

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3179 OF 2022
IN ALPST/8755/2022

JANKALYAN URBAN COOPERATIVE CREDIT SOCIETY, BHUSAWAL
THROUGH ITS MANAGER RAVINDRA GOPAL DHANDE
VERSUS
RAMESH GIANDALMAL ADHICHA

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Advocate for Applicants : Mr. Shinde Abasaheb D.
Advocate for Respondent : Mr. Shaikh Mohammad Naseer A.

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CORAM : KISHORE C. SANT, J.
DATE : 27th MARCH 2023.

Per Court :

1. This is an application seeking condonation of delay of 1469 days in filing application seeking leave to file appeal against acquittal. The reason assigned for delay is that the applicant is a Cooperative Credit Society and the said Society had filed a complaint under Section 138 through an Advocate. However though the complaint was dismissed, learned Advocate did not communicate the said fact to the applicant and therefore there is a delay.

2. Learned Advocate for the applicant submits that since the applicant is a Society, delay deserves to be condoned.

3. The learned Advocate for the respondent however submits that in fact the applicant is a Society, who had also filed recovery proceeding against the respondent/accused. Pursuant to the recovery proceeding, property of the accused is seized and is auctioned. However while dispossessing of the property by way of auction, certain irregularities had taken place at the hands of the applicant/Society. Now the Tahasildar has also lodged FIR bearing Crime No.109/2022 with Bhusawal City Police Station against the Recovery Officer of the Society and the purchaser of the property. He submits that it is only because of the said action, now the Society has approached this Court seeking leave to file appeal against acquittal. He also submits that there is no sufficient reason given in the application and prays for dismissal of the application.

4. After hearing the parties, this Court finds that the applicant in this case, is a Cooperative Credit Society. It cannot be accepted that the

Society is not keeping the track of the cases filed on it's behalf. From the impugned order, it is seen that the complaint was filed in the year 2010 and the process was issued on 12.08.2012. Even thereafter the applicant/Society did not take steps in the matter to serve the respondent/accused. No step was taken since 15.01.2018 and it is therefore the learned Court of Judicial Magistrate First Class, Bhusawal dismissed the complaint by order dated 13.07.2018 in SCC No.851/2010. Thus it is seen that at every stage it is the Society, which is not taking prompt steps and therefore the learned trial Court had no option. This Court did not go into other aspect in this application for condonation of delay. This Court has referred the impugned order only for the purpose to see the conduct of the applicant. It is clearly seen from the above things that the Society was not vigilant. Even assuming that the lawyer engaged by the Society did not immediately inform the Society about the dismissal, however Society is expected to keep track of the proceeding. There also appears to be substance in the submission of the respondent that only because now complaint is filed against the Recovery Officer of the Society by the Tahasildar, Society now rushed to this Court.

5. Even reading of the application as it is, the only reason assigned in the application is that communication gap between the lawyer and the Society, certainly this cannot be said to be sufficient reason for huge delay of 1469 days. In view of dismissal of the complaint filed by the applicant, there is an acquittal of the accused, such right cannot be taken away lightly. The respondent/accused cannot be made to face further to prosecution after so much delay. Hence this Court finds that the application deserves to be dismissed.

6. With this, the Criminal Application is dismissed.

[KISHORE C. SANT, J.]

Najeeb.