

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION No.16741 of 2016

Between:

Smt. Kasireddy Mahalakshmi

.....Petitioner

and

State of A.P. rep. by its Public Prosecutor and another

.....Respondents

Date of Judgment pronounced on : 06-11-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**
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! Counsel for the petitioner : Sri G. Rama Gopal

^ Counsel for the respondent : Sri ASC Bose for R.2
Learned Public Prosecutor for
R.1-State

? Cases referred

1. 1978 CrLJ 61 AP=(2) AnWR 395
2. 1979 (2) APLJ 398 (DB)
3. 2010 (1) ALD Cr1 431 AP
4. 2014 (2) SCC 62
5. 1993 (3) SCC 4
6. 1995 (1) SCC 42

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**CRIMINAL PETITION No.16741 of 2016****ORDER:**

The petitioner is the accused and the 2nd respondent is the defacto complainant in C.C.No.262 of 2016 pending on the file of learned V Special Magistrate, Visakhapatnam, for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'the Act').

2. The complaint was not filed within one month from the accrual of cause of action to lay the complaint as contemplated by Section 142(b) of the Act. The petition in Crl.M.P.No.414 of 2016 in unnumbered complaint case DDR.No.10820 of 2015 was filed. It was after hearing the complainant from perusal of the reasons assigned in that petition, the learned Magistrate allowed the same condoning the delay of 22 days by payment of costs of Rs.100/- to the DLSA, Visakhapatnam payable by 29.02.2016 by order dated 10.02.2016 which reads as follows:

“This petition is filed under Section 142(b) of NI Act praying the Court to condone the delay of 22 days in filing the complaint. The reason assigned by the petitioner is that due to his ill-health he was bed ridden for few weeks and as such he forgot to pursue the complaint and therefore he could not contact his counsel within time and thereafter he contacted his counsel and filed the complaint before this Court and therefore the delay was caused and it is not neither willful nor wanton and therefore the petition may be allowed.

Since the reasons assigned by the petitioner are quite cogent, the petition is allowed, but subject to payment of costs of Rs.100/- to the DLSA, Visakhapatnam by 29.02.2016.”

3. It is from condonation of delay of 22 days in filing the complaint after following the procedure contemplated by Sections 200 to 204 CrPC, cognizance was taken and said cognizance is now impugned.

4. One of the contentions is there was no notice and opportunity to condone the delay in filing the complaint after expiry of the cause of action of one month time invoking the proviso to Section 142(b) of the Act.

5. It is the submission of the learned counsel for the 2nd respondent-complainant that there is no notice contemplated from the wording of Section 142(b) proviso, leave apart at the pre-cognizance stage the accused has no right of audience or hearing including equally for delay condonation if any and thereby it cannot be impugned at the post cognizance stage, the pre cognizance condonation of delay.

6. Heard and perused the material on record.

7. Undisputedly the cause of action from its accrual, the complaint shall be filed within one month as per Section 142(b) of the Act. What the proviso speaks is the cognizance of the complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he has sufficient cause for not making the complaint within such period.

8. No doubt the wording is the complainant has to satisfy the Court the reason for not filing the complaint within one month. In fact after one month, the taking of cognizance is not automatic also from the use of the discretion and the word 'may', what the complainant has to give the cogent reason for not filing the complaint within one month is different from the condonation of delay. Once the complaint is not filed within the statutory period, certain rights are accrued to the accused. Once that right chosen to be interfered, notice is contemplated to the accused before condonation of delay as it is interfering with the accrued right of accused after expiry of one month from the expiry of the cause of action if at all to extend only after hearing.

9. Thereby when there is no notice admittedly and hearing of the accused in the delay condonation application, the condonation of delay is not sustainable so also the taking of cognizance consequently and law is very clear in this regard by the earlier expression of this Court in **Bharat Hybrid Seeds & Agro Enterprises Vs. State**¹ that absence of a rule of law shall not enable the Court to extend time for prosecution without hearing proposed accused. This rule of practice is necessary as rule of justice to follow and the same was followed in subsequent expression including the Division Bench in **Khasim Beg Vs. State of A.P.**² and several Single Judge Bench expressions of this Court under Sections 468 to

¹ 1978 CrLJ 61 AP=(2) AnWR 395

² 1979 (2) APLJ 398 (DB)

473 Cr.P.C. particularly referring to proviso to Section 142(b) of the Act by a Single Judge Bench expression, though not in so many words, in **D.Shyam Sunder Vs. Neella Prabhu Lingamurthy and Another**³, leave about the observations in the Constitution Bench expression of the Apex court in **Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director-Dr. K.M. Cherian & Others**⁴, referring to **Vanka Radhamanohari (Smt) Vs. Vanka Venkata Reddy**⁵ and **State of Maharashtra Vs. Sharadchandra Vinayak Dongre**⁶ held as follows:

“At Para 26 it is observed that if the complaint is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not.

At Para 27 it is observed referring to expression in **Vanka Radhamanohari** supra on the scope of Section 473 Cr.P.C. that the provision enjoins a duty on the court to examine not only whether such delay has been explained but as to whether, it is the requirement of justice to ignore such delay.”

10. Having regard to the above, the very cognizance order is set aside by reverted the clock back to the application of condonation of delay in Crl.M.P.No.414 of 2016 by restoring the same by directing the petitioner/accused and

³ 2010 (1) ALD CrI 431 AP

⁴ 2014 (2) SCC 62

⁵ 1993 (3) SCC 4

⁶ 1995 (1) SCC 42

the 2nd respondent-defacto complainant to appear before the learned trial Magistrate within one week from the date of receipt of this order to file any counter by the accused in said delay condonation application in Crl.M.P.No.414 of 2016 to decide on own merits the delay condonation application and then to take cognizance if any.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 06.11.2018

Note: L.R. Copy to be marked
(B/o)
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