

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14698 of 2011

Arising Out of PS.Case No. 0 Year-0 Thana -0 District- PATNA

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Gaurav Roy son of Bijoy Roy, resident of Mohalla- Choudhary Colony, P.S. + P.O.-Sahebganj, District- Sahebganj (Jharkhand). At present residing at Lohia Nagar, Malahi Pakri Chowk, P.S.-Patrakar Nagar, P.O.-Lohia Nagar, Vrindavan Apartment, Phase-II, Flat No.C/101. Kankarbagh, District- Patna

.... Petitioner/s

Versus

1.The State of Bihar

2. Ram Pravesh Rai son of Kamla Roy, proprietor M/s Ram Pravesh Roy Estate Pvt. Ltd., Goharua House, Village- Sirnga, P.S.-Siwan Muffasil, District- Siwan. Presently residing at House No.19, C/o Tondon Sahu, Patliputra Colony, P.O. + P.S.-Patliputra, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Aruni Singh, Advocate

Mr. Sumant Singh, Advocate

For the Opposite Party No.2 : Mr. Binod Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-11-2017

This application has been filed under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') against the order dated 25.10.2010 passed in Criminal Revision No.69 of 2010 by the learned Additional Session Judge-IV, Patna affirming the order dated 08.10.2009 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.343(C) of 2008 passed on petition dated 11.05.2009 filed on behalf of the petitioner to drop the case proceeded against him under the provisions of Section 142(b) of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') whereby and where-under the learned Additional Session Judge-IV, Patna rejected the



said revision application holding that there is no illegality in the order and further held that the complaint case filed against the petitioner is not barred by limitation.

2. The short facts of the case are that the complainant (opposite party no.2) filed a complaint case bearing Complaint Case No.343(C) of 2008 stating therein that two cheques bearing no.323031 and 323032 dated 05.11.2007 were issued for an amount of six lacs each by the petitioner drawn on HDFC Bank in favour of the complainant which was presented on 22.11.2007 by the complainant with his banker Dena Bank, at Patna, but the same could not be honoured due to payment stopped by the drawer. Thereafter, the complainant issued a legal notice dated 26.11.2007 which was served on the petitioner on 28.11.2007. On 30.11.2007 the petitioner sent reply to the legal notice dated 26.11.2007 denying the liability. The complainant again sent legal notice dated 14.12.2007 to the petitioner through speed post. Thereafter, a fresh reply dated 24.12.2007 was sent by the petitioner which was received by the complainant on 07.01.2008.

3. Mr. Aaruni Singh, learned counsel for the petitioner submitted that as the petitioner is alleged to have failed to make payment within fifteen days from receiving of the statutory notice dated 26.11.2007 which was received by him on 28.11.2007 as per



Section 142(b) read with Section 138(c) of the N.I.Act, the complaint was barred by law of limitation. He submitted that there was delay of forty three days in filing the complaint and without explaining or filing any petition to condone the delay, the learned Magistrate could not have taken cognizance of the offence under Section 138 of the N.I.Act and summoned the petitioner. He submitted that finding of the revisional court that the complaint is not barred by limitation is perverse. He contended that in view of the law laid down by the Supreme Court in **K.M.Mathew vs. The State of Kerala, AIR 1992 SC 2206**, the learned Magistrate has power to drop the proceeding against the petitioner even after he was summoned as on the basis of the admitted fact the summoning order was bad in law.

4. On the contrary, Mr. Binod Kumar Singh, learned counsel appearing on behalf of the complainant submitted that there is no illegality in the order passed by the revisional court affirming the order passed by the learned Magistrate and dismissing the revision application. He submitted that the application filed by the petitioner is totally misconceived and not maintainable. According to him, after receipt of the legal notice dated 26.11.2007, on 28.11.2007 the petitioner made a false reply denying the liability and, thus, the complainant was again compelled to send reply of the false reply to the petitioner and that counter reply was sent through registered post



on 14.12.2007 claiming the due amount annexing necessary documents with notice and as the petitioner finally refused to pay the aforesaid amount with other dues vide his reply dated 24.12.2007 which was received by the complainant on 07.01.2008. The complaint was filed on 04.02.2008. On the basis of the aforesaid submissions, he submitted that the complaint was filed within a month from the date of cause of action which had arisen on 07.01.2008. He submitted that taking note of all the facts and circumstances of the case, the learned Magistrate had rightly held in his order dated 08.10.2009 that the complaint was filed within thirty days from the cause of action. He submitted that even otherwise the procedural defects and irregularities which are curable should not be allowed to defeat substantive right or to cause injustice. He submitted that proviso to clause (b) of Section 142 of the N.I. Act confers jurisdiction upon the court to condone the delay if the court is satisfied that the complainant had sufficient cause for not making a complaint within the prescribed period. Hence, even if any delay in filing the complaint is found, the same shall be deemed to have been condoned by the learned Magistrate as he was satisfied that the complaint is bona fide.

