

Nikita

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

CRIMINAL REVISION APPLICATION NO.89 OF 2021

Sulekha Deepak Kanegaonkar ... Applicant
V/s.
The State of Maharashtra and Ors ... Respondents

Ms. Swarali Joglekar for the Applicant.

Ms. M. R. Tidke, APP for the State.

Mr. Shubham M. i/b Samay Pawar for Respondent
No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 13, 2023

P.C.:

1. By the impugned order, the Appellate Court in an appeal challenging the conviction and sentence of the accused under Section 138 of Negotiable Instruments Act, 1881 is challenging rejection of application of condonation of delay of 600 days.

2. It is undisputed that the applicant has been convicted for offence under Section 138 of Negotiable Instruments Act, 1881. She has deposited 20% of cheque amount with the Trial Court which has been withdrawn by the appellant.

3. The reason the in the application is as follows.

i. Father of the applicant is suffering from Liver Cancer

contrary to 7 years of the date of application. Except applicant there is no one to look after him. He resides at Solapur. The trial is held in Mumbai.

ii. The husband of applicant was suffering from cancer since July 2018.

4. The appellate Court disbelieved the second reason holding that order of conviction is dated 3rd June 2017. The treatment of Chemotherapy was going on since July 2018. There is no explanation for a period between 4th July 2017 till June 2018.

5. Considering the nature of disease suffered by the husband and father, once the accused is convicted, the Appellate Court while considering application for delay against such conviction needs to be condoned. In the context of conviction, it was expected of Appellate Court to consider sufficient cause mentioned in the application. Considering the fact about which there is no serious challenge that father is suffering from Liver Cancer and husband is suffering from cancer. The applicant has made out a case of condonation of delay. I therefore pass following order:

i. Criminal Miscellaneous Application No.1117 of 2019 is allowed.

ii. The Appellate Court shall decide the appeal of applicant on merits.

iii. Considering the facts of the case, the order of conviction is dated passed in the year 2017, the Appellate Court shall decide the appeal within six months from the

date of appearance of the parties.

iv. Parties shall appear before the Appellate Court on 24th April 2023.

6. The criminal revision application stands disposed of. No costs.

(AMIT BORKAR, J.)