

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

**CRIMINAL REVISION APPLICATION NO. 186 OF 2020
WITH
INTERIM APPLICATION NO.1185 OF 2020**

Brijmohan Sarathe ... Applicant

Versus

1. The State of Maharashtra
2. Sushila Sopan More
3. Naresh Sopan More ... Respondents

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Mr. Jagannath S. Pawar, Advocate for the Applicant.

Mr. Milind V. Rawal for Respondent Nos.2 & 3.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 15th JANUARY, 2024.

P.C.:

1. The applicant is convicted for offence under Section 138 of the Negotiable Instrument Act vide Judgment and order dated 24th May 2018 passed by the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai in Summary Criminal Case No.2001564/SS/2015 and sentenced to suffer simple imprisonment till rising of the Court and to pay fine of Rs.7,20,000/- within two months and in default of payment of fine to suffer simple imprisonment for three months.

2. The applicant preferred an appeal challenging the Judgment of conviction before the Sessions Court. Since there was a delay in preferring the appeal, the applicant preferred Misc. Application No.2299 of 2018 for condonation of delay. The learned Sessions Judge vide order dated 15th November 2018 directed that the applicant be released on execution of P.R. bond in cash bail of Rs.5,000/- to be deposited in the Court. However, subsequently vide order dated 11th March 2020, the learned Sessions Judge has rejected the application for condonation of delay.

3. Being aggrieved by the aforesaid order, the applicant has preferred the present Revision Application challenging the said order and Interim Application for suspension of sentence and grant of bail.

4. Vide order dated 7th October 2020, the applicant was permitted to deposit Rs.72,000/- before the lower Appellate Court within two weeks and warrant of arrest, if any was directed to be kept in abeyance. Vide order dated 25th November 2020 it was recorded that pursuant to order dated 7th October 2020, the applicant had deposited 72,000/- in the Lower Court on 13th October 2020. This Court then directed that if warrant of arrest is issued against the applicant, the execution shall be stayed until further order. Thereafter, the applications are adjourned from time to time and the interim relief granted earlier has been extended.

5. Learned Advocate for the applicant submitted that there was delay of 142 days in preferring the appeal before the Sessions Court. The learned Sessions Judge ought to have condoned the delay. Sufficient cause was shown to condone the delay. In the interest of justice, the delay should have been condoned. The applicant had deposited Rs.1,80,000/- before the Sessions Court during the pendency of Appeal and thereafter amount of Rs.72,000/- and Rs.73,000/- were deposited in the Sessions Court and this Court respectively. Hence, it is submitted that the delay may be condoned and the appeal may be directed to be decided on merits.

6. Learned Advocate for the Respondent Nos.2 & 3/ Complainant submitted that the delay has not been explained by the applicant. The delay was enormous. The Sessions Court has rejected the application for condonation of delay on the ground that there was no sufficient explanation. The revision applicant was not diligent in exercising his right. There was delay of 142 days. The applicant had not deposited the entire amount of compensation. Hence, the revision application as well as interim application may be rejected. The Advocate for the respondents has filed short notes of written arguments on behalf of Respondent Nos.2 & 3.

7. The applicant has been convicted for an offence under Section 138 of the Negotiable Instrument Act. The substantive sentence imposed by the trial Court is till rising of the Court. The applicant was also directed to pay compensation of Rs.7,20,000/-. It is pertinent to note that there was delay of about 142 days in preferring the appeal. The appeal was filed challenging the judgment of conviction. The appellate Court had granted bail to the applicant. However, the delay was not condoned and the application for condonation of delay was rejected which has resulted in dismissal of appeal. It is true that there was delay of 142 days but considering the fact that the applicant was challenging the judgment of conviction, the Court ought not to have rigid approach for condoning the delay. In the interest the justice the delay is required to be condoned. It is also pertinent to note that the applicant has so far deposited an amount of Rs.3,25,000/- as stated herein above. Considering these circumstances, the delay occurred in preferring the appeal challenging the Judgment of conviction is required to be condoned. Hence, I pass the following order:

ORDER

- i. Impugned order dated 11th March 2020 passed by the learned Sessions Judge in Misc. Application No.2299 of 2018 rejecting the application for condonation of delay is set aside.

- ii.** Order dated 15th November 2018 passed by the Sessions Court granting bail to the applicant is restored.
- iii.** The appeal preferred by the applicant is restored to file. The same may be heard on merits and decided in accordance with law.
- iv.** The amount of Rs.73,000/- deposited in this Court be transferred to the Sessions Court, where the appeal is pending.
- v.** Criminal Revision Application and Interim Application are disposed of.
- vi.** Parties to appear before the Sessions Court on 5th February 2024 at 11.00 a.m.

(PRAKASH D. NAIK, J.)