

Court No. - 90

Case :- APPLICATION U/S 482 No. - 22685 of 2023

Applicant :- Al Baith Enterprises Through Its Proprietor Shafat Husain

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajiv Kumar Mishra, Anand Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. The applicant has invoked the inherent jurisdiction of this court U/S 482 Cr.P.C. assailing the summoning order dated 10.04.2023 passed by Additional Chief Judicial Magistrate, Court No.9, Allahabad in Complaint Case No.843/2022 (B.S. Enterprises Vs. All Baith Enterprises Pro Shafaat Husain), U/S 138 Negotiable Instrument Act (in brevity "NI Act"), Police Station Muthhiganj, District Allahabad.
3. Respondent No.2 has filed a complaint dated 16.04.2021 with an averment that under business transaction accused (applicant herein) has taken some goods from the complainant and in lieu thereof he has furnished Cheque No.000179, dated 07.01.2021 amounting to Rs.1,96,000/-. However, same was bounced for want of sufficient fund, while it was presented before the drawee bank for encashment. Despite repeated requests, accused/drawer of Cheque in question has refused to return the sum represented on the said Cheque.
4. Learned counsel for the applicant has advanced solitary submission questioning the condonation of delay by order impugned in filing the complaint that notice was sent on 15.01.2021, however, complaint was filed being barred by time on 16.04.2021. Learned Magistrate has illegally condoned delay sans opportunity of hearing that too without considering the fact that previous complaint no.119 of 2021 was dismissed on the ground of being filed before maturity.
5. Per contra, learned AGA has vehemently opposed the submissions as raised by learned counsel for the applicant and supported the summoning order dated 10.04.2023.

6. Having considered the rival submissions advanced by learned counsel for the applicant as well as learned A.G.A. and perusal of record it is manifested that a complaint has been filed owing to dishonor of Cheque No.000179 amounting Rs.1,96,000/- for want of sufficient fund. It is own case of the complainant (respondent no.2), as stated in paragraph no.8 of the complaint, that the previous complaint no.119 of 2021 was discarded on the ground of being filed before the cause of action arises under the law. At later stage, second complaint in question has been filed with a bit of delay i.e. beyond the prescribed period of limitation. As per complaint case notice was sent to the accused on 15.01.2021. However, there is nothing on record to establish as to when it was served upon the opposite party (applicant herein) and, thereafter, he failed to pay the demanded money as mentioned in the complaint in pursuance of the provisions enunciated under the proviso to Section 138 NI Act. Complaint, however, has been filed on 16.04.2021. Assuming that registered notice dated 15.01.2021 has been served upon accused within one month as presumption lies under the law i.e. upto 14.02.2021. Thereafter money demanded was expected to be returned to the complainant within 15 days from the date of receipt of notice as enunciated under proviso (c) to Section 138, hypothetically, which comes to March 1st, 2021.

7. Period of limitation for the purposes of filing the complaint is enunciated under Section 142 of the NI Act, which is quoted herein below :

"Section 142. Cognizance of offences.

[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,--

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.-- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]"

8. Section 142(1)(b) denotes the limitation for filing the complaint under Section 138 NI Act i.e. within a period of one month from the date of cause of action arises under Clause (c) of the proviso to Section 138 NI Act. In addition to that proviso to Section 142 (1)(b) of the NI Act entrust power upon the court concerned to condone the delay if the complainant satisfied the court that he has sufficient cause for not making the complaint within prescribed period of limitation.

9. In given circumstances of the present case, having considered the contents of the complaint and the statement of witnesses, learned Magistrate has condoned the delay in positive exercises of jurisdiction being satisfied with the reasons assigned by the complainant for the condonation of the delay and, accordingly, treated it to be filed within the prescribed period of limitation. Negotiable Instrument Act is a special enactment for a limited purpose to provide the legal protection to different mercantile instruments and provides for the procedure in case of obligation which have to be discharged under the instrument. Intending to secure the legally enforceable debt or other liability legislation has given provisions for the condonation of delay in case complaint is filed under the provisions of the act beyond prescribed period of limitation. The procedure for taking the cognisance of offence is enunciated under Section 142 of the NI Act. The proceedings under the NI Act is in the nature of summary proceedings for which provisions as enunciated under Section 262 to 265 (both inclusive) of Cr.P.C. are made applicable by virtue of provision as enunciated under the provisions of Section 143 Cr.P.C.

10. In this conspectus as above, even assuming that no notice has been given to the present applicant (accused) before condoning the

delay, in my considered opinion it would not adversely affect the legality and validity of the order dated 10.04.2023 by which delay has been condoned and simultaneously, summons have been ordered to be issued against the present applicant under Section 138 NI Act.

11. No other point has been raised qua merits of the case. The legally enforceable liability as mentioned in the complaint has not been denied by the complainant. This court neither found any abuse of process of court in the proceeding under challenge nor any justifiable ground to pass an order intending to secure the ends of justice.

12. Resultantly, the instant application, being misconceived and devoid of merits, is dismissed with no order as to the cost.

Order Date :- 23.11.2023/vkg