

GAHC010129132017



2024:GAU-AS:12246

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

Case No. : Crl.Pet./421/2017

AJIT MEDHI
S/O LT. NABIN MEDHI R/O SANDHA P.S, P.O. and DIST. NALBARI, ASSAM
PIN - 781337

VERSUS

THE STATE OF ASSAM and ANR

2:M/S HILL CEMENT COMPANY LTD.
HAVING ITS CORPORATE OFFICE AT SHIVAM COMPLEX
BHARALUMUKH
A.T. ROAD
GUWAHATI-09
DIST. KAMRUP M
ASSA

Advocate for the Petitioner : MR.S BARMAN, MS.A SARMA

Advocate for the Respondent : MR.R DER-2, PP, ASSAM,MR.R J SARMA(R-2)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

04.12.2024

1. Heard Mr. S Barman, learned counsel for the petitioner. Also heard Mr. RJ Sarma, learned counsel for the respondent No. 2 and Mr. B Sarma, learned Additional

Public Prosecutor, Assam.

2. The present application is filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India praying for quashing and setting aside the proceeding registered as CR case No. 2124/2015 pending in the court of learned Judicial Magistrate, 1st Class, Kamrup (M). The further challenge is order dated 28.07.2016, whereby Bailable Warrant of Arrest was issued against the petitioner.

3. The aforesaid CR case was filed under Section 138 of Negotiable Instrument Act, 1881 and was registered as CR case No. 1016/2014. The learned Magistrate under its order dated 23.04.2015, after perusal of the case record, opined that the complaint case was filed beyond the period of limitation of 30 days as mandated under the Negotiable Instrument Act, 1881. Accordingly, the matter was fixed on 21.05.2015 for hearing on the point of limitation. Thereafter, the learned Magistrate was transferred and the matter was also transferred to the court of learned Additional Chief Judicial Magistrate, Nalbari. Subsequently, in view of the amendment of the Negotiable Instrument Act, 1881, the matter was again transferred to the court of learned Chief Judicial Magistrate, Kamrup (M) for necessary action under Subsection 2 of Section 142 of the Negotiable Instrument Act, 1881.

4. Thereafter, on 25.04.2016, the complainant filed a petition, which was registered as Petition No. 503, praying for condonation of delay of 28 days in filing the case. The matter was proceeded thereafter, however, without any decision being taken in the aforesaid Petition No. 503 dated 25.04.2016, on 17.03.2017 charges under Section 138 of Negotiable Instrument Act was explained to the accused.

5. This court is of the opinion that when the learned Magistrate under its order dated 23.04.2015 has raised an issue of maintainability of the complaint being barred by limitation and when an application for condonation of delay was filed by the complainant himself, without adjudicating the said issue, the learned court below could not have proceeded against the accused recorded hereinabove, more particularly, could not have passed the order dated 17.03.2017.

6. That being the position, this court is of the unhesitant view that the learned Magistrate has exceeded in his jurisdiction by passing order dated 17.03.2017 without considering the issue of limitation as has been raised by the court itself and subsequently a prayer for condonation of same be made by the complainant.

7. Accordingly, the present petition stands allowed by relegating the matter to the learned trial court below to consider the application for condonation of delay of 28 days filed by the complainant. In the meantime, the respondent may also file / raise objection to the aforesaid Petition No. 503, which was filed for condonation of delay. The issue of delay be determined as early as possible preferably within a period of six weeks from the date of appearance of the parties before the court. In view of the aforesaid determination, the Bailable Warrant of Arrest issued against the petitioner is interfered with. Parties shall appear before the learned trial court on 07.01.2025 and on such appearance the preliminary issue raised be decided within a period of six weeks thereafter.

8. While parting with this record, it is made clear that this court has not expressed any opinion on the merit of claim of condonation of delay or the objection that might be raised by the accused as regard condonation of such delay. The learned Magistrate is at liberty to apply its own mind in deciding the issue.

9. Accordingly, the criminal petition stands disposed of. Parties to bear their own costs.

JUDGE

Comparing Assistant