagat Chandulal Shah

V/s.

1. The State of MaharashtraRespondents
2. M/s. Global Exim

Mr. Aabad Ponda i/b Ms. Mallika Ingale for the applicants.

Mr. Girish Agrawal for respondent no. 2.

Mr. S. R. Shinde APP for the State.

CORAM : NITIN W. SAMBRE, J.

RESERVED ON : APRIL 26, 2018.

PRONOUNCED ON : MAY 4, 2018.

P.C.

This is an application under section 482 of Code of Criminal Procedure, 1973 questioning the order dated 06/02/2015 and 16/03/2015 passed by the learned 33rd Metropolitan Magistrate, Ballard Pier, Mumbai in C.C. No. 307/SS/2014.

2 The facts necessary for deciding the application are as under.

The aforesaid criminal complaint came to be filed against the applicant for offence punishable under section 141 of the Negotiable Instruments Act, 1881.

Since the complaint was filed at belated stage, complainant preferred an application on 20/01/2014 seeking condonation of delay of 24 days in filing the complaint.

The said application for condonation of delay was resisted by the applicant on the ground that such application should have been accompanied by affidavit. Respondent-complainant then preferred another application seeking condonation of delay of 24 days in filing a complaint supporting an affidavit on 02/12/2014 which was independently objected by the applicant-accused.

The learned Magistrate on 06/02/2015 allowed prayer for condonation of delay in filling the complaint which was subject matter of challenge in criminal application no. 208 of 2015 preferred before this Court. This Court on 29/06/2016 admitted the said

application questioning the order of grant of interim relief and further ordered stay to the proceedings which was subject matter of challenge before the Apex Court in petitions for Special Leave to Appeal (Crl.) No (s) 9019/2016 which came to be decided on 12/01/2017 with following observations.

“Heard Mr. Jay Savla, learned counsel for the petitioner and Mr. V. Giri, learned senior counsel along with Mr. Anil Kaushik, learned counsel for the respondents.

Mr. V. Giri, learned senior counsel, after obtaining instructions, submitted that the Criminal Application (APL) No. 208 of 2015 preferred by the respondents shall be withdrawn with the liberty that they may approach the High Court at the appropriate stage.

In view of the aforesaid statement, we treat Criminal Application (APL) No. 208 of 2015 pending in the High Court of Judicature at Bombay deemed to have been withdrawn. The learned Magistrate shall proceed in accordance with law.

The Special leave petition is accordingly disposed of”.

In view of liberty observed by the Apex Court in the aforesaid order, applicant no. 2 was served with summons. As a consequence whereof, applicant-accused are before this Court.

3 While questioning the impugned order, Shri. Ponda, the

learned counsel would urge that the complaint itself demonstrates that court fee was not paid and the last date for payment of same has expired on 16/03/2014. According to him, two applications for condonation of delay are not maintainable which fact has been lost sight by the learned Magistrate. He would then urge that the conduct of the respondent-complainant is required to be appreciated, keeping in mind the fact that the second application which was supported by an affidavit was filed after period of more than one year. He would then urge that the reasons mentioned in the application for condonation of delay are far away from truth and not bonafide, as contents thereof demonstrates his personal presence in Mumbai, even before the date of presenting the complaint and the date on which affidavit was sworn. According to him, even subsequent conduct of the applicant of not taking steps to serve the respondent for an year, pursuant to the order of notice on delay, speaks of callous and negligent attitude of the applicant. According to him, the provisions of section 143 of the Negotiable Instruments Act, 1881, if appreciated, the delay ought not to have been condoned. Shri. Ponda would also draw support from the

Judgment of Apex Court in the matter of **Indian Bank Association and Ors. V/s. Union of India (UOI) and Anr**¹ so as to claim that the mandate of final decision within six months on an complaint under Negotiable Instruments Act, 1881 should have been strictly enforced. As the copies were not supplied for a period of one year, for serving notice on the accused on the issue of condonation of delay, it is complainant who is required to be blamed for the delay. Shri. Ponda would also tried to draw support from the judgment of Apex Court in the matter of **Pawan Kumar Ralli V/s. Maninder Narula**² so as to claim that the Magistrate is required to deal with the application for condonation of delay as the issue raised herein above are not dealt with.

