

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Cr1.Rev.Pet.No. 1800 of 2008 ()

AGAINST THE ORDER IN CRL.MP NO. 5684/2007 of JUDICIAL FIRST CLASS
MAGISTRATE-III, THRISSUR DATED 25-02-2008

REVISION PETITIONER(S)/PETITIONER/COMPLAINANT:

SATHYA NARAYANAN.K.S.,
S/O.SREEDHARAN, KATHIRAPPILLY HOUSE, MUDIKKODU P.O.
PATTIKADU, THRISSUR.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENT(S)/RESPONDENT & STATE:

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1. PREETHI, W/O.VASU,
THAVALAKULANGARA HOUSE, MANANKODU DESOM
PANANCHERY VILLAGE, PATTIKADU, THRISSUR.
 2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2- BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

'C.R.'

P.D. RAJAN, J.

Crl. R.P.No.1800 of 2008

Dated this the 6th day of October, 2015

ORDER

This revision petition is preferred against the order in C.M.P.No.5683/2007 on the file of Judicial First Class Magistrate-III, Thrissur, which was filed u/s.142 of the Negotiable Instrument Act to condone the delay of 48 days in filing a complaint u/s.138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act). Complainant's case is that the accused borrowed a sum of ₹1,50,000/- from him and in discharge of that debt, accused issued a cheque drawn on South Indian Bank, Ollukkara branch. When it was presented for encashment, it was dishonoured for the reason of 'account closed'. The complainant demanded the amount

by giving a notice in writing to the accused, but even after acceptance of notice, he failed to pay the due amount. In the circumstances, he filed a complaint, C.M.P.No.5684/2007 in the trial Court, with a petition to condone the delay of 48 days, which was dismissed by the learned Magistrate on 25.2.2008. Being aggrieved by that, he approached this Court with this revision petition.

2. The learned counsel appearing for the revision petitioner submitted that as the petitioner was laid up due to Chikkun Guniya, he had sufficient cause for not appearing in the trial Court for filing a complaint in time. For ascertaining the satisfaction of the Court, it is necessary to conduct an enquiry, but without any enquiry, the trial Court dismissed the petition, which is illegal, which resulted in miscarriage of justice. Hence, he prays

to exercise the revisional jurisdiction to rectify the error.

3. I heard the learned Public Prosecutor. Notice issued to the 1st respondent was returned as unclaimed and there is no appearance for the 1st respondent.

4. The manner in which a complaint for dishonour of cheque has to be filed is explained under S.142 of the N.I. Act. The Section starts with a non-obstante clause which states that the provision mentioned in the Section will be in supersession of the provision of the Code of Criminal Procedure for filing complaints. Section 142 of the N.I. Act reads as follows:

"142. Cognizance of offences.- 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 © 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."

5. A plain reading of the Section says, if a payee of the cheque or the holder in due course of the cheque files a complaint in writing for taking cognizance of an offence punishable under Section 138 of the N.I. Act, such a written complaint can be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 of the N.I. Act. The proviso to S.142 stipulates that the cognizance of a complaint can be taken by a Court after the prescribed period of 30

days, if the complainant satisfies the Court that he had sufficient cause which resulted in delay of making a complaint within the period. A metropolitan Magistrate or judicial Magistrate of the Ist Class having territorial jurisdiction can try a complaint. Normally, the Court having jurisdiction shall take cognizance of the offence on a complaint within one month from the date on which cause of action arises under Clause (c) of the proviso to Section 138 of the N.I. Act. The use of 'shall' in clause (a) ensure a mandatory direction to ensure the legal ingredients provided under S.142, which have to be fulfilled before cognizance of the complaint.

