

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 448 of 2016**

Gopal Mittal, aged about 43 years, son of Shri Banwari Lal Mittal, Proprietor/partner-Bol Bam Transport Co. Ltd. behind Khapriganj Mauhapali Road, Kharsia, PS & Tehsil Kharsia, Raipur, Civil and Revenue District Raigarh (CG).

---- Petitioner**Versus**

1. Yashwant Kumar, aged about 36 years son of late Rohit Kumar Chandra, resident of Dabhra, PS & Tehsil Dabhra, Janjgir Champa, Civil and Revenue District Janjgir Champa (CG).
2. State of Chhattisgarh through the District Magistrate, District Janjgir Champa (CG).

Respondents

For Petitioner	Shri Pushpendra Kumar Patel, Advocate.
For Respondent No.2	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/04/2016**

1. By way of this petition under Section 482 Cr.P.C. the petitioner intends to challenge the order dated 19.01.2016 passed by the First Additional Sessions Judge, Sakti in Criminal Revision No.53/2015. Vide impugned order, the court below has set aside the order dated 22.09.2015 passed by the Judicial Magistrate First Class-Dabhra, rejecting the complaint case under Section 138 of the Negotiable Instrument Act on the ground that the provisions of Section 5 of the Limitation Act for condonation of delay is not applicable to the proceeding under Negotiable Instrument Act, and therefore, application under Section 5 of Limitation Act as well

as complaint were rejected.

2. The First Additional Sessions Judge while hearing the revision petition holds that admittedly there was delay which is not disputed by the either side. To condone such delay, the complainant had also filed an application under Section 5 of the Limitation Act along with application under Section 138 of the Negotiable Instrument Act. In respect of delay caused, the complainant had also filed a medical certificate showing the proof of his being not well during the intervening period.
3. The revisional court has set aside the order dated 22.09.2015 passed by the Judicial Magistrate First Class holding that the court below ought to have considered the application under Section 5 of the Limitation Act to be one under Section 142 of the Negotiable Instrument Act and decided the matter. According to the court below Negotiable Instrument Act itself provides for condonation of delay if sufficient cause has been explained. Only for the reason that provisions of Section 5 of the Limitation Act is not applicable to the proceeding under Negotiable Instrument Act and rejecting the complaint was not proper. The complaint case ought not to have been rejected on the ground of delay as application under Section 5 of the Limitation Act was filed instead of Section 142 of the Negotiable Instrument Act.
4. Taking into consideration the facts that Section 142 of the Negotiable Instrument Act specifically empowers the court to condone delay in filing the complaint case and further at the first instance application under Section 5 of the Limitation Act was filed along with complaint for condonation of delay, this court is of the opinion that there is no illegality or infirmity in the order impugned dated 19.01.2016 passed by the First

Additional Sessions Judge, Sakti in Cr. Revision No. 53 of 2015, setting aside the order dated 22.09.2015 passed by the Judicial Magistrate First Class, Dabhra.

5. Accordingly, the petition has no merit, the same deserves to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder