

ORDER BELOW EXH .1

This is an application for condonation of delay caused in filing the proceeding U/s.138 of the negotiable instruments act.

2. The advocate of the accused appeared in this matter through his advocate on 01/10/2016.he has not filed his say at Exh12 and thereby strongly opposed to the application.

3. Heard learned both Sides Perused the record.

4. The learned advocate for the applicant submitted that the present matter was initially filed in the Judicial Magistrate first class at Vashi, Navi Mumbai but as per judgment of the Hon'ble apex court in Dashrath Roopsingh Rathod Vs. State of Maharashtra the present matter was transferred in the court of Judicial Magistrate first class court, Panvel, Dist Raigad. Thereafter, the Negotiable Instruments (Amendments) ordinance, 2015 came in to force in the year 2015 and as per the said ordinance again all the cases arising out of section 138 of N.I.Act were transferred. He further submitted that, the Hon'ble court was pleased to pass transfer order on 27/11/2015. He further submitted that for complainant was not aware about the transfer order. At the relevant time the complainant has gone out of station and she has decided to withdraw her share from the partnership firm. Therefore, she was unable to file present complaint before this court within limitation. delay of 202 days caused for filing this complaint in this court. She prayed for condonation of the delay.

5. The learned advocate for the non applicant submitted that, the applicant has not given satisfactory explanation in respect of condoning the delay. The application is false and frivolous and liable to be rejected. The settled position of law in respect to delay condonation under section 138 N.I.Act. is very limited as substantial and valid grounds and reasons along with document has to be annexed with the application the applicant has failed to do so. She lied upon the authority of Hon'ble Madras High Court in **C. Ponnusamy v/s Chinamman Constructions** in this authority. The Hon'ble high court held that reason for condoning delay to be reasonable and satisfactory. She prayed for rejection the application.

6. As per the proviso clause of section 142 of N.I.Act the cognizance of complaint may be taken by the Court after the prescribed period if the complainant satisfies the Court that he had sufficient cause for not making the complaint within such period.

7. It is settled position of the law that the delay must be satisfactorily explained. In this present case the complainant stated that due to transferring the matter delay was caused to filing this present complaint. Delay is not caused for filling complaint under section 138 of N.I.Act. I found that this delay is not intentional or inordinate. Considering the facts on record and the reason for delay mentioned in the application appears to be satisfactory, Hence it is necessary in the interest of justice to condone the delay and proceed with the matter on merit. I hold that, delay will have to be condoned by saddling cost to the complainant.

Hence, in result the following order.

ORDER

- A] Application is allowed subject to cost of Rs. 1500/-. Costs should be paid to the legal aid within 30 days from this order.
- B] The payment of cost is a condition precedent.
- C] Complaint be registered as summary criminal case after payment of the cost.
- D] Proceeding of this application be kept with complaint.

Place : Vashi.

Date : 05/10/2017

(N.S.Kale)
Judicial Magistrate First Class
Court No. 8, Vashi, Navi Mumbai.