

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 26th April, 2017**

+ CRL.M.C. 2298/2014 & CRL.M.A.7704/2014& 8970/2016

ADRIYANA EVENTIDE & ANR. Petitioners

Through: Mr.Alok Tripathi, Advocate.

versus

DEE MARK HOTELS & RESORTS & ANR. Respondents

Through: Mr. Ajay K. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. The instant petition is preferred by the petitioners under Article 227 of the Constitution of India read with Section 482 Cr.P.C. for setting aside/quashing the impugned order dated 10.02.2014 passed by the learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi in CC. No. 258/1A/13 titled as *M/sDee Marks Hotel & Resorts vs. M/s Adriyana Eventide & Ors.* wherein the learned Metropolitan Magistrate allowed the application moved by the respondents/complainants for condonation of delay of 27 days in filing the complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881.

2. The brief facts stated are that the petitioner no.2- Dhyanesh Raj is one of the partners of the petitioner No.1/firm- M/s Adriyana Eventide who are engaged in the business of event management. As per the alleged allegations in the complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 on 12.01.2013 the petitioner No.2 along with other partners of the petitioner No.1/firm approached the respondent No.1/complainant- M/s Dee Marks Hotel and Resorts which is a unit of the respondent No.2- M/s Dalip Trading Pvt. Ltd. for arranging/booking a marriage party/dinner at the venue of the respondents/complainants for their client.
3. After the estimate for the venue and the function was finalized the petitioner No.1 and the partners of the petitioner No.2/firm gave a sum of Rs 25,000/- as advance to the respondent No.1/complainant at the time of booking the party. On 28.01.2013 the petitioner No.1 further gave a sum of Rs. 75,000/- to the respondent No.1/complainant and assured that the total bill for the function will be cleared before the end of the marriage party.
4. Thereafter, on 30.04.2013 in part discharge of their liability the petitioner No.1 issued a cheque bearing No. 444676 dated 30.04.2013 drawn on ICICI Bank, Greater Kailash II Branch, New Delhi for a sum of Rs. 1,86,000/- in favour of the respondent No.1/complainant. On 14.06.2013 the respondent No.1/complainant presented the said cheque to its banker but the same was returned unpaid vide return memo dated 14.06.2013 with remarks "Funds insufficient".
5. A legal notice dated 05.07.2013 was served upon to the

petitioner No.1, petitioner No.2/firm and its other partners by the respondents/complainants thereby demanding the cheque amount with interest within 15 days of the receipt of the legal notice. The petitioners replied to the said legal notice of the respondents/complainants on 19.07.2013. Further, when the petitioners failed to make the cheque payment within 15 days notice period the respondents/complainants filed a complaint on 17.09.2013 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 against the petitioners and the other partners of the firm in the Court of learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

6. Further, the respondents/complainants had also moved an application for condonation of delay of 27 days in filing of the aforesaid complaint case under the NI Act.
7. Consequently, after perusal of the record and considering the submissions made by the learned counsels of the parties the learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi vide impugned order dated 10.02.2014 in CC. No. 258/1A/13 allowed the aforesaid application for condonation of delay of the respondents/complainants subject to cost of Rs. 2500/-.

Hence the present petition.

8. The learned counsel for the petitioners has submitted that the learned Metropolitan Magistrate while allowing the application of the respondents/complainants for condonation of delay has not appreciated the fact that the cause disclosed by the AR for the respondents/complainants was not supported by any documents.

Therefore the learned Metropolitan Magistrate in a mechanical manner and without application of mind has passed the impugned order dated 10.02.2014 which is bad in law and liable to be set aside/quashed by this Court under Section 482 Cr.P.C.

9. On the contrary, the learned counsel for the respondents has submitted that the impugned order dated 10.02.2014 passed by the learned Metropolitan Magistrate is just and proper and does not require interference by this Court to invoke inherent powers under Section 482 Cr.P.C.

10. In the instant petition the whole question hinges around whether the learned Metropolitan Magistrate has rightly allowed the application of the respondents/complainants for condonation of delay of 27 days in filing the application under Section 138 read with Section 141 of NI Act?

