

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1053 OF 2026

WITH

WRIT PETITION (ST) NO. 3014 OF 2026

WITH

WRIT PETITION (ST) NO. 3011 OF 2026

Jitendra Murlidhar Gulwani And Ors. ... Petitioners

V/S.

The State Of Maharashtra And Anr. ... Respondents

Mr. Mehul Thakker, learned Advocates for the Petitioners.

Mr. F. A. Wasif, learned Advocate for the Respondent No. 2.

Mr. Sukanta Karmakar, learned APP for the Respondent – State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 10th March, 2026.

P.C. :

1. Writ Petition(ST)No. 3014 of 2026 and Writ Petition(ST)No. 3011 of 2026 were not on the board. At the request of Mr. Mehul Thakker, learned Advocate for Petitioners in both petitions, they are taken on board. Mr. Thakker submits that the issues in all three petitions are similar and requests that they be taken up together and disposed of by a common order. Mr. F.A. Wasif, Advocate for

Respondent No. 2, and Mr. Sukanta Karmakar, learned APP, confirm the statements made by Mr. Thakker.

2. Heard Mr. Mehul Thakker, learned Advocate for the Petitioners, Mr. Sukanta Karmakar, learned APP for the State and Mr. F. A. Wasif, Advocate for Respondent No. 2.

3. The grievance of the Petitioners in these Petition concerns the Order dated 27th January 2026 (impugned order) passed by the Judicial Magistrate First Class, 7th Court, Dadar, Mumbai (hereafter “Magistrate”), by which the Magistrate has allowed the Miscellaneous Applications (3 Nos) seeking condonation of delay, thereby condoning the delay in filing the Complaint by Respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881.

4. The subject matter of Writ Petition No. 1053 of 2026 pertains to Miscellaneous Application No. 483/MISC./2025, and the delay in filing the complaint is 93 days.

5. The subject matter of Writ Petition (ST) No. 3014 of 2026 pertains to Miscellaneous Application No. 481/MISC./2025, and the delay in filling the complaint is 100 days.

6. The subject matter of Writ Petition (ST) No. 3011 of 2026 pertains to Miscellaneous Application No. 482/MISC./2025, and the delay in filling the complaint is 87 days.

7. Mr. Mehul Thakker argues that the impugned order is challenged on two grounds. *First*, Respondent No. 2 did not submit an affidavit with the application for condonation of delay. He cites the decision of the Hon'ble Supreme Court in H. S. Oberoi Buildtech Pvt. Ltd. v. M/S MSN Woodtech¹. *Second*, he contends that the Petitioners presented various decisions to support their case, which the Magistrate failed to consider. Therefore, he requests that the impugned order be set aside.

8. Perusal of the records with the assistance of the learned Advocates.

9. The reason provided by Respondent No. 2 for seeking condonation of the delay is that Respondent No. 2 inadvertently filed the complaint(s) before the Mazgaon Metropolitan Magistrate Court. The filing was carried out through "e-filing." Respondent No. 2 in the Application seeking condonation of delay has

¹ Criminal Appeal arising out of SLP (Crl.) No. 2002/2025 decided on 09.09.2025.

specifically stated that the affidavit accompanying the complaint under section 138 of NI Act shows the date of the notary, which is well within the limitation period. It was only when the Registry of the Mazgaon Metropolitan Magistrate Court raised an objection to jurisdiction that Respondent No. 2 withdrew the complaint(s) and refiled them before the Judicial Magistrate First Class, 7th Court, Dadar, Mumbai.

10. The Petitioners, although they have opposed the said Application seeking condonation of delay in their reply, have not disputed that the Mazgaon Metropolitan Magistrate Court lacks jurisdiction to entertain the subject complaint/s. Similarly, Respondent No. 2's averment in paragraph 3 of the application seeking condonation of delay regarding the date of notarization of the affidavit accompanying the e-filed 138 complaint is not specifically denied.

11. The Petitioners, in their reply, have neither alleged nor attributed any malafides against Respondent No. 2. Furthermore, the Petitioners do not assert that Respondent No. 2 would have gained or benefited from delaying the filing of proceedings under

Section 138 of the Negotiable Instruments Act, 1881.

12. Mr. Mehul Thakker submits that the decision in the case of *H.S. Oberoi Buildech Pvt. Ltd. (supra)*, which supports the case of the Petitioners though cited before the Magistrate, was not considered thus, resulting in prejudice caused to the Petitioners.

13. In the case of *H.S. Oberoi Buildech Pvt. Ltd. (supra)*, the Hon'ble Supreme Court in paragraphs 7, 8 and 9 has observed as follows:-

7. *In the present case, the same has absolutely not been done. The High Court opining that though there may have been delay but still the Trial Court is well within its power to condone the delay and in terms of Section 142(b) of the Act, filing of an application for condonation of delay is not a statutory mandate, again in our considered view, is erroneous.*

8. *Once the statute prescribes a mandatory time limit for filing a complaint, there cannot be any deviation from the same except when an application accompanying the complaint is filed seeking condonation disclosing reasons for the delay and even then it is obligatory on the part of the Court to take note of such filing beyond limitation and to consider the reasons disclosed independently and to come to a judicious conclusion that in the facts and circumstances of that case condonation is justified. The same not having been done, the order cannot be sustained.*

9. *Accordingly, the order issuing summons to the appellants by the Trial Court as upheld by the High Court is*

set aside. In the result, the complaint itself stands quashed. The appeal stands allowed.

14. The factual matrix in the case relied on by Mr. Thakker relates to different circumstances, where the Trial Court had condoned delay without an application for such condonation and ordered issuance of summons. In the case at hand, the Magistrate, through the impugned order, accepted the reasons given by Respondent No. 2 in the application for condonation of delay and exercised discretion in favour of Respondent No.2 by allowing the application for condonation of delay, condoning the delay, with costs.

15. In the case of *N. Balakrishnan v/s M. Krishnamurthy*² the Hon'ble Supreme Court in paragraphs nos. 9 to 13 has held as follows:-

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

2 (1998) 7 SCC 123

Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

*11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

12. A court knows that refusal to condone delay

would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

16. Considering the above referred decision of the Hon’ble Supreme Court and the decision in the case of Esha Bhattacharjee v. Raghunathpur Nafar Academy³ no fault is found in the exercise of discretion by the Magistrate. Neither the grounds raised in the memo indicate perversity in the impugned order, nor Mr. Mehul Thakker was able to point out any perversity in the impugned

³ (2013) 12 SCC 649

order.

17. In view of the above, no grounds exist to entertain these petitions. Therefore, all three petitions are dismissed. No orders regarding costs.

(ASHWIN D. BHOBE, J.)

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