

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 2336 of 2025**

With

R/CRIMINAL REVISION APPLICATION NO. 2337 of 2025

With

R/CRIMINAL REVISION APPLICATION NO. 2338 of 2025

With

R/CRIMINAL REVISION APPLICATION NO. 2339 of 2025

With

R/CRIMINAL REVISION APPLICATION NO. 2340 of 2025

With

R/CRIMINAL REVISION APPLICATION NO. 2341 of 2025

With

R/CRIMINAL REVISION APPLICATION NO. 2342 of 2025

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RAMESHBHAI KALUBHAI PRAJAPATI

Versus

SANDEEP VIJAYKUMAR NAIR & ANR.

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Appearance:

MR INDRAVADAN PARMAR(2738) for the Applicant(s) No. 1

MR DAKSHESH MEHTA(2430) for the Respondent(s) No. 1

MR. RUSHANG D MEHTA(6989) for the Respondent(s) No. 1

**MR NIRAJ SHARMA. APP for the Respondent – State in Criminal Revision
Applications no. 2336/25, 2337/25, 2338/25, 2339/25**

**MR PRANAV DHAGAT. APP for the Respondent – State in Criminal Revision
Applications no. 2340/25, 2341/25, 2342/25**

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 04/05/2026

COMMON ORDER

1. Challenge is given to the order dated 4.10.2025 passed by the learned Additional Sessions Judge, City Civil Court no.11, Ahmedabad, whereby the prayer made to condone the delay and registration of Criminal Appeal for challenging the

judgment and order of conviction and sentence passed by the learned Additional Chief Metropolitan Magistrate, Court no.28 came to be rejected. Prayer is made to quash and set aside the order and direct the learned Judge to allow the applicant to present Criminal Appeal and to assail the conviction judgment and order.

2. Mr. Indravadan Parmar, learned advocate for the applicant has referred to the facts of the matter, which has been provided in a tabular form, which is as under:-

	1	2	3	4	5	6	7	8
A	Before the learned Additional Chief Metro. Magistrate (N.I. Act Court No.28), Ahmedabad (the Trial Court) :							
1	2016	Seven (7) separate criminal cases (each case for single/one dishonoured cheque) had been filed by Respondent No.1 (M/s. Cera Sanitary Wares Ltd., Ahmedabad/Mehsana through its authorised officer Mr. Sandeep Vijaykumar Nair) against M/s. Satadhar Trading Co. (a proprietorship firm) and its proprietor Mr. Rameshbhai Prajapati of Vadodara for the offence punishable under Section 138 r/w 142 of the Negotiable Instruments Act, 1881.						
2	Criminal Case No.	1299/2016	1300/2016	1301/2016	1302/2016	1303/2016	1305/2016	1306/2016
	Amount (in Rs.)	2,00,000	2,00,000	2,00,000	2,00,000	3,00,000	1,00,000	1,00,000
							Total : Rs.13,00,000/-(7)	
	Ch. No.	850159	850158	850157	850161	855720	000757	000756
	Date	29/02/2016	29/02/2016	29/02/2016	29/02/2016	29/02/2016	29/02/2016	29/02/2016
	Banker	All cheques were drawn on Uma Co. op. Bank Ltd., Vadodara and HDFC Bank Ltd., Ashram Road Branch, Ahmedabd was a Banker of payee.						
3	31.01.2024	The learned Additional Chief Metropolitan Magistrate (N.I. Act - Court No.28), Ahmedabad had held the Applicant guilty and convicted under Section 255 (2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 138 of the Negotiable Instruments Act and directed him to undergo simple imprisonment for a period of one (1) year and ordered to pay compensation of respective cheque amounts under Section 357 (3) of the Code of Criminal Procedure, 1973 to Respondent No.2 within 30 days and in default of such payment, further simple imprisonment for a period of three (3) months had been awarded as per separate judgments and orders - dated : 31.01.2024.						
B	Before the learned Principal District Judge, Ahmedabad (the Appellate Court) :							
4	July, 2025	The Applicant had challenged the said judgements and orders (7) - dated : 31.01.2024 before the learned Principal District Judge, Ahmedabad by preferring separate Criminal Appeals with separate applications under Section 5 of the Limitation Act, 1963 for condonation of delay of 545 days in preferring these appeals.						

