

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1220 of 2017**

- Anil Kumar Agrawal S/o Ramnivas Agrawal, Aged About 32 Years R/o Near M/s Anil Traders, Krishi Form Upaj Mandi, Annapurna Para, Kanker, District North Bastar Kanker, Chhattisgarh

**---- Petitioner****Versus**

- Basant Sahu S/o Ramadhin Sahu, Aged About 42 Years R/o Dhanelikanhar, Police Station Korar, District North Bastar Kanker, Chhattisgarh

**---- Respondent**


---

|                |   |                               |
|----------------|---|-------------------------------|
| For Petitioner | : | Shri D.N. Prajapati, Advocate |
| For Respondent | : | Shri Ashok Patil, Advocate    |

---

**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****16/04/2018**

1. Heard.
2. Leave to appeal has been sought for against acquittal order dated 08.02.2017, passed by the JMFC, North Bastar, Kanker in complaint case No.1689/07. Application for leave to appeal is also delayed by 127 days.
3. Learned counsel for the petitioner submits that a cheque dated 23.01.2007 of Rs.1,23,000/- was given to the petitioner, which was dishonoured on 17.05.2007 and was intimated to the Bank of the petitioner i.e. Dena Bank on 19.05.2007, however, the Bank has informed him about the dishonour of the cheque on 13.06.2007 by a courier. Thereafter, the notice was given demanding the amount having not been paid, the complaint was registered, however, learned Court below without appreciating the facts in a proper

perspective, dismissed the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'the N.I. Act'*). He further submits that the categorical submission was made that intimation of the dishonour was given on 13.06.2007, therefore, the action contemplated by the petitioner was within the stipulated time. He would further submit that on the delay of 127 days reasonable explanation has been given, therefore, the delay occurred to seek leave to appeal may be condoned.

4. Perused the original document of the Court below. Perusal would show that a cheque dated 23.01.2007 (Ex. P-1), which was issued in favour of the petitioner, was deposited by the petitioner on 11.05.2007 with his Bank namely Dena Bank, Kanker vide Ex. P-3. The said cheque was dishonoured on 17.05.2007 from Central Bank, wherein the cheque was issued for clearance. Thereafter, a memo was issued by the Dena Bank on 19.05.2007, which is addressed to the petitioner Anil Kumar Agrawal, vide Ex. P-4. In the statement of the petitioner, it is contended that the intimation of dishonour of such cheque on 19.05.2007 was received by the petitioner on 13.06.2007 by a courier. Thereafter, the notice was given. Perusal of the document exhibited before the Court shows that there is no such document or any statement recorded of the courier boy to show that the said intimation of 19.05.2007 was received by the petitioner on 13.06.2007.
5. As per Section 138 (B) of the N.I. Act, the petitioner should prove the fact that information of dishonour was actually received on 13.06.2007, which is negated by Ex. P-4 i.e. memo by Dena Bank dated 19.05.2007. Consequently, the petitioner had failed to establish the fact that the intimation of the dishonour of the said cheque was received late i.e. on 13.06.2007. The petitioner if was conscious enough could have examined the necessary witness of the courier company or the bank official in this

case to show the fact that the intimation of dishonour was received by him on 13.06.2007, instead the petitioner, as appears, slept over the same and was dormant. Consequently, the submission made by the petitioner was not appreciated by the Court below cannot be faulted or re-appreciated in this application for leave to appeal. Furthermore, this leave to appeal is delayed by 127 days, no sufficient reason has been assigned to condone the delay and casual averments have been made. In the circumstances, I do not find any reason to condone the delay or any merit in this case so as to allow the leave to appeal.

6. The petition has no merits. It is accordingly dismissed.

Sd/-

Goutam Bhaduri  
Judge

Ashu