

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 338 OF 2013

Rajsingh Deshraj Singh Chandel .. Applicant

v/s.

Sadhu Barla & Anr. ..Respondents

Mr. Vasim Siddiqui i/b Mr. Kunal Bhonge for the applicant
Mr. Rajesh More, APP for the respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 14th OCTOBER, 2015.**

P.C.

1. By this application, the applicant-complainant (hereinafter referred to as the complainant) has sought leave to challenge the appeal against the judgment dated 20.02.2013 in C.C. No. 693 of 2007 whereby the learned J.M.F.C. Vashi dismissed the complaint filed under Section 138 of the N.I. Act and thus, acquitted the respondent-accused (hereinafter referred to as the accused) under Section 138 of the N.I. Act.

2. The learned Counsel for the complainant has submitted that

the complaint is dismissed mainly on the ground of limitation. He further submits that opportunity be given to the complainant to file an application for condonation of delay and the matter be remanded to the trial Court. In support of his submission, he has relied upon the judgment in the case of ***Pawan Kumar Ralli Vs. Maninder Singh Narula (2014) 15 SCC 245*** and the decision of this Court in the case of ***Sou. Surekha Sandip Hajare Vs. Instacomp 2004 All MR (Cri.) 373.***

3. I have considered the submission advanced by the learned Counsel for the complainant. I have also perused the records and the decisions relied upon the by the learned Counsel for the complainant. The records reveal that the complainant herein had alleged that he had advanced loan of Rs.4,85,000/- to the accused. It is stated that the accused had repaid part of the loan amount and had issued two cheques bearing Cheque No.096604 dated 10.12.2006 and Cheque No. 062734 dated 20.07.2006 for total amount of Rs.3,20,000/-. The said cheques were

dishonoured for insufficient funds. Thereafter, the complainant had issued statutory notice calling upon the accused to repay the loan amount. The accused did not repay the loan amount. Hence, the complainant initiated proceedings against the accused under Section 138 of the N.I. Act.

4. The learned Magistrate has dismissed the complaint mainly on the ground that the same was filed beyond the period of limitation. It is to be noted that in terms of Section 138 (c) of the N.I. Act, the cause of action for filing the complaint commences on expiry of 15 days of the receipt of the notice. Whereas, in terms of Section 142 (b), the complaint is to be filed within 30 days from the date the cause of action arises. Proviso to this Section enables the Court to take cognizance after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

5. In the instant case, the complainant had averred in

paragraph 8 of the complaint that he had issued notice dated 02.01.2007 and had called upon the accused to pay the amount within 15 days from the date of receipt of the notice. The complainant had further stated that the notice was sent at the residential address as well as the office address. The complainant had further stated that the said notice had returned unclaimed on 15.01.2007. The complainant stated that since the notice was unclaimed, it is deemed to have been received by the accused on 15.01.2007. The accused had not made the payment within 15 days. The complainant therefore claimed that the complaint which was filed on 26.02.2007 was within the period of limitation.

6. It is to be noted that the complainant had deposed that he had issued a statutory notice to the accused on 02.01.2007 by R.P.A.D. and U.C.P. at the residential address as well as office address. He has stated that the notice sent by R.P.A.D. was returned unclaimed on 15.01.2007 while the notice sent by RPAD at the office address of the accused was received on 08.01.2007.

7. The evidence of the complainant, therefore, reveals that the accused had received the notice sent him at the office address on 08.01.2007. Hence, in terms of Section 138 (c) of the Act, the cause of action had accrued on 23.01.2007 i.e. on the expiry of 15 days from 08.01.2007, the date of receipt of the notice. In terms of Section 142 (b) of the Act, the complaint was required to be filed within 30 days from the cause of action i.e. on or before 22.02.2007. In the instant case, the complaint was admittedly filed on 27.02.2007, which was certainly beyond the limitation period prescribed u/s 142 (b) of the N.I. Act.

8. The learned Counsel for the complainant, relying upon the decision of the Apex Court, in the case of *Pawan Kumar Ralli (Supra)*, submitted that the complainant should be given an opportunity to file an application for condonation of delay and the matter may, therefore, be remanded. It may be mentioned that in the case of *Pawan Kumar Ralli (Supra)*, the Apex Court, upon considering the fact that the issue of limitation was raised for the

first time before the High Court, had held that :-

“21. In the peculiar facts and circumstances of the case, while keeping in mind the legislative intent and the specific plea of the appellant raised in the grounds for the special leave petition that he should have been allowed to move an application for condonation of delay before the trial court as the respondent has not suffered any prejudice by reason of 25 days' delay, we strongly feel that the appellant should not have been deprived of the remedy provided by the legislature. In fact, the remedy so provided was to enable a genuine litigant to pursue his case against a defaulter by overcoming the technical difficulty of limitation.”

22. At the same time, we want to make it very clear that by this observation we are not laying down a legal proposition that without even filing an application seeking condonation of delay at an initial stage, the complainant can be given opportunity at any stage of the proceeding. As already discussed by us in the foregoing paragraphs, we have come to the irresistible conclusion, to afford an opportunity for the complainant to move an application seeking condonation of delay, under the peculiar facts and circumstances of the case.”

9. In ***Surekha Hajare Vs. Instacom, 2004 All MR Cri, 373*** this Court has held as under :-

“16. Even during the trial also the Court can ask the complainant or his lawyer to explain the doubt about the tenability on the point of limitation. Whenever such occasion arises the complainant is under legal duty to satisfy the Court that the complaint is within limitation.

Even at such later stage also an application is permissible to be moved praying for condonation of delay and in fit cases, the Court should be liberal in condoning such delay if the complainant is not blamable for his own acts. If the delay has been caused by happening of some event not within control of complainant he would be entitled to get the delay condoned if he is not indolent. The law does not help the indolent. The delay has to be condoned in the interest of justice and in context with the grounds which were beyond the control of such complainant in the interest of justice.”

10. Reverting to the facts of the present case, the issue of limitation is not raised before this Court for the first time. Moreover, the perusal of the complaint reveals that the complainant had suppressed the fact that the accused had received the notice dispatched at his office address on 08.01.2007 and had averred that the notice which was returned unclaimed, was deemed to have been served on 15.01.2007. Based on these averments, the complainant had claimed that the complaint which was filed on 27.02.2007 was within limitation. The learned Magistrate had taken cognizance of the offence as the complainant had suppressed the fact that the notice was served on the accused on 08.01.2007. Though this fact was disclosed

subsequently, the complainant had not filed an application for condonation of delay and had further not assigned any reasons for not filing such application.

11. In view of the above facts and circumstances, the decision of the Apex Court which was rendered on peculiar fact and circumstances of the case is not applicable to the facts of the present case. There is no ground for setting aside the judgment of acquittal.

In the result, the application is dismissed. Leave is rejected.

(ANUJA PRABHUDESSAI, J.)