

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: January 28, 2015

+ CRL.M.C. 3482/2013

VINAY ANAND

..... Petitioner

Through: Mr. Sanjiv Kumar & Mr. M.
Sharma, Advocates

Versus

STATE & ORS.

..... Respondents

Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent No.1-
State
Mr. R.D. Joshi, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Petitioner's complaint under Section 138 of the *Negotiable Instruments Act, 1881* stands dismissed as time barred. Application seeking condonation of 14 days' delay in filing the aforesaid complaint has been dismissed by the trial court while noting that if counsel for complainant was out of station then complainant ought to have approached another counsel. The aforesaid order of 9th May, 2013 of the trial court stands affirmed by learned Revisional Court vide impugned order of 27th May, 2013 with the following reasoning:-

"I have heard the arguments on behalf of the revisionist."

In the application moved under Section 5 of the Limitation Act, complainant had blamed his counsel as he was out of station due to his personal reasons and he has not properly explained. There is no affidavit attached with the application of the earlier counsel who had remained outside of Delhi for personal reasons or disclosing the personal reason of the counsel. The reason given by the revisionist in his application is not found satisfactory. Trial court has dealt in detail as to why he has not accepted the plea of the counsel of the revisionist. I do not find any impropriety, incorrectness and illegality in the order passed by trial court, hence, revision petition is hereby dismissed.”

Upon hearing both the sides and on perusal of the impugned orders and the material on record, I find that while dealing with the applications seeking condonation of delay, a pragmatic approach has to be adopted. Judicial notice can be taken note of the fact that lawyers seldom come forward to give their affidavits particularly when they are at fault. The dishonoured cheques in question are of ₹9,75,000/-. For the negligence of the counsel, a party cannot be made to suffer. At best, defaulting party can be put to terms in a case which does not disclose gross negligence. Instant case is the one which does not disclose gross negligence. Sufficient case is shown for the delay occasioned. Impugned orders are accordingly quashed and petitioner's application seeking condonation of 14 days' delay in filing the complaint under Section 138 of *The Negotiable Instruments Act, 1881* is allowed and the delay is condoned.

Trial court is directed to deal with petitioner's complaint under Section 138 of *The Negotiable Instruments Act, 1881* in accordance with the law.

With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 28, 2015

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