

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO. 1000 OF 2025

Robin Aiyuda Uthappa ..Applicant
Versus
State of Maharashtra & Anr ...Respondents

Mr. Siddhesh S. Borkar, with Sanket Loate, Shivendra Dwivedi and
Hitendra Parab, for the Applicant
Smt. R.S. Tendulkar, APP, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATE : 23rd SEPTEMBER 2025

ORDER:

1. This Criminal Application is preferred to quash and set aside the order dated 29th July 2025 passed by the learned Sessions Judge in MA No. 83 of 2025, whereby the Application preferred by the Applicant to condone 1143 days delay in filing Revision against an order dated 8th October 2021 passed in CC No. 6301515/SS/2020 by the learned Magistrate of issue of process under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (“the NI act”), came to be rejected.

2. In the Application for condonation of delay, the Applicant asserted that he was unaware of the order dated 8th October 2021

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passed by the Magistrate. He was not in-charge of the affairs of the Accused No.1-company. In fact there was a dispute between the Applicant and Accused No.1 since prior to the issue of the demand notice under Section 138 of the NI Act, in the instant case. The Applicant became aware of the said proceeding only after he was informed by the concerned Police Officer about the issuance of the non-bailable warrant against him.

3. The learned Sessions Judge was not persuaded to accept the aforesaid cause ascribed by the Applicant as a sufficient cause for the condonation of huge delay of 1143 days. No material was placed before the Court of Sessions to substantiate the claim of the Applicant that he was a Non Executive Director of the Accused No.-1-company and was not concerned with the transactions in question.

4. Having regard to the object of the provisions contained in the NI Act 1881, and especially the mandate under Section 143(3) of the Act, to conclude the trial within six months from the filing of the Complaint, the learned Sessions Judge decline to condone the delay.

5. Mr. Siddhesh S. Borkar, the learned Counsel for the Applicant, would urge that the learned Sessions Judge took a very hyper-technical view of the matter. The principle that the Court ought to be adopt a liberal approach in construing sufficient cause for condonation of delay

was lost sight of. It was urged that the delay was neither intentional nor malafide.

6. An endeavour was made by Mr. Borkar to draw home the point that the Applicant had no knowledge of the proceeding before the learned Magistrate as the Applicant had a dispute with the Accused No.1-company. In any event, the Applicant was an Investor Director/ not Executive Director of the Accused No.1-company, submitted Mr. Borkar.

7. Ordinarily, an Application for condonation of delay receives a liberal consideration so as to advance the cause of substantive justice. The Courts would lean in favour of the condonation of delay as the determination of the lis on merits rather than technicalities promotes the cause of substantive justice. However, if the delay is both inordinate and unexplained, the delay cannot be condoned in a mechanical manner. The prescription of period of limitation is with a definite public purpose. If the delay is inordinate, the condonation of delay would defeat the object of prescribing the period of limitation. The nature of the proceeding in which the condonation of delay is sought also assumes importance.

8. In the facts of the case at hand, by any standard, the delay of 1143 days cannot be said to be short. The submission of Mr. Borkar that the Applicant had no knowledge about the pendency of the

proceeding before the Magistrate is required to be appreciated in the light of the fact that though the Applicant claimed that he was the Investor Director, as fairly submitted by Mr. Borkar, in the forms filed with the Registrar of Companies, the Applicant was shown to be a Director of the company. Reliance sought to be placed on the Investment Agreement, therefore, does not advance the cause of the Applicant.

9. There is material to indicate that the learned Magistrate took steps to secure the presence of the Accused. Summons and Bailable Warrants were issued, followed by the Non-Bailable Warrant. In the face of the material on record, the assertion that the Applicant had no knowledge of the proceedings in the complainant, *prima facie*, does not inspire confidence.

10. In a recent pronouncement in the case of **H. Guruswamy & Ors Vs A. Krishnaiah Since Deceased by LRs**,¹ the Supreme Court has cautioned against condoning huge delay in a mechanical manner by resorting to the concepts of “liberal consideration” and “substantive justice”. The Supreme Court further enunciated that, while considering the plea for condonation of delay, the Court must not start with the merits of the main matter (which was sought to be pressed into service by Mr. Borkar in the instant case also). The observations of the Supreme Court in paragraphs 13, 15, 16 and 17 read as under:

1 2025(1) Apex Court Judgments 432.

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the

opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the ‘Sword of Damocles’ hanging over the head of a litigant for an indefinite period of time.”

11. In the light of the aforesaid enunciation of law and having regard to the huge delay and the object of the provisions contained in Section 138 of the NI Act and the statutory mandate to conclude the trial within six months, the learned Sessions Judge does not seem to have committed any error in declining to condone the delay.

12. This Court, therefore, does not find any justifiable reason to interfere with the impugned order.

13. The Application stands rejected.

[N. J. JAMADAR, J.]