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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 513 OF 2016****IN****CRIMINAL APPLICATION NO. 97 OF 2016**

Farah Diba Sultan Ahmed and another

....Applicants

Vs.

M/s. Ramnord Research Laboratories
Pvt. Ltd. and another

....Respondents

Mr. Vikram Sutaria Advocate for the applicant

Mr. Jagdish Choudhary I/b Raj Legal for respondent no. 1

Mr. S. H. Yadav APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.**DATED : 11th DECEMBER, 2018.****P.C.**

The learned counsel for the applicant i.e. respondent in Criminal Application No. 97 of 2016 has submitted before this Court that in fact the delay is of 81 days and therefore this Court had condoned the delay. The applicant herein has demonstrated the delay caused in filing of the application by giving following dates in a

tabular form which is reproduced as under:

Particulars	Date	Delay-Number of Days
Impugned Order passed by Ld. M. M. 44 th Court at Andheri, Mumbai in CC No. 551/SS/2007	01/09/2014	-----
Statutory period of challenging the impugned order (60 days)	On or before- 31/10/2014	-----
Application for certified copy came to be filed	30/09/2015	335 days (From 01/11/2014 till 29/09/2015)
Certified copies received	06/10/2015	-----
Criminal Application seeking delay condonation came to be filed on before this. Hon'ble Court-	28/01/2016	113 days (from 07/10/2016 till 27/01/2016)
Total Delay:		446 days

2 The learned counsel for respondent in Criminal Application No. 513 of 2016 submits that in fact the matter was transferred to Court room no. 44 at Andheri. The file in the case of Complaint no. 551/SS/2007 was misplaced as informed to him by the clerk. According to the learned counsel, the original complainant had inquired with the clerk of the Magistrate who had repeatedly

informed him that the file is misplaced, however, no complaint was made to the Magistrate and it was never brought to the notice of the Magistrate. According to the learned counsel he was not aware of the transfer of the matter from Court room no. 10 to Court room no. 44 and therefore, he could not prosecute the matter. The learned counsel for the applicant submits that this is the second occasion when the complaint has been dismissed for want of prosecution under section 256 of Code of Criminal Procedure, 1973 and that the applicant has to go through the ordeal of criminal proceedings. It is also submitted that even according to the respondent, certified copy was received on 06/10/2015 and the application seeking condonation of delay was filed in the High Court on 28/01/2016. There is delay of 113 days in filing the application seeking condonation of delay. The explanation for delay of 81 days is that applicant being a company had to take several approvals from the concerned officers for challenging the order dated 01/09/2014 and according to the applicant, they had learnt about the dismissal in the year 2015.

3 Since the delay was less than 100 days, this Court had taken a lenient view and had condoned the delay.

4 According to the learned counsel for the respondent, the delay is calculated from the date of knowledge and not from the date of receipt of certified copies. However, the said submission is unfounded. Since it was incumbent upon the complainant to prosecute his case, it would be his responsibility to see that the case is taken to its logical end at the earliest, moreso since the matter had once been restored to its original status by the High Court. There was a second default. The Hon'ble Apex Court in the matter of **Indian Bank Association and Ors Vs. Union of India and Ors [Writ Petition (Civil) No. 18 of 2013]** has given directions that the proceedings under section 138 of the Negotiable Instruments Act shall be concluded within six months as far as possible.

5 Present complaint is of the year 2007. The explanation given by the respondent that he was in contact with the clerk who informed him that the file was missing is not satisfactory. Neither

there is a reference to the clerk nor to the Magistrate. Moreover, the complainant happens to be a Company. The amount of the cheque was to the tune of Rs. 11,27,500/-. The Court cannot be oblivious of the laches and delay on the part of the complainant and failure to explain the delay. According to the complainant he was under impression that the Magistrate would issue notice and since he had not received any notice, he had to approach the Court. It is pertinent to note that even according to the complainant he had attended 10th Court Andheri on 24/05/2013, 08/08/2013, 07/12/2013, 02/04/2014, 17/07/2014 & 03/09/2014 and his representative was informed by the same clerk that the file is misplaced. According to the applicant, the name of the said clerk is Mr. Pimple. The complainant was also in contact with him on his cellphone but since the clerk had not given any further date, he had not pursued the matter. In fact, it was incumbent upon the Company to inform the Magistrate about the same, moreso since the matter once restored by the High Court.

6 It is in these circumstances that the order dated 08/03/2016

deserves to be recalled as this Court had only considered the delay of 81 days. The order dated 085/03/2016 shall be read with order dated 21/03/2016 by which typographical errors were corrected.

7 In view of the above discussion, Criminal Application No. 513 of 2016 is allowed. The order dated 08/03/2016 is recalled.

8 It is made clear that the said order shall not be an embargo to file a Civil Suit nor refusal to grant leave or condone the inordinate delay in any other proceedings between the parties.

9 Application stands disposed of.

[SMT. SADHANA S. JADHAV, J.]