

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.390 OF 2022

IN
CRIMINAL APPEAL NO. OF 2022

M/s. Central Engineering Corpn. A partnership firm having registered office at
Abhyankar Road, Sitabuldi, Nagpur through Partner, Shri Ashish s/o Ashok Kumar
Nagori

Vs.

Shankarrao s/o Rangdeoji Motghare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. S. Deshpande, Advocate with Mr. A. M. Balpande, Advocate for applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/07/2022

1. Heard Mr. Deshpande, learned counsel with Mr. Balpande, learned counsel for the applicant.

2. The application seeks condonation of delay of 3455 days (9 years and 5 months) in filing the appeal against the acquittal.

3. The proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated in the year 2009 and on failure of the complainant to take steps to secure the presence of the accused came to be dismissed on 11.4.2014 (pg.71), thereafter nothing was done and the present application came to be filed on 31.3.2022 after delay of 9 years and 5 months. The learned counsel for the applicants submits that the

reasons are enumerated in paras 4 and 5 in the application and are sufficient for condonation for delay. Perusal of para 4 would indicate that except for two occasions, one being when the grandmother of the complainant is said to have expired on July 2015 and the other in which on 9.3.2017 his grandfather expired, there is no other reason given except for vague allegation that the counsel concerned did not inform. In my considered opinion, the complainant is equally under obligation to be abreast of the proceedings in the Court and cannot just walk away by throwing the blame on the counsel. Nothing is there on record, apart what has been said in paras 4 and 5. The demise of the counsel is on 17.3.2022, and therefore, there was need for justification for the delay occasioned prior thereto which is absent. In my considered opinion, the applicant who was the complainant clearly failed in his obligation to keep abreast of the proceedings and to take necessary steps for service upon the accused. Merely saying that the counsel did not inform is of no avail for the reason that the counsel is not expected to serve the accused and it is for the complainant to take the appropriate and necessary steps in that regard, which are clearly absent, considering which, I do not see this is a fit case to condone the delay of 9 years and 5 months. The application is therefore rejected.