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**(1997) 10 GUJ CK 0033**  
**In the Gujarat High Court**

Ashvinbhai Kalaria

APPELLANT

Vs

Jayantilal Mathurdas Patel and Another

RESPONDENT

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**Date of Decision :** 24-10-1997

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (1998) 3 GLR 2111

**Hon'ble Judges :** S.D. Pandit, J

**Bench :** Single Bench

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**Judgement**

S.D. Pandit, J.—Ashvinbhai Kalaria original accused in Criminal Case No. 386 of 1994 has preferred the present revision application against the order of the learned Additional City Sessions Judge passed in Misc. Cri. Application No. 2027 of 1997 on 2-9-1997.

2. Misc. Criminal Application No. 2097 of 1997 was filed by the respondent No. 1 Jayantilal Mathurdas Patel, the complainant in Criminal Case No. 386 of 1994 seeking condonation of delay caused in filing revision application filed by him for restoring this Criminal Case No. 386 of 1994 which was dismissed by learned Metropolitan Magistrate on 30-11-1994. The learned Sessions Judge has condoned the delay in filing the revision application and hence the original accused has come before This Court. It is necessary to mention here few facts of this case. Cri. Case No. 386 of 1994 was filed by respondent Jayantilal Mathurdas Patel against the present revision applicant for the alleged commission of the offences punishable u/s 138 of Negotiable Instruments Act. Said complaint was filed by him on 25-2-1994. The Roj Nama of the criminal case produced by the present revision applicant shows that said complaint was dismissed on 13-11-1996. Admittedly, said complaint was dismissed by the learned Metropolitan Magistrate in view of the decision of the Supreme Court dated 1-5-1996 in the case of Common Cause-a registered Society v. Union of India AIR 1996 SCW 2279 : AIR 1996 SC 1619 : 1997(2) GLR 1297 (SC). It is the claim of respondent No. 1-original complainant that as a matter of fact he was

given the date of 16-11-1996 and when he went on 16-11-1996 the matter was not on the Board on that date a further date was given as 30-12-1996. On that day, when he again went to the Court he found that the case was not on Board and therefore, he made inquiries and started to search the proceedings and the proceedings could not be traced and the same could be traced only in August 1997 and at that time he came to know that his complaint was dismissed by relying upon the directions of the Supreme Court given in the case of Common Cause-a registered Society (supra). The learned Addl. City Sessions Judge has considered said contention of the respondent No. 1 and the Roj Nama and has observed that there must be some misunderstanding of respondent himself (respondent No. 1 the original complainant) about the dates and because of the said misunderstanding he could not remain present on the due date. The learned Addl. City Sessions Judge has taken into consideration the general principles in consideration of the claim of the condonation of delay, viz., that a liberal approach should be taken and that the Court should not be hyper-technical. He also relied upon the case of State of Haryana Vs. Chandra Mani and others, , and has used his discretion in condoning the delay.

3. Learned Advocate for the revision applicant has cited before me the decision of the Apex Court in the case of Ashis Kumar Hazra Vs. Rubi Park Co-operative Housing Society Ltd. and others, , and has contended before me that in view of the said case, the delay should not be condoned. I am considering the proceeding in question in a revision proceeding. The order passed by the learned Additional City Sessions Judge is a discretionary order. It could not be said that the order passed by the learned Additional City Sessions Judge is either illegal or perverse. When the order is discretionary one and when it is not possible for This Court to hold the same perverse or illegal, it would not be proper for This Court to interfere with the said discretionary order passed by the learned Additional City Sessions Judge. Now apart from this if the facts of the present case are considered then it would be quite clear that no interference is called for in the order passed by the learned Additional City Sessions Judge. As stated earlier, the complaint of respondent No. 1 has been dismissed relying upon the directions given by the Supreme Court in its judgment delivered on 1-5-1996 in the case of Common Cause-a registered Society (supra). But the Supreme Court has again reviewed said decision dated 1-5-1996 and has delivered a judgment on 28-11-1996. In the said judgment it has been observed on page 196 in the case of Common Cause A Regd. Society Vs. U.O.I. and Others, as under (at page No. 1304 of GLR):

It is, however, made clear that in trials regarding other offences which are covered by the time-limit specified in our earlier order dated 1st May, 1996 wherein the concerned accused are already acquitted or discharged pursuant to the said order, such acquittal or discharge shall not be liable to be recalled for facing such trial pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order.

4. In view of the above directions of the Supreme Court, as a matter of fact, it was not necessary for the original complainant to file any application for restoring his complaint which has been dismissed by the learned Magistrate relying upon the directions of the Supreme Court given on 1-5-1996. As per the said directions of the Supreme Court a duty is cast on the learned Magistrate to issue summons to the accused and notice to the complainant and to restore the case to file and to proceed with the matter according to law. Therefore, in the circumstances, no interference is called for in the order passed by the learned Additional City Sessions Judge. I, therefore, reject this application.