

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

**CRIMINAL APPLICATION NO. 4335 OF 2022
IN ALPST/11968/2022**

Sayyad Akhil Ahemad Mashayak .. Applicant

Versus

Mohammad Siddiq Md. Yusuf Shaikh .. Respondent

Mr. Sushant B. Choudhari, Advocate for the Applicant.

CORAM : KISHORE C. SANT, J.

DATED : 16th MARCH, 2023.

P. C. :-

- . None appears for respondent though represented by a lawyer.
2. Heard learned advocate for the applicant.
3. This is an application seeking condonation of delay of 1215 days that is caused in filing application seeking leave to file an appeal challenging the judgment and order of acquittal of the respondent of the offence punishable under Section 138 of the Negotiable Instruments Act. The impugned judgment is passed on 19.06.2019. However, the applicant filed an appeal in the Sessions Court bearing Criminal Appeal No. 16/2020 within time. Later on it was realized that appeal would not lie before the Sessions Court, but the proper remedy

is to file an appeal in this Court. In this view of the matter, the applicant prayed for withdrawal of the criminal appeal by filing specific proceeding that the applicant wants to approach this Court and therefore, wants to withdraw the appeal. Pursis was filed on 11.07.2022 and on the same day the learned Additional Sessions Judge -2, Osmanabad allowed withdrawal of appeal. It is thereafter the applicant approached this Court by filing this application on 14.12.2022.

4. On this background, learned advocate for the applicant submits that, in fact, delay is for the reason that under misconception the applicant had approached the Sessions Court by filing an appeal which was pending till 11.07.2022. After the withdrawal of the said appeal, the delay is only of 94 days. Though the delay appears to be of 1215 days, it is for the reasons as stated above. The period that is spent in prosecuting the appeal before the Sessions Court needs to be excluded. He thus prayed that, the delay is unintentional. The applicant is not to gain anything by causing delay and there is no question of deliberate or intentional delay that is caused. On the contrary, it is the applicant who is deprived of money. He further submits that, the right to file an appeal is a valuable right and therefore, the delay needs to be condoned.

5. In view of the same, this Court finds that, a case is made out to condone the delay. Hence, the following order.
6. The criminal application is hereby allowed.
7. The delay of 1215 days that is caused in filing an application seeking leave to file an appeal against acquittal is condoned.
8. Office to register the Application for leave to appeal by party party No. 11968/2022 and give number.
9. With this, the criminal application stands disposed off.

(KISHORE C. SANT, J.)

P.S.B.