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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-22107 of 2014

Date of decision: February 10, 2015

Renu Batra

.....Petitioner

Versus

Sushil Batra

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Surinder Pal Singh, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the orders dated 26.11.2013 and 22.04.2014.

Learned counsel for the petitioner has submitted that the complaint under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) had been filed after the period of limitation had expired. Respondent had failed to explain the delay in filing the complaint.

Respondent has filed the complaint against the petitioner under Section 138 of the Act with regard to dishonour of cheque dated 31.12.2011 in the sum of ₹10,00,000/-. Alongwith the complaint, an application was moved by the respondent under Section 142 (b) of the Acts. Vide order dated 26.11.2013, trial Court condoned the delay in filing the complaint. The said order was upheld by the Court of revision vide order dated 22.04.2014. Hence, the

Present petition.

Section 142 of the Act reads as under:-

“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 (c) of the proviso to section 138:*

²⁴ *[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.”*

Thus, as per above provision, the Court has the power to take cognizance of the complaint after the prescribed period, if the complainant satisfies the Court that he has sufficient cause for not filing the complaint within the prescribed period.

In the present case, the complainant has stated that he could not file the complaint within the prescribed period as he had been advised by his counsel that the Courts were closed on account of summer vacation w.e.f. 16.06.2012 to 15.07.2012. Respondent further took plea that he had fallen ill and had been advised rest w.e.f. 01.07.2012 to 13.07.2012. In support of his application for condonation of delay, respondent led his evidence. The case of the petitioner, on the other hand was that

the petitioner had gone to Madhya Pradesh from 24.06.2012 to 02.07.2012 with his family.

Thus, as per Section 142 (b) of the Act, the trial Court had the jurisdiction to take cognizance of the complaint after the expiry of the prescribed period and the trial Court has exercised the said jurisdiction. The plea taken by the complainant that he had been advised by his counsel that the Courts were closed for summer vacation from 16.06.2012 to 15.07.2012, is plausible. Moreover, the complainant had nothing to gain by filing the complaint after delay.

Hon'ble the Supreme Court in the case of **Collector Land Acquisition, Anantnag and another vs. Mst. Katiji and others** AIR 1987 SC 1353 has held as under:-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that pedantic approach should be made. Why not every hour's delay every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

5. There is no presumption that delay is occasioned

deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6.It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

In the facts and circumstances of the present case, the delay in filing the complaint cannot be said to be malafide or intentional. The revision petition filed by the petitioner against the order dated 26.11.2103, was dismissed.

It is a settled proposition of law that the petitioner cannot invoke jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) after dismissal of his revision by the Sessions Court as it would amount to a second revision. However, in a case of grave injustice, this Court can interfere under Section 482 Cr.P.C. But in view the facts and circumstances of the present case, no ground for interference is made out as it cannot be said to be a case of grave injustice.

Dismissed.

February 10, 2015
m.singh

(SABINA)
JUDGE