6. The general rule of extension of period of limitation in certain Criminal cases have been explained under Section 473 of the Code of Criminal Procedure provides as

follows:

"Extension of period of limitation in certain cases. - Notwithstanding anything contained in the foregoing provisions of this chapter, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

The above Section also begins with a non-obstante clause which enables a Court to take cognizance of an offence not only when it is satisfied to the Court that the delay has been properly explained but even in the absence of proper explanation in the interest of justice the Court can do it. The non-obstante clause means that the said section has an overriding effect on Section 468, if the court is satisfied on the facts and circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

7. Apex Court in Vanka Radhamanohari (SMT) v. Vanka

Venkata Reddy and others [(1993) 3 SCC 4] held as follows:

"At times it has come to our notice that many courts are treating the provisions of section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay under section 5 of that Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the limitation Act the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such whenever the bar of Section 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone the delay in the interest of justice. While examining the question as to whether it is necessary too condone the delay in the interest of justice, the court has to take note of the nature of offence the class to which the victim. If the power under Section 473 of the code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and

inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances instead of applying the rule of limitation and saying the with lapse of time the cause of action itself has come to and end. The general rule of limitation is based on the Latin maxim : vigilantibus, et non, dormientibus, jura subveniunt (the vigilant, and not the sleepy, are assisted by the law). That maxim cannot be applied in connection with offences relating to cruelty against women. (emphasis supplied)

8. The N.I. Act is a special enactment and Chapter XVII (containing Section 138 to 142) was inserted by Act 66 of 1988, with effect from 1.4.1989. The proviso to Clause (b) of S.142 of the N.I. Act was inserted vide the Amendment Act 2002 (55 of 2002) conferring power to empower the courts to condone the delay in filing of complaint in appropriate cases. In such cases, the complainant has to satisfy the court that he could not approach the court with his complaint within the stipulated

time of 30 days. Prior to amendment, there were conflicting views with regard to this issue and the said issue is resolved by adding a proviso by amendment to S.142 (b). If the complainant is able to satisfy the court that there was sufficient cause which prevented him from filing the complaint within the stipulated period, the court after the expiry of 30 days, can proceed with the case after condoning the delay. It is true that the object of introducing Section 142(b) was to put a bar on limitation on prosecutions and to prevent the parties from filing a complaint after a long time. It is true that after a long time, launching of prosecution may be vexatious because by that time even the evidence may disappear.

9. But this Court in Muraleedharan v. Sreeram Investments Ltd. [(2006) 1 KLT 131] held that an application filed for condonation of delay in preferring an appeal or such other proceedings is always accompanied by an affidavit of the party litigant who seeks such condonation. But in Abdurahiman v. Sethumadhavan [2006(4) KLT 33] it was held that there is no requirement under law that complainant should file an affidavit for condonation of delay and give an opportunity of being heard to the accused. But in view of proviso to S.142 (b), a court can take cognizance of an offence when it is satisfied that the delay has been properly explained.

10. The complainant was laid up due to 'Chikkun Guniya', which was not enquired by the learned Magistrate. There is no hard and fast rule as to what constitutes

sufficient cause to condone the delay. It must be determined by the reference to the facts and circumstances of each case. It is also difficult to exercise judicial discretion in a strait jacket formula, while considering the provisions of proviso to Section 142(b). A provision should be liberally construed so as to give substantial justice to the approaching party. The limitation provided u/s.142 of the N. I. Act is equally for and against the approaching party. It should be remembered that the purpose of such limitation should be exercised in reasonable cases. In the situation, it is incumbent upon the Court to show on record that it applied its mind to the question of limitation and the reasons stated in the facts and circumstances of the case were properly considered and explained, if it is not adverted,

which indicates no proper application of mind, which cause miscarriage of justice to the complainant. The Court below passed an illegal perverse order, which is to be rectified by invoking the revisional jurisdiction.

11. In the circumstances, the common order passed by the learned Magistrate in C.M.P.Nos.5683/2007 & 5684/2007 is set aside. The matter is remitted to the trial Court for fresh consideration as per law, after hearing the revision petitioner/complainant. He is directed to appear in the Judicial First Class Magistrate-III, Thrissur on 2.11.2015.

The criminal revision petition is allowed.

P.D. RAJAN, JUDGE.

acd

