



Judgment

27-Cr.APPA-540-2024

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APPA] NO.540 OF 2024

IN

CRIMINAL APPEAL [STAMP] NO. 4545 OF 2024

...

- 1] Ajay Ashok Kohale (Dead) Through LRS.
- 2] Smt. Harshada Wd/o. Ajay Kohale,
Aged about 26 years, Occupation: Housewife,
R/o. Daund, Tah. & Distt. Pune.
- 3] Ku. Akshara Ajay Kohale (Minor),
Through her mother,
Both are represent Through
Power of Attorney Holder,
Dhanraj Vishnusa Sonawane,
Aged 52 years, Occ.: Private,
R/o. Bhosla Ved Shala, Mahal, Nagpur.

... **APPLICANTS**

- - V E R S U S - -

Shri. Ashok Yadaorao Larokar,
Aged Adult, Occ. Not known,
R/o. Near Masjid, Nababpura,
Mahal, Nagpur.

... **NON-APPLICANT**

Ms. P.Lakhani, Advocate h/f Mr. M.P. Kariya, Advocate for the
applicants.

None for the non-applicant.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 26, 2025.

ORAL JUDGMENT :

Heard the learned counsel for the applicants.

2. **Admit.**

3. The present application is being filed seeking leave to file appeal against the order of acquittal passed in Summary Criminal Complaint No.6460/2010, by the 26th Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Nagpur, on 14/10/2016, by which the complaint came to be dismissed for want of prosecution, resulting into acquittal of the accused. Prayer in the appeal is to quash and set aside the said order and restore the same to the original file.

4. Brief facts of the case are as under :

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The applicants, being the legal heirs of the original complainant, have filed the present appeal against the order passed by the trial court dismissing the complaint for want of prosecution under Section 256 of the Code of Criminal Procedure. The original complainant had lent a sum of Rs.1,00,000/- to the respondent, who issued a cheque for repayment, which was dishonored due to insufficient funds. A statutory notice was issued to the respondent on 31/05/2010, which was duly received, however, the respondent failed to make the payment or respond to the notice. The original complainant, after exhausting all remedies, filed a complaint under Section 138 of the Negotiable Instruments Act. The Trial Court issued process, and the complainant presented his evidence by way of affidavit on 20/01/2015. Thereafter, the matter was posted for further evidence and cross-examination. The complainant also filed an application on 06/02/2015 seeking permission to file original documents. However, on 13/02/2015, the original complainant tragically passed away in

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a railway accident. Subsequently, on 29/12/2015, the applicants filed an application for bringing the legal heirs on record. Despite these applications, the Trial Court failed to decide the same and, on 19/02/2016, passed an order indicating that, no one appeared for the complainant and the matter be put up for appropriate order. Ultimately, on 14/10/2016, the Trial Court dismissed the complaint under Section 256 of the Code of Criminal Procedure for non-appearance of the complainant and acquitted the respondent.

5. The applicants contended that the Trial Court's order is erroneous and contrary to law, as it dismissed the complaint without first addressing the applications for Condonation of Delay and for bringing the legal heirs on record. The applicants asserts that the dismissal was unjust, considering the circumstances surrounding the original complainant's death and the pending applications. Therefore, the prayer is for setting aside of the Trial Court's order and restoring the

complaint to its original position for adjudication on merits.

6. As could be seen from the record, there is a delay of 2672 days in preferring the application for grant of leave to file appeal against the order of acquittal under Section 256 of the Criminal Procedure Code. Though the respondent was served, none appeared for the respondent. It is not in dispute that the present applicants are the legal heirs of original complainant, deceased-Ajay. The reason for seeking condonation of delay, as pointed out by the learned counsel for the applicants, is that though the applicants filed an application on 29/12/2015 to bring the legal heirs on record, however, without deciding that application, the order of dismissal for want of prosecution was passed under Section 256 of the Code of Criminal Procedure resulting into acquittal of the accused.

7. The learned counsel for the applicants ought to have filed the instant appeal within a period of three months.

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However, due to lack of knowledge, she was unable to file the instant appeal within the prescribed time. The husband of applicant No.2 had filed the original complaint under Section 138 of the Negotiable Instruments Act, 1881. It is further submitted that applicant No.2 was unaware of the proceedings, and for the first time, she came to know about them on 29/12/2015. Therefore, upon advice of her counsel, she filed an application for bringing legal heirs on record.

8. It is further submitted that the husband of applicant No.2 passed away on 13/02/2015 in a railway accident at Pune Railway Station, which left her in a state of shock. Despite the delay, she filed the application for bringing the legal heirs on record before the Court below. After filing the application, a dispute arose between the applicant and her in-laws, following which the applicant moved to her father's residence at Daund, District Pune. It is further submitted that, the applicant was not informed about the progress of the case, and consequently,

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the order dated 14/10/2016 was passed by the Learned 26th Joint Civil Judge, Junior Division, and Judicial Magistrate First Class (Special Court under Section 138 N.I. Act), Nagpur. Due to financial constraints, the applicant was unable to attend the Court at Nagpur. However, later on, she came to know that the case had been dismissed for non-appearance of the complainant in 2016. Thereafter, she contacted a friend of her late husband to inquire about the status of the case. Upon receiving information, she requested a certified copy of the order, which she received in the month of December, 2022. Due to financial difficulties, she was unable to approach the High Court. However, she has appointed a Power of Attorney on her behalf to initiate the appropriate proceedings. Accordingly, the present application is being filed by the Power of Attorney, challenging the order dated 14/10/2016.

9. Upon hearing the learned counsel for the applicants, it appears that the husband of the applicant No.2 instituted the

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complaint against the accused in the year 2010. However, he passed away in the year 2015, and thereafter, an application was filed by the applicant No.2 to bring the legal heirs on record. However, without deciding the said application, the order dated 14/10/2016 was passed, whereby the complaint was dismissed for want of prosecution under Section 256 of the Code of Criminal Procedure, resulting into acquittal of the accused.

10. As submitted by the learned counsel for the applicants, considering the death of the husband of Applicant No. 2 and a subsequent rift between the applicant and her in-laws, compelled her to leave her matrimonial home and move to Daund, District Pune. As stated by the learned counsel, due to financial constraints, the applicant was unable to travel to Nagpur and, as a result, lost track of the proceedings and was unable to keep up with the status of the case.

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11. The reasons assigned by the applicants appear to be genuine, and it can be said that the applicants have sufficiently explained the delay and shown sufficient cause. Therefore, I am inclined to condone the delay of 2672 days in preferring the Appeal / Application for grant of leave to file an appeal.

12. Accordingly, Criminal Application [APPA] No. 540/2024 is **allowed** and disposed of.

13. The Office is directed to register Criminal Application seeking leave.

CRIMINAL APPLICATION [APPA] NO. ____/2025:

1. **Heard**

2. Issue notice to the respondent/non-applicant, returnable on 16/10/2025.

[M. M. NERLIKAR, J]