The answer is YES.

11. In the instant petition the respondents had filed an application dated 17.09.2013 under Section 138 read with Section 141 of NI Act therein disclosing in para No. 13 that there is delay of 27 days in filing the said complaint application and the complainants had filed a separate application for condonation of delay stating therein the cause of delay in filing the said complaint application under Section 138 of NI Act.

12. The separate application for condonation of delay was filed along with the application under Section 138 of NI Act. The grounds made in the application for condonation of delay are reproduced as under:-

"2. That the complainant has authorised its manager Mr. S.N. Pandey to file the present complaint vide board resolution dated 20/6/13, who was in possession of all the requisite papers, cheque etc. related to the present matter.

3. That the first cousin of AR of the complainant named Shri Hari Shankar Pandey s/o late Shri Dev Charan Pandey, and his wife, r/o Chauriya bujurg district Gorakhpur, UP, had gone for pilgrimage to Kedarnath along with his wife.

4. That on 15/8/13, the AR of the complainant immediately proceeded to Dehradun on getting information from his relatives present there that said h.s. pandey and his wife are not traceable and he should immediately reach Dehradun to trace them or for identification of their bodies.

5. That Mr. S.N. Pandey remained at Dehradun and nearby areas for 15 days but did not get any information for their survival. They ran from post to pillar to search and know about their untraced family persons and have gone up to Shrinagar (Uttarakhand) and also searched at other places but could not hear anything from any of the state authorities and/or local residents and ultimately on 8/9/2013 the AR of complainant returned to Dehradun and from there has proceeded to their native place Chauriya, district Gorakhpur, UP, along with other family members to perform the last rituals of untraced family members treating them as no long alive according to Hindu rites and customs.

6. That the last rituals were to be performed in consultation with and on advice of elders and spiritual persons of the family as it was a peculiar sad demise of the family proof of their death except the apprehension of death due to the disaster at holy shrine Kedarnath. The AR could only return to Delhi on 16/9/13 and on knowing that the cheque and the others papers related to this

matter was in his custody, immediately contacted his advocate and filed the complaint immediately thereafter on 17/9/2013.

7. That due to the reasons mentioned above the AR has to immediately go to Uttarakhand on an urgent call by his family members after the havoc of disaster at Kedarnath, he could not keep his senses in order and could not handover the related papers of the case to another responsible person or reminded for filing of complaint and thus the delay of 27 days in filing of accompanying complaint has occurred.

8. That the delay in filing of complaint is neither intentional nor wilful but due to the reasons of Nature's disaster and was beyond the power and control of the applicant as mentioned above. Hence this application.

9. That the complainant will suffer irreparable loss and injury if the delay of 27 days in filing of accompanying complaint is not condoned by this Hon'ble court. That it is a fit case where this Hon'ble court may exercise its jurisdiction to condone the delay on the grounds of vis-major, force-major and being beyond the control of complainant."

13. The aforesaid application for condonation of delay is supported with an affidavit dated 17.09.2013 of Mr. S.N. Pandey who is an authorised representative of the respondents. The Court below finding the justified reason to have substantial justice has rightly condoned the delay of 27 days in filing the application under Section 138 of NI Act of the respondents by relying on the judgment of the Apex Court in *State of NCT of Delhi vs. Ahmad Khan; JT 2001 (10) 265 SC*.

14. Therefore, in presence of an application for condonation of delay supported with an affidavit dated 17.09.2013, the plea taken by

the petitioners loses its significance.

15. Consequently, the impugned order dated 10.02.2014 passed by the learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi in CC. No. 258/1A/13 titled as *M/sDee Marks Hotel & Resorts vs. M/s Adriyana Eventide & Ors.* does not warrant any interference by this Court to invoke inherent powers under Section 482 Cr.P.C. and the present petition is dismissed.

16. One copy of this judgment be sent to the concerned Court.

17. All the pending application(s) if any are disposed of accordingly. No order as to costs.

APRIL 26, 2017/km

I.S.MEHTA, J

