

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**25 CRIMINAL APPLICATION NO.1528 OF 2022
IN ALPST/4014/2022**

**JEEVAN BABRUVAN KOLPE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Dashrarth R. Dhumal, Advocate for the applicant
Mr. S. B. Bhosale, Advocate for the respondent
Mr. S. R. Yadav-Lonikar, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 17th MARCH, 2023

P. C.

1. Heard the learned advocates for the parties.
2. This is an application seeking condonation of delay of 2256 days that is caused in filing the application seeking leave to file an appeal against the judgment and order dated 22-12-2015 passed by the learned JMFC, Kallam in SCC No. 440/2014 thereby acquitted the respondent of the offence punishable under Section 138 of the Negotiable Instrument Act. After the impugned judgment, the applicant under wrong advise filed an appeal in the court of learned Sessions Judge,

Osmanabad by filing Criminal Appeal No.04/2016. Said appeal came to be dismissed on 24-02-2022 as not maintainable. The applicant, has therefore, approached this court by filing the application seeking leave to file an appeal in the matter alongwith this application. The learned advocate for the applicant submits that the delay is not deliberate or intentional and it is purely for the reasons that under wrong advise the applicant had approached the Sessions Court by filing an appeal.

3. Looking to the date of the impugned judgment and filing of the appeal before the Sessions Court, Osmanabad there was no delay. Even after rejection of the appeal by the Sessions Court, the applicant has immediately approached this court which clearly shows that the applicant has taken prompt steps to file an appeal.

4. Learned advocate for the respondent vehemently opposed the application submitting that choosing a wrong forum cannot be said to be sufficient reason to condone the delay. He

submits that now the judgment of acquittal is passed by the learned JMFC, Kallam. The respondent cannot be harassed after 7-8 years in this appeal. He has already faced one appeal in the Sessions Court and now this second time also he has to face the appeal and therefore he prays for rejection of application.

5. Considering that the cheque was for Rs.7 lakhs and the applicant should get an opportunity to prove his case in the appeal, this court finds that sufficient reasons is made out to condone the delay. However, at the same time cost needs to be imposed to compensate the respondent as the respondent is made to suffer one proceeding of appeal. The application is, therefore, allowed subject to deposit of cost of Rs.7000/- in the office of this court within a period of two weeks. The respondent is at liberty to withdraw the same without making separate application. After the amount is deposited, office to register the application seeking leave to file an appeal as appeal.

[KISHORE C. SANT, J.]