

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 569 of 2016**

Benuram Sahu S/o Khagpati Sahu Aged About 60 Years R/o Village -
Post Kataud, Tahsil - Dabhra, Distt. Janjgir (Champa) Chhattisgarh

---- Petitioner**Versus**

Ram Kumar Dwivedi S/o Late B. D. Dwivedi Aged About 61 Years R/o
Awass No. M.I.G. - 30, Sada Colony, Jamnigali, Tahsil - Katghora, Distt.
Korba Chhattisgarh.

---- Respondent

For Petitioner : Mr. Vivek Tripathi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17.06.2016**

1. The present Criminal Misc. Petition has been filed challenging the order dated 25.04.2016 passed in Criminal Revision No. 82/2015 by the Additional Sessions Judge, Katghora whereby the Revisional Court upheld the order dated 09.09.2015 passed by the Judicial Magistrate First Class, Katghora in Criminal Case No. 350/2015 wherein the Court below had entertained the application under Section 138 of Negotiable Instrument Act, 1881 (hereinafter 'the N.I. Act') after condoning the delay caused in the filing of the case under Section 138 of the N.I. Act.

2. Learned Counsel for the Petitioner submits that the two Courts below had committed an error of law in not appreciating the fact that the reasons shown by the Respondent in his application under proviso to Section 142(B) of the N.I. Act, there was no satisfactory explanation given by him which he could prove the submissions raised in the said

Application justifying the delay.

3. From the record that has been placed before this Court it appears that in the Application under Section 142(B) of the N.I. Act, the complainant had stated that he and the present Petitioner-accused were employees of the Chhattisgarh State Electricity Board (in short 'C.S.E.B.'). they were co-employees and that the present Petitioner after the legal notice was served had been giving assurances of making payments immediately. But since there was considerable delay on the part of the present Petitioner in making the payment even after repeated assurances the complainant was left with no other option but to file the proceedings under Section 138 of the N.I. Act along with application for condonation of delay which was duly entertained and allowed vide order dated 09.09.2015 by the Court below and while entertaining the said Application the Court below also took note of a judicial pronouncement of Madhya Pradesh High Court reported in **2011 (3) MPLJ 405 (Tulshi Ram Nawariya Vs. Mahesh Chandra)**.

4. The said order dated 09.09.2015 was put to challenge in the Revision Petition before the Revisional Court of the Additional Session Judge, Katghora which was registered as Criminal Revision No. 82/2015. The Court below also after considering the contentions put forth by the present Petitioner in the Revision Petition and on perusal of the record, had found that there was no illegality or perversity in the findings arrived at by the trial Court while condoning the delay and registering the complaint against the Petitioner and vide the impugned order dated 25.04.2016 the Revision was dismissed.

5. Learned Counsel for the Petitioner at this juncture submits that all

the submissions put forth by the Respondent in his application under Proviso to Section 142(B) are only averments without there being any basis and were not cogent explanations. It was a mere submission and contentions put forth without any substance and proof, therefore the Court below ought not have relied upon such submission while condoning the delay.

6. Considering the facts that the complainant is 61 year old retired employee of the C.S.E.B. and the fact that the present Petitioner was also a co-employee working along with the complainant in the same establishment the averments made by the complainant seems to be a plausible justification for the delay caused and if the same has been accepted by the two Court below, in the opinion of this Court the Courts below have not committed illegality or perversity while accepting the same.

7. It is not the case of the Petitioner that the Court was not competent to pass an order. Rather the Act provides the Court the power to condone the delay in a given case if sufficient cause is explained. If in the present case considering the Complainant being a retired senior citizen a pragmatic view has been taken by the Court the same cannot be said to be bad in law.

8. In the opinion of this Court no strong case is made out in the present Petition calling interference with the impugned order, accordingly the same is rejected.

Sd/-

(P. Sam Koshy)
JUDGE

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