

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.75/2022

Sri Sumanta Dey

..... Petitioner(s)

V E R S U S

Sri Tinku Sutradhar & another

.....Respondent(s)

For Petitioner(s) : Mr. A. Acharjee, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

03/01/2023

Heard Mr. A. Acharjee, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State.

2. By means of this revision petition, the petitioner has challenged the Order dated 24.11.2022 passed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur in case No. Crl.Misc.11 of 2022 arising out of CR(N.I.) 50 of 2022 whereby the learned Judge has dismissed the application filed by the petitioner for condonation of delay of 32 days in filing the complaint under section 138 of N.I. Act.

3. Petitioner has prayed for the following reliefs:

- "(i) Admit this revision petition;
- (ii) Call for the records;
- (iii) Issue notice upon the respondent; and
- (iv) After hearing of the parties and on a perusal of the evidence on record be pleased enough to set-aside/quash the impugned order dated 24-11-2022 passed by Smt. D. Kilikdar, the Ld. Chief Judicial Magistrate, Gomati Judicial District, Udaipur in CrI.Misc. 11 of 2022 arising out of CR(N.I) 50 of 2022, whereby the application for condonation of delay of 32 days for filing of complaint under section 138 of NI Act, has been dismissed by the Ld. Court below which is very much illegally without decided the matter on merit in spite of having sufficient evidence/documents on record against him. The Order of rejection of condonation petition was passed by the court below illegally and arbitrarily which is liable to be set aside and quash.

AND/OR

To pass any other appropriate order/orders as your Lordship may deem fit and proper for the interest of justice."

4. Case of the petitioner, in a nutshell, is that the complainant Sumanta Dey (petitioner herein) and accused Tinku Sutradhar are well acquainted to each other for a long time and the accused took loan for an amount of Rs.6,50,000/- from the petitioner for his urgent necessity in presence of witnesses in part installments on condition to return the same within three years. But after elapse of three years, the accused did not make

any payment to the complainant. Subsequently, on repeated request of the petitioner, the accused on 06.04.2022 issued one cheque vide No.922821 amounting to Rs.6,50,000/- drawn on State Bank of India, Udaipur Branch. Thereafter, on request of the accused that there was not enough money in his account, the petitioner deposited the cheque on 25.04.2022 in Union Bank of India, Udaipur Branch for encashment, but the said cheque was dishonoured by the bank for insufficiency of funds in the account of the accused. Petitioner informed the said fact to the accused but he did not make payment of the said dishonoured amount to the petitioner till today. Thereafter, the petitioner gave a demand notice to the accused on 24.05.2022 but with no fruitful result. Consequently, the petitioner filed a Misc. case under Section 142(b) of the Negotiable Instruments Act, 1881 before the Trial Court with an application for condonation of delay of 32 days which was dismissed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur in case No. Crl.Misc.11 of 2022 vide order dated 24.11.2022. Aggrieved thereby, the petitioner filed this revision petition. Hence, this case.

5. Mr. A. Acharjee, learned counsel appearing for the petitioner, submits that the petitioner was suffering from illness w.e.f. 18.07.2022 and his attending doctor advised him to consult with orthopedic department and to review after six weeks when the doctor advised him to take rest for 30

days. But the learned Trial Judge without appreciating such factual evidence committed a serious error by dismissing the condonation application which is very much illegal, arbitrary, perverse and not tenable in the eye of law. Accordingly, he prays for setting aside the impugned order dated 24.11.2022 passed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur.

6. On the other hand, Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State, vehemently objected the submissions advanced by the learned counsel for the petitioner contending that the petitioner in order to substantiate his ground of illness submitted one medical prescription dated 18.07.2022 but on perusal of the same nothing serious revealed on the face of it rather appears to be a regular medical checkup for general weakness and as such, the learned Trial Judge on appreciation of all the factual aspects of the matter has rightly dismissed the condonation application. Accordingly, he contends that there is no error in the impugned order passed by the learned trial Judge calling for any interference and prays for dismissal of the revision petition.

7. Having considered the submissions of learned counsel for the rival parties, this Court is of the considered view that the petitioner was admittedly suffering from illness w.e.f. 18.07.2022 for which he attended a

physician, undergone treatment and submitted documents in support of his illness and as such, for fair ends of justice, the petitioner should be afforded an opportunity. Accordingly, the instant revision petition is allowed. Consequently, the impugned order dated 24.11.2022 passed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur in case No. CrI.Misc.11 of 2022 arising out of CR(N.I.) 50 of 2022 is hereby set aside and quashed. The Trial Court shall consider the case of the petitioner on the ground that the petitioner has approached the medical expert on 18.07.2022 and also on 25.07.2022 with regard to his ill health and also filed a prescription dated 18.07.2022 before the Court and now has presented another prescription dated 25.07.2022. Having consideration with regard to the amount of Rs.6,50,000/- which is the subject matter of the case and needs to be decided, on technical reasons, this Court feels that the ultimate justice cannot be denied to the petitioner.

8. With the above observations and directions, the revision petition is allowed and disposed of.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak