

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 230 OF 2020

Ashok Nandlal Kela,
Aged 45 years, Occ. - Business,
R/o In front of Kela Post Office,
Kela Nagar, Khamgaon, District -
Buldhana.

.... **PETITIONER**

VERSUS

1) Buldhana Urban Co-op. Credit Society
(Multi-State), through its Recovery
Officer, Branch – Khamgaon, Buldhana.

2) State of Maharashtra,
through P.S.O., Khamgaon (City).

.... **RESPONDENTS**

Mr. T.L. Pande, Counsel h/f. Mr. A.D. Bhate, Counsel for the petitioner,
Mrs. Sonali Saware Gadhawe, Counsel for respondent 1,
Mr. N.R. Rode, Addl.PP. for respondent 2/State.

CORAM : ROHIT B. DEO, J.
DATED : 12th FEBRUARY, 2021

ORAL JUDGMENT :

Heard finally with the consent of the parties at the stage of admission.

2. The petitioner is assailing the judgment dated 01-10-2019

rendered by the Additional Sessions Judge, Khamgaon in Criminal Revision 53/2019 whereby the revision preferred by the petitioner challenging the condonation of two days delay in filing the complaint under Section 138 of the Negotiable Instruments Act (Act), is rejected.

3. Few facts may be noted.

4. Respondent 1 instituted Summary Criminal Case 1230/2018 under Section 138 of the Act, on 20-6-2018.

5. The verification statement was recorded on 21-8-2018.

6. It was noticed that there was delay of two days in filing the complaint and, therefore, respondent 1-complainant preferred Exhibit 6 which is an application for condonation of delay.

7. The learned Magistrate issued notice to the proposed accused on the application for condonation of delay. Despite service of notice, the accused did not appear. The learned Magistrate condoned the delay vide order dated 08-5-2019 and issued process.

8. The first submission of the learned Counsel is that sufficient

cause to condone delay is not discernible from the application. Be it noted, that the petitioner-accused did not respond to the notice of condonation of delay. Both the Courts below have found that the explanation that a genuine error occurred while calculating the period of limitation, is acceptable. I have given due consideration to the observations of the learned Magistrate in paragraph 2 of the order dated 08-5-2019 of condoning the delay. In my considered view, there is nothing arbitrary in exercise of discretion by the Courts below and in exercise of constitutional jurisdiction under Article 227 of the Constitution of India it would not be appropriate to interfere.

9. The learned Counsel for the accused then submits that the application for condonation of delay must be filed simultaneously with the complaint. This would be an idle scenario. However, in the facts of the case, it was only when the verification statement was recorded that the error in calculating the period of limitation came to light. It is not as if the application for condoning the delay was preferred after issuance of process. The application Exhibit 6 seeking condonation of delay was preferred prior to the issuance of process. The learned Magistrate issued notice. The accused chose not to appear. The Magistrate, therefore, condoned the delay and then took cognizance of the complaint. I do not see any error in the approach of the learned

Magistrate muchless with the view taken.

10. The petition is dismissed.

JUDGE

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Prafulla
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by Prafulla
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