

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

**CRIMINAL APPLICATION NO. 3198 OF 2021  
IN ALPST/9106/2021**

Santoshimata Merchant Coop. Credit Society,  
Bhusawal, through Prashant Laxman Bharambe .. Applicant

Versus

Khalilkhan Mustaffa Khan .. Respondent

Mr. Kailas B. Jadhav, Advocate for the Applicant.  
Mr. Govind A. Kulkarni, APP for Respondent.

**CORAM : KISHORE C. SANT, J.**

**DATED : 23<sup>rd</sup> JANUARY, 2023.**

**P. C. :-**

. Heard learned advocate for the applicant and learned advocate for respondent.

2. This is an application seeking condonation of delay of 1404 days that is caused in filing application seeking leave to file an appeal against acquittal. It is submitted by the learned advocate for the applicant that, the loan was advanced by the society to the respondent. Loan amount of Rs. 10,00,000/- (Rs. Ten Lakh only) was advanced. Since respondent was not regular in payment, the cheque was given by him of Rs. 3,00,000/- (Rs. Three Lakh only). However, the said cheque came to be dishonored and therefore, the prosecution was lodged

under Section 138 of the Negotiable Instruments Act (for short “N.I. Act”). He submits that, there was also simultaneous proceeding filed under Section 101 of the Maharashtra Co-operative Societies Act (for short “M.C.S. Act”) for recovery of an amount of Rs. 18, 60, 595/-. The complaint under Section 138 of the N.I. Act was filed in the year 2009 and the same came to be dismissed on 07.12.2017. In the proceedings started under Section 101 of the M.C.S. Act, there was a certificate granted to the society. In the proceedings pursuant to Section 101 of the M.C.S. Act, the execution proceedings are taken under Rule 107 of the Maharashtra Co-operative Societies Rules. In the said proceedings, the respondent shown that he has already been acquitted by the criminal Court in the proceeding filed under Section 138 of the N.I. Act on the ground that he has shown that the amount of loan is already repaid. It is therefore, the society decided to challenge the judgment of acquittal.

3. By looking to the reason assigned, it is clear that, there is no whisper as to why the appeal was not preferred earlier and or that the society was prevented from filing appeal/application. It simply appears that only because the respondent has taken defence in the proceeding filed under Section 101 of the M.C.S. Act, therefore society now wants to file appeal against acquittal. It hardly can be said to be sufficient cause for condoning the delay.

4. Learned advocate for respondent rightly placed reliance upon the judgment of the Hon'ble Apex Court in a case of Majji Sannemma alias Sanyasirao Vs. Reddy Sridevi and others reported in 2021 SCC Online SC 1260. Learned advocate for respondent vehemently opposes the application.

5. Considering the above position and since there is no much less sufficient cause shown by the applicant to condone the delay, the same deserves to be dismissed. No interference is called for.

6. In view of this, the criminal application stands dismissed and disposed off.

( KISHORE C. SANT, J. )

P.S.B.