

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 816 of 2016

1. Remi Sales & Engineering Ltd. through its Authorized person Rupak Jajodiya
2. Rupak C Jajodiya S/o C. L. Jajodiya, aged about 40 years
Both R/o Marwadi Line- Bilaspur, PS and Tahsil Bilaspur, District Bilaspur, CG

---- Petitioners

Versus

1. M/s Vinayak Traders through its proprietor Mr. Arjundas Motwani
2. Arjun Das Motwani S/o Proprietor of M/s Vinayak Traders
Both R/o Zone No.II, Vyapar Vihar, Bilaspur, District Bilaspur, CG

---- Respondents

For Petitioners	:	Ms. Sharmila Singhai, Advocate.
For Respondents	:	Shri Vinod Tekam, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/11/2016

The present petition has been filed assailing the order dated 23.06.2016 passed by the 9th Additional Sessions Judge, Bilaspur in Criminal Revision No. 208/2015 whereby the Revisional Court has rejected the revision petition of the petitioners affirming the order passed by the JMFC, Bilaspur dated 10.04.2015 in an unregistered complaint under Section 138 of Negotiable Instruments Act.

2. Brief facts for adjudication of the present petition are that the complainant had initially lodged a complaint under Section 138 of Negotiable Instruments Act (for short 'NI Act') before the 25th Jt. C.J.J.D. And J.M.F.C, Nagpur. However, in the light of the judgment of the Hon'ble Supreme Court in the case of Dashrath Pupsingh Rathod Vs. State of Maharashtra and another, (2014) 9 SCC 129 the JMFC, Nagpur vide its order dated 12.12.2014 refused to entertain the complaint case on account of

not having its jurisdiction and returned the same to be presented before the appropriate Court. It is alleged that the said order dated 12.12.2014 was obtained by the present petitioner only on 22.12.2014 and subsequently the complaint case before the JMFC, Bilaspur was filed on 23.01.2015 with a delay of 12 days from the date of passing of the order of Nagpur Court.

3. According to the counsel for the petitioners, for the delay of 12 days that has occurred the complainants had filed an application for condonation of delay supported with a medical certificate showing that the complainant was not well and therefore, he could not file the complaint case within stipulated period. However, the JMFC, Bilaspur vide its order dated 10.04.2015 rejected the same holding that the complaint has been filed beyond the period of 30 days within which the complaint has to be filed after passing of the order of the Nagpur Court.

4. The said order dated 10.04.2015 was also put to challenge in a revision registered as Criminal Revision No. 208 of 2015 before the 9th Additional Sessions Judge, Bilaspur and the Revisional Court also vide its order dated 23.06.2016 rejected the revision petition affirming the order of the JMFC, Bilaspur dated 10.04.2015 passed by the JMFC, Bilaspur.

5. Counsel for the petitioners submits that the two Courts below have not taken the contention on condonation of delay in its proper perspective, in as much as, the two Courts below ought to have taken a more pragmatic view while deciding the application for condonation of delay. She submits that the delay in filing of the application also was not inordinate as the delay caused was that of only 11-12 days. She further submits that in case if the date of receipt of the order dated 12.12.2014 issued by the Nagpur Court is taken into consideration then the complaint case is within limitation as the order dated 12.12.2014 by the Court at Nagpur was received on 22.12.2014 and the complaint case before the JMFC was filed on 23.01.2015. Counsel for

the petitioners further referring to the judgment passed by the Supreme Court in the case of Dashrath (supra) submits that the Supreme Court subsequently in the case of M/s Bridgestone India Pvt. Ltd. Vs. Inderpal Singh decided on 24.11.2015 in Criminal Appeal No. 1557 of 2015 discussing the case of Dashrath (supra) reached to the conclusion that in the present scenario, the case of the petitioner would also have been tenable before the Court at Nagpur. Thus, for all these reasons, counsel for the petitioners prayed for quashing of the two impugned orders and for remitting the matter back to the trial Court for considering the case on its merit after registering the same.

