

**IN THE COURT OF
ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
AT: BARDOLI, SURAT**

Criminal Miscellaneous Application no.214/2026

Applicant:

Zinabhai Chotubhai Chaudhari

R/O: Bedkuva Dur, Ta.: Vyara, Dist.: Surat

V/s.

Respondent:

Hiteshbhai Shivajibhai Patel

R/O: Samba, Ta.: Mahuva, Dist.: Surat

:: ORDER BELOW EXHIBIT 1 ::

- (1) This application is filed by the applicant praying for an order to condone the delay of 07 days and to allow the complainant to present his complaint under section 138 of the Negotiable Instrument Act, 1881. The applicant submits that he was out of station for some social reasons and because of such reasons he failed to file the complaint within stipulated time of 30 days after cause of action arose after service of legal notice to the accused. He further submits that his elder brother Ishwarbhai Chotubhai Chaudhari is a patient of paralysis and he was taking medical treatment and because of such reason he failed to file the present complaint in due time. He submits that he committed a bona fide mistake and therefore, prays to this Court to grant his application and to pass an appropriate order in the interest of justice.

- (2) Notice for appearance was issued to the respondent/accused. The accused appeared through his advocate and filed his written reply at exhibit 7. The learned advocate for the accused contended that the reasons of delay were not specifically mentioned by the complainant in his complaint and therefore, prays this Court to reject the application of condonation of delay of 07 days of the complainant.
- (3) I have heard the learned counsel for the complainant and perused the application filed under the proviso to Section 142(b) of the Act. The complainant stated initially in his delay condonation application that he was out of station for some social purpose but thereafter, he stated that because of his elder brother ill health, he failed to file the complaint in prescribed time and filed with a delay of 07 days.

Under Section 142(b) of the N.I. Act, the complaint must be filed within one month from the date of accrual of cause of action. The proviso empowers the Court to condone the delay only upon the complainant satisfactorily demonstrating “sufficient cause.”

The reason, given by the complainant that he was out of station for social purpose, does not seem to be tenable for not filing the complaint in prescribed time limit as it was his duty to be vigilant enough for claiming his legal rights. Further, the record of the case shows that no documentary proof of ill health of the elder brother Ishwarbhai chotubhai Chaudhari of the applicant during 28/05/2026 to 03/06/2026 has been produced on record to substantiate the contentions mentioned in the

application. Further, the complainant has not produced any documentary medical proof of his elder brother for the period of 30 days after cause of action arose on 28/05/2026 to file the present complaint in favour of the complainant. The document produced at mark 6/1, 6/3, 6/4 and 6/5 are of dates 05.06.2026, 19.06.2026, 11.07.2026 and 18.06.2026 respectively and therefore, this Court is of the opinion that these documents does not validate the claim to condone the delay of the applicant. Further, the document produced at mark 6/2 is of 26.03.2026 and therefore, it appears clearly that the document produced at mark 6/2 is of date before accrual of the cause of action to file the present complaint and hence, such document does not seem to be supportive. The complainant has not called upon any witness or any doctor under whom his elder brother was taking treatment, during the date after accrual of the cause of action till the date of filing of the present complaint, to corroborate his contentions. This Court is of the opinion that mere narration of the facts that the complainant's elder brother was on medication for some prolonged illness, does not suffice the case of the complainant. This Court is of the opinion that the reason offered is not supported by material documents.

The Supreme Court in the judgment of **Subodh S. Salaskar v. Jayprakash M. Shah, (2008) 13 SCC 689** has held that the discretion to condone delay must be exercised judicially, and only when the explanation offered is reasonable, bona fide, and supported by material. This decision emphasises that equity, sympathy, or personal beliefs cannot justify condonation unless

supported by concrete circumstances. This Court is of the opinion that “complainant's elder brother was indisposed” does not automatically constitute sufficient cause, unless backed by proof and shown to have genuinely prevented the filing of the complaint in time. The applicant owed a duty to explain each and every day of the delay when an application is filed to get the delay condoned before filing a case under the Negotiable Instrument Act, 1881.

- (4) The complainant was fully aware of dishonour of the cheque, receipt of the statutory notice, expiry of the 15-day payment period, and commencement of limitation. Despite such knowledge, the complainant did not file the complaint within prescribed time and did not even mention any sufficient cause for filing the complaint with delay. The reason of illness of elder brother cannot be equated with “sufficient cause” in the present case. This Court is of the opinion that the length of delay is immaterial and what matters is the adequacy of the explanation. Here, the explanation falls short of the legal standard.
- (5) Further, this Court opines that the procedural technicalities of the legal provisions will not be taken seriously if each and every delay application is allowed by the Court. It appears the applicant was not vigilant enough for his legal rights and for that reason he filed the present case with delay of 07 days. It appears, to this Court, that the mistake of the applicant is not a bona fide mistake and therefore, the applicant does not appear to be a bona fide litigant. The Negotiable Instrument Act is a special piece of litigation, and the delay cannot be condoned by this Court until

or unless the complainant satisfies the Court for not filing his case within the prescribed period of limitation

The complainant has not made out a case to invoke the discretionary power under the proviso to Section 142(b). The delay is not due to circumstances beyond the complainant's control, but due to his own decision. Therefore, this Court is of the considered view that no sufficient cause has been shown for condoning the delay and hence, below mentioned order is passed in the interest of justice:

ORDER

1. The application for condonation of delay is hereby rejected.
2. The complaint is barred by limitation and therefore, this Court declines to take cognizance of the offence under Section 138 of the Negotiable Instruments Act and accordingly, the complaint is dismissed.

Pronounced in the open Court on this 06nd day of August, 2026.

Place:- Bardoli

Date :- 06/08/2026

(Dr. Abhinav Mudgal)

Additional Chief Judicial Magistrate

Bardoli-Surat

UID:- GJ01332