

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.6640 of 2009

ORDER:-

The petition is filed under Section 482 Cr.P.C., for quashing all further proceedings in C.C.No.330 of 2009 on the file of the VI-Metropolitan Magistrate, Cyberabad at Medchal, registered under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. The 1st respondent filed the private complaint alleging that the petitioners/accused have issued a cheque for Rs.20,25,000/- in discharge of a debt and when the cheque was presented, the same was dishonoured. Legal notice was issued to which no reply was given. Thereafter, the complaint was filed. However, since the complaint was not filed within the statutory period as provided under the Act, CrI.M.P.No.293 of 2009 was filed to condone the delay of two days in filing the private complaint and by order, dated 09-04-2009, it was allowed by the learned Magistrate.

3. The petitioners are seeking to quash all further proceedings in the Calendar Case on two grounds. Firstly, it is contended that admittedly the private complaint was not filed within the statutory period and was filed with a delay of six days. However, by wrongly showing as if the delay is of two days, the respondent/complaint filed the criminal petition. The petition was filed on 06-04-2009. On 09-04-2009 the said petition was allowed even without issuing any notice to the petitioners/accused who are respondents in the said CrI.M.P. as well as the private complaint. Learned Counsel submits that, no doubt, condonation of delay is the discretionary power vested in the Court but such power cannot be exercised without affording even opportunity to the opposite party to contest the claim of a petitioner. It is secondly contended that the Court at Medchal had no jurisdiction to entertain the private complaint for the reason that no part of transaction took place within the limits of Medchal Court and therefore the complaint in the

said Court is not maintainable. According to the learned Counsel, the transaction took place in the limits of Hyderabad, cheque was issued in a branch at Hyderabad, it was presented by the respondent/complainant in a branch at Hyderabad, and was dishonoured at Hyderabad, and a legal notice was also issued at Hyderabad address. Therefore, the Court at Medchal had no jurisdiction to entertain the complaint.

4. On the other hand, learned Counsel appearing for the 2nd respondent submits that merely because no notice was given to the petitioners/accused in the petition filed under Section 142(b) of the Act to condone the delay, the further proceedings in the Calendar Case cannot be quashed. With regard to the jurisdiction, learned Counsel submits that since the Registered Office of the *de facto* complainant is within the limits of the Court at Medchal, this Court has got jurisdiction.

5. The admitted facts are that the amount of cheque dated 15-11-2008 is Rs.20,25,000/-. It was issued at Hyderabad. The cheque was presented at Kotak Mahindra, Hyderabad. The said cheque was presented and dishonoured on 20-01-2009. The statutory legal notice was issued on 09-02-2009. The same was served on the petitioners/accused on 14-02-2009. However, the complaint was filed only on 06-04-2009 along with CrI.M.P.No.293 of 2009 for condoning the delay.

6. A perusal of the record shows that the learned Magistrate has not bestowed proper attention in the matter at any stage. When the complaint was filed on 06-04-2009. if even by ordinary calculation, the Court should have come to know that there is delay of six days in filing the complaint but not two days. In the affidavit that is filed in support of the petition to condone the delay, the respondent/complainant stated that there is a delay of only two days in filing the private complaint. Even in the petition that is appended to the affidavit, originally it was mentioned that there was delay of two days. However, subsequently,

it appears that in the petition, there is correction and two days is corrected into six days. Coming to the order passed by the learned Magistrate on 09-04-2009, it is mentioned that the petition is filed only to condone the delay of two days. It is manifest that through out the proceedings, there was a request to condone the delay of two days only which was acceded to, but, as a matter of fact, there was delay of six days and there was material alteration in the petition part ostensibly made subsequent to the disposal of the petition for the reason that while the petition was disposed of on 09-04-2009, it is mentioned that there is delay of only two days. Who made this material alteration and tampered with the record needs to be enquired by the learned Magistrate.

