

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.1186 of 2017

ORDER:

This Criminal Revision Case is directed at the instance of petitioner/accused aggrieved by the order dated 06.02.2017 in CrI.M.P.No.2646/2016 in C.F.No.4765/2016 on the file of I Metropolitan Magistrate, Vijayawada, whereunder the learned Judge allowed the petition filed by the respondent/complainant under Section 142 (b) of Negotiable Instruments Act, 1881 (for short "N.I Act), to condone the delay of 02 days in filing the complaint.

2) The factual matrix of the case is thus:

a) The complainant's case is that accused, who had acquaintance with him, borrowed Rs.7 lakhs from him on 15.12.2013 for his family and business expenses and executed a promissory note in his favour agreeing to repay the same with interest @ 24% p.a. On the repeated demands made by the complainant, the accused issued a cheque bearing No.704563 for Rs.5,00,000/- drawn on State Bank of India, Hanuman Junction Branch, on 09.11.2015 towards part payment of the debt. When the complainant presented the said cheque on 09.11.2015 for collection, the same was returned on 10.11.2015 with the endorsement "account closed". Thereafter, he issued demand notice on 05.12.2015, for which, the accused gave a reply notice on 22.12.2015 with all false, baseless and untenable allegations to evade the debt due under promissory note. Hence the complaint.

b) The complainant filed CrI.M.P.No.2646/2016 in C.F.No.4765/2016 seeking to condone the delay of 02 days in filing the complaint on the submission that he was bed-ridden due to viral fever and could not move from his bed and meet his counsel within time to file the complaint before the Court.

c) The petitioner/accused filed his counter and opposed the petition denying the allegations made in the petition. It is contended that originally the complainant issued a statutory demand notice on 05.12.2015 demanding the respondent to pay the entire amount within 15 days and the respondent received the notice on 11.12.2015 and gave a reply on 22.12.2015. Hence, as per Sec.138 of N.I Act, the complainant must have filed the complaint on or before 24.01.2016 but he filed the complaint on 27.01.2016 i.e, with a delay of 02 days. The complainant did not file the delay condonation petition along with the complaint on 27.01.2016. It is only after taking the objection by the Court, the complainant filed the delay **condoning** petition on 20.07.2016. Thus the delay is 174 days but not 02 days and hence the petition is not maintainable.

d) After hearing both sides, the Trial Court allowed the petition and condoned the delay of 02 days in filing the petition.

Hence, the Criminal Revision Case.

3) Heard both sides.

4) The main plank of argument of learned counsel for petitioner is that admittedly the complaint was to be filed on or before 24.01.2016 but it was filed only on 27.01.2016 i.e, with a delay of 02 days and to this extent there is no dispute. However, the complainant has not filed any delay condoning petition along with the complaint. The office of the Trial Court returned the file on 02.02.2016 with several objections *inter alia* the objection relating to the limitation (vide objection No.8 dt.02.02.2016). After such objection only, the petitioner filed CrI.M.P.No.2646 of 2016 under Section 142(b) of N.I Act, praying to condone the delay of 02 days in filing the complaint. Learned counsel vehemently argued that though the delay by the date of filing of the complaint was only 02 days, however, since the complainant has not filed any delay condonation petition till 20.07.2016 i.e. until office took the objection, the delay during the interregnum period i.e., 27.01.2016 to 20.07.2016 would also accrue to the initial delay of 02 days. Thus the total delay in the instant case comes to 174 days but not 02 days. Learned counsel would submit, the petitioner/accused has taken a categorical plea to that effect. However, the Trial Court without considering the same and giving a finding on the delay of 174 days, simply held that delay was only 02 days and condoned the same and thereby severe prejudice was caused to the petitioner/accused and therefore impugned order is liable to be quashed and consequently the complaint is also liable to be dismissed for inordinate delay. He thus prayed to allow the CrI.R.C.

5) Per contra, learned counsel for 1st respondent/complainant would argue that the delay was only 02 days and considering the same as negligible one,

the Trial Court rightly condoned the said delay and therefore, there was no illegality or irregularity in the order impugned.

6) The point for determination is:

“Whether there are merits in the Crl.R.C to allow?”

7) **POINT**: As can be seen, the 1st respondent/complainant ought to have filed the complaint on 24.01.2016 but filed the complaint on 27.01.2016 i.e, with a delay of 02 days. Admittedly, he did not file delay condonation petition along with complaint. On 02.02.2016, office took several objections including the objection relating to the limitation (vide objection No.8) to the effect *“state as to how the complaint is in time”*. Thereafter, the respondent/complainant it appears, filed Crl.M.P.No.2646/2016 under Section 142(b) of N.I Act on 20.07.2016 seeking to condone the delay of 02 days in filing the complaint. The complainant mentioned the delay as if 02 days. The petitioner/accused filed counter mentioning that the delay was 174 days but not 02 days and hence the petition was not maintainable. A perusal of the impugned order would show that the Trial Court has not addressed the contention taken by the petitioner/accused. It has not given any finding as to the sustainability of the objection. On the other hand, the order would read as if the Trial Court also took the delay as 02 days and condoned the same. In these circumstances, I am of the considered view that the matter needs to be remanded to the Trial Court to consider the objections raised by the petitioner/accused in his counter in a proper manner and pass the order on merits.

8) In the result, this Criminal Revision Case is allowed and the impugned order dated 06.02.2017 in CrI.M.P.No.2646/2016 in C.F.No.4765/2016 passed by the I Metropolitan Magistrate, Vijayawada, is set aside and the matter is remanded to the Trial Court with a direction to hear both parties on the counter objections raised by the petitioner/accused and pass an appropriate order on merits, expeditiously.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 13.06.2018

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U. DURGA PRASAD RAO, J