6. Counsel appearing for the respondents, however, opposes the petition on the ground that it is the requirement of law that once a proceeding was returned to be filed before the appropriate Court, the same has to be done within the period of 30 days from the date of return of the complaint. In the instant case, since the petitioners have not acted promptly on the complaint lodged by them, the two Courts below have rightly drawn the conclusion that the complaint has been filed beyond the prescribed period of 30 days and no plausible explanation has been given for the said delay. He further submits that the two Courts below have objectively considered the prayer of the petitioners for condonation of delay and passed a speaking order. Therefore, the two impugned orders do not warrant any interference.

7. Having considered the factual background of the case and also upon hearing the counsel appearing on either side some of the undisputed details which are relevant for adjudication of the present petition under Section 482 CrPC are that a complaint case under Section 138 of NI ACT was filed before the Court at Nagpur. The said complaint case was returned on 12.12.2014 to be filed before the appropriate Court. The complainant subsequently filed a complaint case at the Court of CJM, Bilaspur on

23.01.2015 with a delay of 11-12 days along with an application for condonation of delay. The application for condonation of delay was supported with a medical certificate showing that the complainant was not keeping well and that he was advised for complete bed rest by the doctor on account of some spinal problem that he had. At this juncture it would be relevant to refer to the proviso of Section 142 of the NI Act which for ready reference is reproduced hereunder:

“[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.]”

8. The said proviso clause has been inserted only w.e.f 06.02.2003 by way of an amendment in the Act. It would be also trite to mention at this juncture that prior to 06.02.2003, the law was too technical that in the event of the complaint was not lodged within the period prescribed as per Section 142 of NI Act, the Court does not have the power to condone the delay and it was left with no other option but to reject the complaint. Thus, the law makers found it to be too harsh and therefore, they thought of giving the power to the concerned Court that in the event of delay, if proper explanation is submitted, the Court shall consider and pass an appropriate order. The State has brought an amendment keeping in view those cases where there are justified reasons and there is no deliberate inordinate delay caused, the same could be entertained and the Court in a given case can condone the delay.

9. The very institution of this proviso gives an indication that the law makers also wanted the Court to be little more pragmatic and liberal for considering the case for condonation of delay and also the fact that the Court should not reject the case only on the ground of delay particularly when there are plausible and satisfactory explanations for the delay caused.

10. In the instant case if we look into the factual background of the case, the delay does not appear to be inordinate or unexplainable as the delay is of only 11-12 days which was explained by producing medical certificate in respect of the ill health of the petitioner.

11. In the matter of N. Balakrishnan v. M. Krishnamurthy¹ it has been held by the Supreme Court that the sufficient cause has to be construed liberally especially when the delay is not deliberate and mala fide. Relevant portion of the report held as under:-

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation) (sic). Rules of limitation are not meant to destroy tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

“12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.”

12. The Hon'ble Supreme Court in one of the recent decisions in the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others² has held as under:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalize injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper perspective, spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.

1 (1998) 7 SCC 123

2 2013 AIR SCW 6158

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v)....vi)....vii).....

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach where as the second calls for a liberal delineation.

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

13. For the foregoing reasons and in view of the law laid down by the Supreme Court, this Court is of the opinion that the rejection of the complaint by the two Courts below is not justified. Once when the petitioner has been able to adduce a plausible explanation and has also supported his contention with a medical certificate, the two Courts below ought to have taken a more pragmatic view particularly for the reason that the original complaint under Section 138 NI Act was filed within the prescribed period of 30 days. It is only when the Nagpur Court refused to entertain the complaint that forced the petitioners to approach the Court at Bilaspur. In between, since the petitioner fell ill and he was advised by the doctor for bed rest because of his spinal problem, he could not file the complaint within the prescribed period and therefore the impugned order of rejection of complaint is not justified and the same deserves to be set aside.

14. Accordingly, the impugned order is set aside. The present CrMP is allowed and the matter is remitted back to the Court below i.e. the CJM, Bilaspur for considering the case on its merit from the stage after condonation of delay.

Sd/-

(P. Sam Koshy)
JUDGE