4 *Per contra*, Shri. Agarwal, the learned counsel for the respondent-complainant would urge that the complaint need not be singed by the complainant. According to him, there is sufficient cause demonstrated in support of prayer for condonation of delay. He would then urge that the entire court fee was paid as directed by

1 [(2014) 5 Supreme Court Cases 590]

2 [(2014) 15 Supreme Court Cases 245]

the Court. According to him, all that is required is a verification of the complaint, however, what was produced on record was notarized affidavit in support of the complaint. Shri. Agarwal would draw support from the judgment of the Apex Court in the the matter of **Indra Kumar Patodia and Anr. V. Reliance Industries Ltd. and Ors.**³so as to claim that the complaint without signature of complainant or authorised signatory is also maintainable. He would also rely upon the judgment of the Apex Court in the matter of **M/s. Reliance Industries V/s. State of Maharashtra**⁴on the same issue. He would also rely upon the judgment of the Apex Court in the matter of **M/s. Leathers V/s. Palaniappan**⁵so as to claim that the object underlying section 138 of the Negotiable Instruments Act, 1881 cannot be frustrated merely by submitting that the complaint was filed at belated stage. He would draw support from observations made in para 27 of the said Judgment. According to him, even if an application for condonation for delay is signed by lawyer, that *ifso facto* does not warrant rejection of prayer for condonation of delay.

3 [AIR 2013 SUPREME COURT 426]

4 [2010 (4) AIR Bom R 309]

5 [2013 Cri.L.J. 1112 SC]

According to him, the Magistrate in his discretion has condoned the delay. As such, no interference is warranted. He sought dismissal of the application.

5 Considered rival submissions. The learned Magistrate vide order dated 06/02/2015, upon perusal of the application and after considering the resistance shown by the applicant-accused, ordered condonation of delay. The cost of Rs. 1,500/- was saddled on the complainant.

6 Though Mr. Ponda has tried to impress upon this Court by submitting that the verification was signed on 26/12/2013, however, the complaint was presented after delayed period for which there is no explanation.

7 If such submissions are to be appreciated in the light of the objection preferred by the applicant-accused, it is to be noted that the complainant has filed complaint on an affidavit. In an application for condonation of delay, cause has been cited that the Constituted Attorney was gone out of station and was not personally

available for filing the complaint. Apart from above, in the written notes of arguments, it has been averred by the applicant that the application for condonation of delay need not be accompanied with an affidavit. Apart from above, it is required to be noted that the order of condonation of delay is a discretionary relief. The objection as such, does not warrant any interference.

8 In the application for condonation of delay filed with and without any affidavit, the reason cited in support of condoning the delay appears to be one and the same. The submission that there are two applications for same cause i.e. for condonation of delay can be accepted as the second in the form of affidavit was in aid of first application. Once the Magistrate has exercised his discretion and condoned the delay that too of a short period of 24 days, I hardly notice any reason to interfere with such order. The view expressed by the learned Magistrate is a possible view.

9 Next claim put forth by the applicant is section 143 of the Negotiable Instruments Act, 1881 provides for outer limit for final decision on a complaint of six months. According to applicant,

because of the delayed act of the complainant of supplying copies, complaint itself is liable to be rejected. In my opinion said submission does not find any support in law. The statute does not speak of consequences when complaint for offence under section 138 of the Negotiable Instruments Act, 1881 is not decided within period of six month as prescribed under section 143 of the said Act. In that eventuality, the judgment relief upon by Shri. Ponda in the matter of Indian Bank Association (Cited supra) will be of hardly any assistance. Apart from above, the fact remains that the applicant-accused will be at liberty to defend the case on merit which right is not withdrawn from the applicant-accused.

10 In the aforesaid background, I hardly notice any reason which warrants interference.

11 In the aforesaid background, application fails, dismissed.

[NITIN W. SAMBRE, J.]