5	Cri. Misc. App. No. For delay	5618/2025	5619/2025	5623/2025	5621/2025	5620/2025	5625/2025	5622/2025
6	Cri. Appeal No.	xxx/2025	xxx/2025	xxx/2025	xxx/2025	xxx/2025	xxx/2025	xxx/2025
7	04.10.2025	The learned Appellate Court had rejected all the said applications as per separate orders - dated : 04.10.2025 passed by the learned Additional Sessions Judge, Court No.,11, City Civil & Sessions Court, Ahmedabad.						

3. Countering the arguments, learned advocate Mr. Rushang Mehta has submitted that the learned Sessions Judge has very categorically dealt with the issue of delay of 545 days, which Mr. Mehta submitted that it is negligence of the applicant, which has been considered and though opportunity had been granted, he had not timely complied with and thus, the learned Judge was of the view that the applicant has failed to show sufficient reason for condoning the delay of 545 days in preferring the appeal.
4. Learned advocate Mr. Rushang Mehta submitted that a bald allegation has been made against the counsel who was representing the accused without any proof and that inspite of sufficient reminders, the accused had not remained present regularly and had not put the defence during the trial and thus, submitted that since the advocate was on record, no indefinite time can be granted to the accused in the proceeding, which is under Section 138 of the Negotiable

Instruments Act, 1881.

5. Here the allegation which has been put forward is inaction on the part of the advocate representing the accused. Mr. Parmar has placed reliance in the case of **Rafiq & Anr. v. Munshilal & Anr.**, (1981) 2 SCC 788 and **N. Balakrishnan v. M. Krishnamurthy**, AIR 1998 SC 3222, where the Hon'ble Apex Court was of an opinion for the superior Court to adopt the magnanimous approach. The observations, relied upon by learned advocate Mr. Parmar, are as under:-

"..... 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."

6. The inaction of the advocate representing the accused cannot be a ground to deny justice. In cases where the advocate appointed by the accused fails to appear, it becomes the bounden duty of the concerned Judge to appoint a lawyer from the Legal Aid Committee so that the matter does not get decided in absence of the accused or for want of legal representation of the advocate. A litigant should not be made to suffer because of the non-appearance of the advocate on

record, more specifically, when it is a case of the accused, where consequences are serious. Having considered the fact that the advocate on record had not instructed the accused with regard to the proceedings, appropriate steps are required to ensure proper representation.

7. At this juncture, while the order was dictated, learned advocate Mr. Mehta has submitted that it is not the controversy of inaction or negligence of the Trial Court's lawyer, whilst it is a case of the seven quashing petitions being Criminal Misc. Applications no. 3657/19, 3683/19, 3685/19, 3686/19, 3688/19, 3689/19 and 3690/19 were moved, which were decided on 31.8.2023, the negligence is attributed to the advocate pursuing the quashing petitions, who is alleged to have failed to inform the accused of the result of the petitions.
8. In the case of **Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others** reported in **AIR 1987 SC 1353**, it has been observed as under:-

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression

"sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice

on technical grounds but because it is capable of removing injustice and is expected to do so.”

9. Having regard to the settled principle that a liberal approach is required to be adopted to advance substantial justice, generally delay is required to be condoned in the interest of justice, more particularly, where the facts do not disclose negligence, deliberate inaction, or lack of bona fides on the part of the party seeking condonation of delay, refusal to condone such delay would result in frustrating the valuable right of appeal. In such circumstances, the Court concerned ought to have adopt a liberal approach for condonation of delay. As observed in the case of **N. Balakrishnan** (supra), the superior Court, while exercising appellate jurisdiction, is empowered to independently examine the sufficiency of cause for the delay and to arrive at its own conclusion, irrespective of the findings recorded by the Court below.
10. Having noticed the grounds raised and the proposition of law as has been propounded in the above-referred and when the specific right of the appeal would get frustrated if the applicant is compelled to undergo the sentence, this Court is of the view that the delay deserves to be condoned and is hereby condoned in all the matters. Registry of the learned

Appellate Court is directed to take the appeals on record, assign appropriate numbers and proceed with the same in accordance with law. Accordingly, the present applications are disposed of.

Maulik

(GITA GOPI,J)