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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 527 OF 2026
IN
CRIMINAL APPLICATION NO. 538 OF 2019**

Pranesh Narayan JavratApplicant

vs.

S.S. Fabrication Erection and Co. ... Respondents
and Others

Mr. Aayan Mahapatra a/w. Ms. Krupali Rajani and Ms. Esha
Pachare for the Applicant

Mr. S. S. Redkar for Respondent No. 1.

Mr. D. J. Haldankar, APP for the Respondent - State.

CORAM : GAURI GODSE, J.

DATED : 24th FEBRUARY 2026

ORDER:

1. This application is filed for restoration of the criminal application which was dismissed for non-prosecution on 18th November 2025. The criminal application was filed under Section 378(4) of Criminal Procedure Code (Cr.PC) seeking leave to file appeal to challenge the order passed by the learned Magistrate acquitting respondent no. 1 of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel for the applicant submits that the applicant was unaware about the matter being listed before this court, hence could not remain present. He has tendered personal affidavit of the earlier advocate on record explaining the reasons why the advocate was unable to remain present when the application was called out before this court.

3. Learned counsel for the applicant therefore submits that for the fault on the part of the applicant's advocate, the applicant has suffered prejudice and the application was dismissed for non-prosecution. He therefore prays for restoration of the application. He further submits that in view of the recent decision of the Apex Court in the case of *M/s. Celestium Financial Versus. A. Gnanasekaran*¹, the applicant be granted leave to file appeal before the Sessions Court under Section 372 of the Cr.PC.

4. Learned counsel for respondent no. 1 opposes the restoration application on the ground that sufficient grounds have not been explained in the application. He submits that during the pendency of the trial, the accused, i.e. respondent no. 1 had deposited an amount of interim compensation of Rs.

¹ 2025 SCC OnLine SC 1320

1,40,000/- which was withdrawn by the applicant. He submits that by the order of acquittal the applicant, i.e. the complainant was directed to make payment of the amount of Rs.1,40,000/- within 60 days with interest. He submits that after dismissal of the application, respondent no. 1 had applied before the trial court for issuing directions for compliance of the said order. He submits that only thereafter, the applicant has filed this application for restoration. He therefore submits that for want of any satisfactory explanation the application need not be restored. However, if this court is inclined to restore the application, the applicant be directed to deposit the amount of Rs. 1,40,000/- as directed by the learned Magistrate while acquitting respondent no. 1.

5. Learned counsel for the applicant on instructions submits that the applicant shall deposit the amount within eight weeks,

6. I have perused the application and the personal affidavit filed by the earlier Advocate on record. The earlier Advocate has stated on oath that he was unable to remain present as he was held up in another court. The reasons stated in the application for not appearing before this court would not be

justified on the part of the earlier Advocate on record. However, the personal affidavit filed by the Advocate supports the applicant's case that he was unaware about the listing of the matter and therefore could not remain present and he should not suffer due to absence of his Advocate.

7. Hence, in the facts and circumstances of the case, delay in filing this application is condoned and the application for leave to file appeal is restored, subject to the applicant depositing an amount of Rs.1,40,000/-.

8. Since the applicant seeks leave to file appeal before the Sessions Court, the Criminal Application No. 538 of 2019 is disposed of by passing following order :

(a) The applicant is permitted to withdraw Criminal Application No. 538 of 2019 with liberty to file appeal before the Sessions Court, subject to the applicant depositing an amount of Rs.1,40,000/- in the Sessions Court within eight weeks from today.

(b) It is clarified that if the applicant files appeal before the Sessions Court within eight weeks from today alongwith depositing the amount of Rs.1,40,000/- he

would be entitled to seek benefit of the period of pendency of the Criminal Application No. 538 of 2018 for seeking condonation of delay in filing appeal before the Sessions Court.

(c) The application for restoration and the application for leave to file appeal are disposed of in the aforesaid terms.

(d) It is clarified that if an amount of Rs.1,40,000/- is not deposited in the Sessions Court within eight weeks from today, the application for restoration and the criminal application for leave to file appeal shall be treated as dismissed without further reference to the court.

(GAURI GODSE, J.)