

MHMM180028082019



ORDER BELOW EXH.01 IN C.C.NO.208/MISC/2019
(Dated 17.02.2022)

1. This is an application to condon the delay to file the complaint u/s.138 of the Negotiable Instruments Act. There is delay of 32 days in presentation of the complaint. The notice was issued to the accused for calling say upon the application. The accused has failed to file her say.

2. As per the complainant, after dishonour of the cheques, complainant sent a legal notice dated 14.01.2019 which was received by the accused on 18.01.2019. The cause of action arose on 02.02.2019. The complainant ought to file complaint on or before 02.03.2019. The complaint has been filed on 04.04.2019. There is 32 days delay to file the complaint. It is contended that due to miscommunication by the advocate of the accused, the complainant could not file his complainant within the limitation period.

3. In view of section 142 of Negotiable Instrument Act, no court shall take cognizance of offence punishable u/sec.138 except upon a complaint in writing made by the payee or holder in due course of the cheque and such complaint is made within one month of the date on which the cause of action arise under clause (c) of proviso to section 138, provided that the cognizance may be taken after the prescribed period if the complainant satisfies the court that he had sufficient cause for not making the complaint within such period. In the present case the complainant was unable to file present complaint within stipulated period due to miscommunication by the

advocate of the accused. The delay is not the intentional. In such circumstances, in my view, delay deserves to be condoned in the interest of justice. Hence, I proceed to pass following order :-

ORDER

1. Delay in presentation of the complaint is hereby condoned subject to cost of Rs.3,000/- payable to the State.
2. The complaint be registered as summary case after payment of cost.

Date : 17.02.2022

(M. Y. Wagh)
Metropolitan Magistrate,
58th Court, Bandra, Mumbai.