7. Be that as it may, the learned Magistrate has disposed of the petition by a cryptic order, which reads as under:-

“Heard. For fair opportunity, petition is allowed and delay is condoned.”

Such an order is not expected to be passed in a petition which has got far reaching consequences. The law provides for specific limitations and any delay thereafter need to be explained satisfactorily and the Court must be satisfied with the reasons assigned for the delay in availing the legally permissible remedies. Without even placing on record the satisfaction of the Court that there were valid grounds to condone the delay, the petition was allowed stating that the said delay is to be condoned in order to afford fair opportunity. Fair opportunity is not only to be given to the petitioner but also to the respondent. This fact has been lost sight of by the learned Magistrate. Even without issuing any notice to the respondent/accused or affording any opportunity of being heard, the learned Magistrate has allowed the petition and condoned the delay. It is borne out from the record that the said CrI.M.P. and the private complaint have been lodged in the Court on 06-04-2009. On 09-04-2009 itself i.e., within three days, the petition is allowed. It cannot even be imagined that notice of the

petition could have been sent and served on the petitioner/accused within less than three days. Therefore, it is clear that the said petition was allowed without affording any opportunity to the petitioner/accused to put forth his contentions in the matter of condonation of delay.

8. In addition to the above, it is noticed from the preamble of the order of the Magistrate that the said order is passed in the presence of both the complainant and the accused. This statement in the order is palpably false. The record of the Court is supposed to depict the true state of affairs but even though no notice was sent to the respondent/accused and there was no appearance, whatsoever, to place on record that the said order is passed in the presence of the respondent/accused is nothing but placing on record the facts which are factually incorrect.

9. In that view of the matter, the impugned order of the learned Magistrate made in CrI.M.P.No.293 of 2009 is liable to be set aside.

10. Insofar as the question of jurisdiction is concerned, the learned Counsel has relied upon the decisions of the Supreme Court reported in **DASHRATH RUPSINGH RATHOD v. STATE OF MAHARASHTRA**^[1]; **VINAY KUMAR SHAILENDRA v. DELHI HIGH Court LEGAL SERVICES COMMITTEE**^[2]; and the recent amendment made to the Negotiable Instruments Act (Act No.6 of 2015) insofar as jurisdiction is concerned.

11. Since there is a delay in filing the complaint, firstly that has to be disposed of on merits. Only if the respondent/complainant could satisfy the Court about the existence of just and sufficient cause for condoning the delay, the private complaint has to be taken on file and at that stage, the question of jurisdiction has to be looked into by the competent Court. In that view of the matter, at this stage, the question as to whether the Court at Medchal has territorial jurisdiction or not cannot be decided and that issue is left open to be decided by the

learned Magistrate before taking cognizance of the complaint in the event of that stage arises. The private complaint, however, cannot be quashed on the ground which are sought to be made out. The petition is therefore liable to be disposed of by giving suitable directions to the learned Magistrate by setting aside the order dated 09-04-2009 made in Crl.M.P.No.293 of 2009.

12. In the result, the Criminal Petition is disposed of by setting aside the Order, dated 09-04-2009. The learned Magistrate is directed to issue notice to the petitioners/accused who are respondents in the said petition and after giving reasonable opportunity to both the parties, should dispose of Crl.M.P.No.293 of 2009 filed under Section 142(b) of the Negotiable Instruments Act. The learned Magistrate is further directed to cause enquiries to be made as to who made the material correction in the petition filed in the Court and who is responsible for correcting the figure '2' into '6' and at what stage it was made. The learned Magistrate shall also verify as to how a wrong statement has been recorded in the preamble to the order passed by him to the effect that the said order has been passed in the presence of both the petitioners/accused and the respondent/complainant which on the face of it do not appear to be correct. The learned Magistrate shall also decide the question of territorial jurisdiction depending upon the legal position on the said aspect.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

September, 2015

smr

[\[1\]](#) (2014) 9 SCC 129

[\[2\]](#) (2014) 10 SCC 708