

Sarnobat

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

**CRIMINAL APPLICATION NO. 639 OF 2017
IN
CRIMINAL REVISION APPLICATION STAMP NO. 685 OF 2017**

Vikas Dinkar Shinde. .. Applicant
Vs.
The State of Maharashtra & Anr. .. Respondents

Mr. Aniket Nikam I/b Mr. Ashish Satpute for the Applicant.
Ms. R. M, Gadhvi, APP for the State.
Mr. Amit P. Ghag, for the Respondent No. 2

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd JANUARY, 2018.

P. C. :

1. This is an application for condonation of delay preferring the revision application challenging the judgment and order dated 3rd October, 2016 passed by the Sessions Court, Bombay in Criminal Appeal No. 729 of 2014 as well as the judgment and order dated 5th July, 2014 passed by the Metropolitan Magistrate 7th Court, Dadar, Mumbai convicting the applicant for the offence punishable under section 138 of Negotiable Instruments Act.

2. There is a delay of about 345 days in preferring the revision application challenging the aforesaid judgments. The learned advocate for the applicant submitted that the appellant was not aware

about the impugned judgment of dismissal of appeal, as the same was dismissed in the absence of his advocate. It is further submitted that the applicant was thereafter arrested on the basis of conviction warrant and he is in custody since 28th August, 2017. The family members of the applicant thereafter approached the advocate for preferring the revision application. It is submitted that, in the interest of justice the applicant be permitted to challenge the impugned judgment of conviction on merits by entertaining the revision application.

3. The learned advocate for the respondent No. 2 vehemently opposed the application for condonation of delay. It is submitted that considering the conduct of the applicant, the delay may not be condoned. It is submitted that the applicant did not remain present before the Sessions Court and therefore, the court was required to hear the counsel for the complainant and decide the matter. It is submitted that the applicant was not available for a long period of time and repeatedly conviction warrants were issued against him. It is submitted that the grounds raised in the application are not justifiable and that the delay in preferring the revision application has not been explained by the applicant. It is therefore, submitted that the application may be rejected.

4. The applicant has been convicted by the Trial Court for the offence punishable under section 138 of N.I. Act. He has been directed

to pay compensation of Rs.2,84,38,750/-. On the basis of conviction warrant, the applicant is taken in custody and he is in custody since 28th August, 2017. The appeal preferred by the applicant has been dismissed by the Sessions Court.

5. Considering the fact that the applicant has been convicted for the offence under Section 138 of N.I. Act and for the reasons mentioned in the application and the submissions advanced by the advocate for the applicant, an opportunity will have to be given to the applicant to contest the judgment and order of conviction passed by the Trial Court and confirmed by the appellate court by condoning the delay. In these circumstances, this application is required to be allowed and hence, I pass the following order;

- (i) Criminal Application No. 639 of 2017 is allowed in terms of prayer clause (a).
- (ii) Application stands disposed of.

[P. D. NAIK , J.]