

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

Criminal Application [APL] No.816 of 2021

Mrs. Gauri w/o Shailesh Pradhan

vs.

Pranay s/o Onkarrao Lichade

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. A.A. Choube, Advocate for the Applicant.

CORAM : VINAY JOSHI, J.

DATE : 29th SEPTEMBER, 2022.

Though the sole non-applicant (complainant) has been served, he chooses to remain absent.

02] Heard.

03] The applicant is an accused in Summary Criminal Case No.2348/2017 filed by the non-applicant in the Court of Judicial Magistrate First Class, Gondia. The said complaint was for the offence punishable under Section 138 of the Negotiable Instruments Act. Having regard to the *prima facie* case, the learned Magistrate by taking cognizance has issued process against the applicant/accused on 30/01/2018. Being aggrieved by the said order of issuance of process, the applicant has filed revision along with delay condonation application, however, it was came to be rejected and that is why the applicant is before this Court.

04] It is submitted that the applicant is a lady staying away at Nagpur. Several cases were filed against her, therefore, for want of proper advice and assistance, she could

not file revision within the stipulated period. It reveals from the impugned order that the applicant was served with summons of the criminal case on 04/04/2018 and she appeared in the Court of Magistrate on 19/05/2018. This fact has been weighed to the revisional court while rejecting the application for condonation of delay. The learned Counsel appearing for the applicant would submit that consistently the Supreme Court has taken a view to liberally construe the applications filed under Section 5 of the Limitation Act. The delay condonation application bears reference that the applicant was engulfed in several cases of like nature. The applicant stated that she being lady staying at Nagpur did not get proper assistance from family and, therefore, she was prevented from filing revision. It is submitted that the applicant has good case on merits to challenge the impugned order.

05] The Supreme Court in the case of Collector (L.A.) vs. Katiji – (1987) 2 SCC 107 ruled that, while considering “sufficient cause” in the light of Section 5 of the Limitations Act, pointed out the principles for adopting liberal approach in condoning the delay by Courts. Undoubtedly, the provisions of Section 5 of the Limitations Act has to be construed liberally so as to advance the cause of justice rather than to throw away the litigant on sheer technicalities. If the delay is condoned, at the most, the cause would be decided on merits. However, in case of condonation, the other side is required to face another round of litigation for which they could be reasonably compensated.

06] In view of the above, the application is allowed. The impugned order dated 04/06/2021 is hereby quashed and set aside. The delay of 342 days caused in filing revision is hereby condoned subject of costs of Rs.10,000/- (Rupees Ten Thousand Only) to be paid to other side within two weeks from today. Deposit of cost amount in the trial Court for respondent amounts to sufficient compliance of the order. On deposit of cost amount, revision shall be registered and to be decided on its own merits.

07] The application stands disposed of in the above terms.

JUDGE

**sandesh*