

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.290 OF 2018
WITH
CRIMINAL APPLICATION NO.291 OF 2018**

Jaybeesha International Pvt. Ltd & Ors. ... Applicants
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Ujjwal Gandhi with Mr. Prateek Dutta i/b
Mohammed Khalik for the petitioner.

Mr. A.R. Patil, APP for the State.

Mr. Ashwin Shete with Mr. Abhay Dhadiwal, Mr.
Priyank Daga i/b Jayakar and Partners for respondent
No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 6, 2023

P.C.:

1. The challenge in this petition is to the order passed by Sessions Court refusing to condone the delay of 485 days in filing Revision challenging issuance of process in a proceeding under Section 138 of the Negotiable Instruments Act, 1881.
2. The reason mentioned in the application for condonation of delay is:- (i) The ill health of applicants No. 2 and 3. (ii) applicant No.4 was out of India. (iii) applicant No.5 was suffering from Tuberculosis and was under medical treatment. (iv) it was a bonafide delay.
3. While dismissing the application, the Sessions Judge held

that the applicants failed to submit material to prove the cause shown in the application.

4. Learned advocate for the applicant states that the applicants have produced on record of this Court the documents to explain the delay. However, the documents produced before this court are in relation to applicant No.5, who passed away during the pendency of the matter. Therefore, even before this Court, no documents have been produced to support the contentions raised in the application. It is well settled that while condoning the delay in criminal proceedings, the Court would be liberal. However, without sufficient cause shown in the application, which prevented the applicant from approaching the court earlier, the court would not be justified in condoning the delay, particularly in the matter arising out of the order of issuance process under Section 138 of the Negotiable Instruments Act, 1881.

5. In the facts of the case, after passing the impugned order, the trial is pending without any progress. This is the consequence when the superior court entertains proceedings arising from a refusal to condone delay. In the absence of any cause, no fault can be found in the exercise of discretion by the Revisional Court.

6. The learned advocate for the petitioner submitted that the reason not mentioned in the application was the settlement talks between the parties. In my opinion, in the absence of such reason averred in the delay condonation application, neither Sessions Court nor this Court can consider this explanation. Therefore such ground cannot be allowed to be urged for the first time in

proceeding under Section 482 of the Code of Criminal Procedure, 1973.

7. Sustenance to the submission above has been drawn from the Judgment of the Apex Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy** reported in **1998 AIR SCW 3139** wherein the apex Court held that mere lapse part of the litigant, unless it is shown that it was malafide, the Court would be liberal to condone the delay. In the facts of the case, in the absence of reason in the application, the exercise of discretion by the Sessions Judge cannot be termed as capricious, arbitrary or perverse. Therefore, no case is made out to interfere with the order.

8. The Criminal Application stands dismissed. No costs.

(AMIT BORKAR, J.)