

GAHC010007332010



2024:GAU-AS:12582

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./363/2010

RAJA KHAN
S/O LT. BULLU KHAN R/O HOUSE NO. 36, APCC ROAD, NEAR FLY OVER,
GHY-3.

VERSUS

PRAFULLA CH. BHUYAN and ANR.
PERMANENT RESIDENT AT NO.2 MATHGARIA, VIDALAYA PATH P.S.
NOONMATI, GHY-20, KAMRUP, ASSAM, OFFICE ADDRESS - CHANDMARI
FLY OVER U- TUM OPP . ALL INDIA RADIO GATE, CHANDMARI, GHY-3,
GROUND FLOOR, HERO HONDA ROOM SIDE.

2:THE STATE OF ASSA

Advocate for the Petitioner : MS.S K NARGIS, MR.I A HAZARIKA,MISSS KHANIKAR,MR.H
R A CHOUDHURY

Advocate for the Respondent : MR.S BHATTACHARJEE, PP, ASSAM,MR.H A SARKAR,MR.S R
BHATTACHARJEE

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Miss. Q. Kiba, Advocate.

For the Respondents : Mr. B. Sarma, APP.

Date of Hearing : 09.12.2024

Date of Judgement : 09.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Ms. Q. Kiba, learned counsel appearing on behalf of Ms. S. K. Nargis, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent. However, none appears for the respondent private responded.
2. The present criminal revision petition under Section 401 read with Section 397 of Cr.P.C., 1973 is filed assailing the Judgment and Order dated 19.06.2010 passed by the learned Judicial Magistrate First Class, Kamrup, Guwahati in C.R. Case No. 3437/09.
3. The aforesaid CR Case No. 3437/2009 was filed by the petitioner under Section 138 of Negotiable Instrument Act, 1881.
4. An averment was made in the complaint that there was 19 days delay in filing the complaint and therefore, a prayer for condonation of delay was made. In view of the aforesaid stand, the learned trial Court below issued a notice to the accused to appear and show cause as to why said delay shall not be condoned. The accused appeared before the learned trial Court below and filed his objection 02.01.2010.
5. After hearing both the learned counsel for the parties, the learned Magistrate concluded that though there are some explanation as regards delay for the reason of the complainant being unwell, however, there is no explanation of delay of 11 days.

6. The objection of the accused that there was no separate application for condonation of delay was rejected by the learned Magistrate on the basis of relying on the decision of the Hon'ble Apex Court in the case of **M/s Dalmia Cement (Bharat) Ltd. –Vs- M/s Galxy Traders & Agencies Ltd)** reported in **AIR 2001 SC 676**. The learned Magistrate further concluded that the complainant received the intimation regarding the dishonour of cheque as disclosed in the complaint on 29.06.2009. The period of 30 days under Section 138(b) of the N.I.Act, expired on 28.06.2009 and therefore according to the learned Magistrate, the notice of demand should have been made on or before 28.06.2009 but the same was made on 29.06.2009 which is clear from the complaint petition itself. According to the learned Magistrate, such delay of one day in breach of mandate of Section 138(b) of the N.I. Act cannot be condoned by the Court.
7. Section 138 (b) of the N.I. Act, prescribes for penalties in case of dishonour of certain cheques for insufficiency of fund in the account. Proviso (b) of Section 138 of N.I.Act prescribes that such provision of Section 138 of N.I.Act, shall have no application when the payee or the holder in due course of the cheque, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque is not made within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.
8. Thus, the learned Magistrate on the basis of material available on record more particularly on the basis of the statement made in the complaint that the intimation of dishonour of the cheque was received on 29.05.2009 and

the notice of demand was issued on 29.06.2009 and thus, it was not within the prescribed period of 30 days.

9. In the considered opinion of this Court, when such materials were uncontroverted and there was specific statement by the complainant as regards date of receipt of information and the date of issue of the notice, the trial Court has rightly dismissed the petition being barred under Section 138(b) of the N. I. Act inasmuch as this Court has also perused the complaint petition which at paragraph 5, it is specifically stated that the drawers bank namely State Bank of India, Bamunimaidan, New Guwahati Branch vide their cheque returning memo dated 29.05.2009 intimated the petitioner as regards returned of the cheque and at paragraph 6, it was specifically stated that the legal notice was issued on 29.06.2009 and the thirty days period shall be over on 28.06.2009.
10. In view of this uncontroverted facts, this Court cannot term the decision of the learned Magistrate to be vitiated by any patent illegality or error.
11. Accordingly, this criminal revision petition stands dismissed.
12. LCR be returned back.

JUDGE

Comparing Assistant