

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL REVISION APPLICATION NO.57 OF 2017

Shri Harneet Kaur,
Sole proprietor of Guru Dev
Cement Industries, Having its
Godown at Plot No.96, Sancaole
Industries Estate, Zuarinagar Goa
Having its office at F-03, Padmavati
Towers, 18th June Road, Panaji Goa.

.... Petitioner.

Vs.

1. paramound Buildwell Constructions
Pvt. Ltd., Ocean Park Residency,
Dona Paula, Goa.

2. Pascoal,
C/o Paramount Buildwell
Construction Pvt. Ltd., Ocean
Park Residency, Donapaula Goa.

3. Vikram Shah, CC/o. Paramount
Buildwell Construction Pvt. Ltd.,
Ocean Park Residency,
Donapaula, Goa.

....Respondents.

Coram:- PRITHVIRAJ K. CHAVAN,J.

Reserved on:-13th November, 2017

Pronounced on:-21st November, 2017.

Shri V. A. Lawande, Advocate for the petitioner.

Shri R. Rao, Advocate for the respondent nos.1,2 and 3.

JUDGMENT

Feeling aggrieved by an order of rejection of application

for condonation of delay by the learned JMFC by order dated 10.11.2016 the original complainant in a case under Section 138 of the Negotiable Instruments Act ("NIAAct" for short) has preferred this revision challenging the legality, propriety and correctness of the said order.

2. The facts necessary for deciding the Revision Petition, can be stated, as follows:-

The petitioner (original complainant) had filed a complaint under Section 138 of the NIAAct against the respondents (original accused) in the Court of JMFC, Panaji bearing Criminal Case No.180/OA/NIA/2014/C. After issuance of process the accused appeared in the matter. In view of the judgment of the Honble Supreme Court in the case of ***Dashrath Rathod Vs. State of Maharashtra,(AIR 2014SC 3519)***, the learned JMFC Panaji returned the complaint to be presented before the proper Court within 30 days from the date of the order. However, there was a delay of 34 days for presenting the said complaint before the learned JMFC Mapusa. The petitioner, therefore, moved an application for condonation of delay before the learned JMFC, Panaji by explaining the cause. The respondents replied the said application. However, the learned JMFC, after hearing the respective parties, dismissed the application for condonation of delay by the impugned order and,

therefore, the present Petition came to be filed.

3. I heard Shri V. A. Lawande, learned Counsel for the petitioner and Shri R. Rao, learned Counsel for the respondents.

4. It is argued by the learned Counsel for the petitioner that on 19.11.2014, the petitioner received a call from his Advocate who informed him that in view of the judgment of the Hon'ble Supreme Court, the matter which was filed before the JMFC, Panaji will have to be presented before the learned JMFC, Mapusa and asked the petitioner to approach him in the afternoon. When the petitioner approached his Advocate on 19.11.2014 at 12 pm, Advocate Shetye informed him about his difficulty to appear in the Mapusa Court since the office of the Advocate is situated in Vasco. Advocate Shetye requested the petitioner to hand over the matter to any other Advocate, accordingly the petitioner on the same day at 6.00 p.m contacted Advocate Lawande from Panaji. It is submitted that Advocate Lawande asked the petitioner to inquire from learned JMFC "C" Court Panaji whether the complaint is presented to the Mapusa Court. It was learnt that an order was passed to present the complaint before the proper Court on 17.9.2014. After receiving the file from JMFC Court, Panaji, the petitioner handed over the same to his Advocate Shri Lawande and that is how there is a delay of 34 days

in presenting the complaint, which according to the learned Counsel, is bonafide and has properly been explained. Delay has also occurred due to lack of instructions from the Advocate appearing for him at Panaji Court. There is no negligence or deliberate delay on the part of the petitioner. It is also argued by the learned Counsel for the petitioner that the learned Trial Court misinterpreted the ratio laid down by the Hon'ble Supreme Court in the case of ***Dasharath Rathod*** (supra).

5. On the other hand, the learned Counsel for the respondents, drew my attention to paragraphs 9 and 11 of the impugned order and prayed for remanding the matter to the trial Court.

6. Sections 142(2) and 142(A) read thus:-

“142 (2):- The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee

or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

Section 142 (A). **Validation for transfer of pending cases:-**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any court, all cases transferred to the Court having jurisdiction under sub-section (2) of Section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has

filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142 as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

7. The question is whether the learned Magistrate, Panaji, was justified in not condoning the delay and refusing to take cognizance of the matter? The complaint was returned to the petitioner for filing in proper Court within 30 days of its return, yet the powers of the learned Magistrate under Section 142 (2) of the NIA Act are not divested as she always had powers to condone the delay, in view of the reasonable explanation tendered by the petitioner which is also supported with an affidavit of an Advocate. It is not the case that the original complaint was not filed by the Petitioner within limitation. However, due to change in law, the petitioner was compelled to get his complaint filed before the Court having jurisdiction. The delay which has been satisfactorily explained appears to be bonafide and reasonable. The learned Counsel for the petitioner has therefore, rightly placed useful reliance in the Kerala High Court Judgment in the case of **A. Rajagopal Karunan Vs. Salim Raj and Ors.(2015(1) KLJ 372)** and in the Uttarakhand High Court in the case of **Ms. Rashmi Mukhi Vs. Pavan Kumar Nath (MANU/UC/ 0625/2015)**. The ratio is squarely applicable to the present set of facts.

8. For the aforesaid reasons, the delay needs to be condoned. The delay is hereby condoned. The learned JMFC shall take up the

complaint and proceed in accordance with law.

9. In view of aforesaid observations, petition stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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