



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3452 OF 2023  
IN  
APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY (ST.)NO.9516  
OF 2023

Najmoon w/o. Gani Shaikh,  
Age : 44 years, Occu. : Household,  
R/o. Shyamnagar, Latur,  
Tq. & Dist. Latur.

**... Applicant.**  
(orig. Complainant)

**Versus**

Tayyab S/o. Usman Sayyad,  
Age : 48 years, Occu. : Business,  
R/o. Bhoyara, Post. Murud Akola,  
Tq. & Dist. Latur.

**... Respondent**  
(orig. Accused)

...  
Mr. Dhananjay A. Mane, Advocate for Applicant.  
Mr. Shrikishan S. Shinde, Advocate for Respondent.  
...

CORAM : ABHAY S. WAGHWASE, J.  
RESERVED ON : 14<sup>th</sup> FEBRUARY, 2024  
PRONOUNCED ON : 23<sup>rd</sup> FEBRUARY, 2024

**ORDER :**

1. This is application for condonation of delay of 470 days in filing application for leave to file appeal by private party.

2. In support of relief, learned counsel for applicant submitted that, exception is to be taken to the judgment and order of 4<sup>th</sup> Additional Chief Judicial Magistrate, Latur, acquitting respondent from offence under section 138 of Negotiable

Instruments Act, 1988. That, a full-proof case was made out, wherein all necessary ingredients of section 138 of N.I. Act were available. However, by judgment and order dated 22.01.2020 respondent was acquitted. Acquittal was not on proper appreciation and therefore, original complainant intends to file appeal, but he could not take steps for leave to file appeal for reasons like time spend in obtaining certified copies, seeking legal advice. That, meantime, due to Covid restrictions court functioning was disrupted. There were also financial crises. That, for said reason delay of in fact 90 days has occurred and not 470 as per office note. For above reasons, he prays to condone the delay caused in filing leave to file appeal by private party.

3. Above application is strongly opposed by learned counsel for accused respondent. He pointed out that, proceedings were decided on 22.01.2020 i.e. much prior to Covid. According to him, lock down was clamped from July 2021. Therefore, in between there was sufficient time, but no steps were taken. Reason for Covid pandemic therefore cannot be taken into consideration. Lastly, he submitted that, there is no sufficient cause made out to condone huge delay and he prays to dismiss the application.

4. After considering the submissions of both sides and on

going through the papers, it seems that, present applicant instituted proceedings under section 138 of N.I. Act bearing S.C.C. No. 2113 of 2016 against present respondent alleging commission of offence under section 138 of N.I. Act. There is no dispute that such proceedings were decided by learned trial Court on 22.01.2020 itself. Admittedly, leave has to be filed within stipulated period. However, record shows that, application for delay caused in seeking leave is filed on 10.09.2023. It is true that, there was Standard Operating Procedure (SOP) during Covid. When trial court had decided the proceedings on 22.01.2020, apparently there was sufficient time in between to file application for leave. But, no steps seems to be taken within stipulated period, resulting into huge delay.

No good and sufficient cause is therefore made out to condone the delay, hence application is rejected.

**(ABHAY S. WAGHWASE, J.)**