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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.401 OF 2019
IN
CRIMINAL APPLICATION (STAMP) NO.104 OF 2019**

Damodar Narayan Chilka	... Applicant
Vs.	
The State of Maharashtra & Ors.	... Respondents

Mr. Onkar A. Mane for the Applicant.

Mr. Y. Y. Dabke APP for Respondent No.1.

CORAM : S. M. MODAK, J.

DATED : 24TH JANUARY 2023

PC:-

1. Heard learned Advocate for the Applicant and learned APP for Respondent No.1.
2. Notice is served on Respondent Nos.2 and 3. They have not appeared.
3. The Applicant intends to challenge the order dated 12th February 2016, passed by the 12th Judicial Magistrate, First Class, Solapur. As per the said order, the complaint was dismissed by invoking the powers under section 256 of the Code of Criminal Procedure. The trial Court has issued non bailable warrant against Respondent Nos.2 and 3-accused and case was fixed for return of non

bailable warrant. Under the presumption that his presence is not required, he has not attended the trial Court. By treating absence of the complainant as deliberate the complaint was dismissed.

4. The complainant has trusted his Advocate and he has not attended the Court and enquired about the matter after 12th February 2016. As per legal advise he requested learned Magistrate to set aside 2016 order and restore the complaint, however, after realising the mistake he withdrew that application on 26th December 2018, and then approached this Court. There is delay of 2 years and 321 days in challenging the said order.

It is true that it is job of police to execute non bailable warrant. So execution of non bailable warrant is completely not in hands of the complainant. The case is pending since 2011. The explanation offered for not taking steps in time to challenge the impugned order for all these years is not challenged by the Respondent by putting appearance. I find no reason to reject it and condone the delay in filing Criminal Application. Hence, the following order is passed :

ORDER

- (a) Application is allowed.
- (b) Delay is condoned.

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5. Today, the Court has condoned the delay in filing Criminal Application. The complaint was dismissed for non appearance of the

complainant. The Court has dismissed the complaint for not executing non bailable warrant. Special leave is sought.

6. Issue notice to the Respondents, why special leave should not be granted, returnable on **28th February 2023**.

(S. M. MODAK, J.)