5. I have heard learned counsel for the parties and perused the record.

6. At this stage, it would be proper to set out Section 138



and Section 142(a) and (b) of the N.I.Act which read as under:-

138. Dishonor of cheque for insufficiency, etc., of funds in the accounts.- *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two year, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within



thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation: *For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.*

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:

Provided that the cognizance of the 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 complain within such period.

(c) xxx xxx xxx xxx



7. It would be manifest from reading of Section 138 of the N.I.Act that it stipulates, inter alia, that (i) the payee of the cheque must give a notice in writing to the drawer of the cheque within thirty days from receipt of information by him from the bank; (ii) The notice must contain a demand for payment of the amount due on the cheque; and (iii) upon receipt of the notice, if the drawer of the cheque fails to make payment within fifteen days of receipt of the notice, prosecution could be launched within one month thereafter. The time prescribed under clauses (a) to (c) of the provisions prescribed under Section 138 of the N.I.Act are mandatory.

8. It would further be manifest from a perusal of Section 142 of the N.I.Act that no court shall take cognizance of any offence punishable under Section 138 of the N.I.Act unless a complaint is made within one month from the date on which the cause of action arose under clause (c) of proviso to Section 138 of the N.I.Act.

9. It would be clear from the complaint itself that the complainant had presented two cheques in his account in the Dena Bank at Maurya Lok Complex, Dak Bunglow Road, Patna, which were returned to him with endorsement 'payment stopped by drawer' through memorandum of HDFC Bank dated 21.11.2007 (Annexure-3) to the complaint. The complainant sent a legal notice dated 26.11.2007 to the petitioner in respect of the aforesaid dishonoured



cheques, which was served on the petitioner on 28.11.2007. On 30.11.2007 the petitioner submitted a reply to the legal notice dated 26.11.2007 denying his liability to pay any amount to the complainant, which was received by the complainant on 10.12.2007. Thus, the cause of action had arisen on 13.12.2007 when the complainant had failed to make payment of the amount of money to the petitioner within fifteen days of receipt of the notice. However, admittedly, the complaint case bearing Complaint Case No.343(C) of 2008 was filed on 04.02.2008. Apparently, there is delay of forty three days in filing the complaint. Thus, I am of the view that the complaint case was filed much after the prescribed period of thirty days under Section 142(b) of the N.I.Act without explaining or filing any petition for condoning the delay. In my considered opinion, subsequent reply to the notice by the complainant would be of no consequence. The N.I.Act does not envisage any provision for filing of reply by the holder of the cheque to the reply filed by the accused denying liability. By filing such reply, the holder of the cheque cannot stretch the period of limitation prescribed under the N.I.Act. Such a reply to the reply would also not give any fresh cause of action to the complainant. It is true that proviso to clause (b) of Section 142 of the N.I.Act confers jurisdiction upon the court to condone the delay, if the complainant satisfies the court that he had sufficient cause for not



making a complaint within the prescribed period. However, in the present case, neither the delay has been explained nor any application to condone the delay has been filed by the complainant.

10. The learned Magistrate while taking cognizance of the offence has not even referred to proviso to clause (b) of Section 142 of the N.I.Act, which confers jurisdiction upon the court to condone the delay. I am of the considered opinion that there cannot be any deemed condonation of delay when the statute has conferred power upon the Magistrate to condone the delay, if the complainant satisfies the court that he had sufficient cause for not making a complaint within the prescribed period. The same has to be construed in the sense in which the statute has conferred power upon the Magistrate. Such power can be exercised only when the court is satisfied that on the facts and in the circumstances of the case that the delay has been properly explained and the complainant had sufficient cause for not making complaint within the prescribed period.

11. In view of the discussions made above, the Court is of the opinion that the learned Additional Sessions Judge-IV, Patna has clearly erred in passing the impugned order dated 25.10.2010 affirming the order dated 08.10.2009 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.343(C) of 2008.

12. In the result, the impugned order dated 25.10.2010



passed in Criminal Revision No.69 of 2010 by the learned Additional Sessions Judge-IV, Patna and the entire criminal proceedings in Complaint Case No.343(C) of 2008 including the order of cognizance dated 17.07.2008 are hereby set aside.

13. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N /A
Uploading Date	22/11/2017
Transmission Date	22/11/2017

