

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.458 OF 2011

ORDER:

The petitioner, who is the complainant in a case under Section 138 of Negotiable Instruments Act, 1881 (for short, 'N.I. Act') before VI Additional Judicial Magistrate of First Class, Rajahmundry, challenges the order dated 30.11.2010 in Crl.M.P.No.4813 of 2010, where under the trial court dismissed the petition filed by him under Section 142 of N.I. Act to condone the delay of 132 days in presenting the complaint.

2. In filing the complaint under Section 138 of N.I. Act, there was a delay of 132 days and hence, the petitioner filed a petition under Section 142 of N.I. Act seeking to condone the aforesaid delay. According to the complainant, the original documents, which were filed along with complaint, were held up with the head office of the complainant at Secunderabad and they were received only before filing the complaint and hence, there occurred a delay of 132 days in filing the complaint. The aforesaid submission was not found favour with the trial court and his petition was ultimately dismissed. The reasons for dismissal were that the complainant has not filed affidavit in support of the petition averments and further, the petition averments were vague and they were mentioned in a stereo typed manner stating that the original

documents filed along with the complaint were held up with the head office at Secunderabad.

Hence, the instant criminal revision case.

3. Though notice was taken up on the 2nd respondent/accused, it was unclaimed and hence, returned. Thus, the service was presumed.

4. Heard Sri P.Vishnu Vardhan Reddy, learned counsel for petitioner.

5. Fulminating the order of the trial court, learned counsel for petitioner would submit that law does not ordain filing of affidavit along with the delay condoning petition and therefore, the petitioner while filing a petition under Section 142 of N.I. Act to condone the delay of 132 days did not file an affidavit in support of the petition. Referring to section 142 of N.I. Act, learned counsel for petitioner would submit that the section would only say that the cognizance of a complaint may be taken by the court after prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period. However, the said section does not insist for filing affidavit in support of the petition. Learned counsel also incidentally referred to Rule 84 of Criminal Rules of Practice and Circular Orders, 1990 and submitted that as per the said Rule, where a case is filed after expiration of the period of limitation

prescribed by law, the charge-sheet or the complaint shall show the ground upon which exemption from the law of limitation is claimed. In this Rule also, there was no specific mentioning that the delay should be explained only through an affidavit. Learned counsel by referring Rule 127 of Criminal Rules of Practice and Circular Orders, 1990 would submit that however, in case of delay in filing the criminal appeals or criminal revision petitions, a petition to excuse the delay should be supported by an affidavit explaining the circumstances of such delay and it shall be filed along with the petition or appeal. So also, Rule 131 ordained that every petition or appeal represented after the expiry of the time specified under Rule 130 and barred by limitation on the date of its representation shall be accompanied by a petition and affidavit as prescribed under Rule 127.

6. By referring the above provisions, learned counsel for petitioner would submit that the mandate of filing affidavit as ordained in Rules 127 and 131 of Criminal Rules of Practice and Circular Orders, 1990 is conspicuously absent in Section 142 of N.I. Act., thereby, inferring that mere filing a petition narrating the reasons for delay is sufficient. In that view of the matter, learned counsel argued, the petitioner had not filed an affidavit in support of the petition filed under Section 142 of N.I. Act. The trial court without referring to the above provisions, unfortunately, dismissed the petition on a

technical ground. So far as the delay of 132 days is concerned, the submission of learned counsel is that the complainant is a well-established chit fund company and its files are maintained at the head office and the relevant file concerning to the present criminal case was held up at the head office and therefore, it could not be obtained within time and in the meanwhile, there occurred a delay of 132 days, which is neither willful nor wanton. He, thus prayed to set aside the impugned order and give an opportunity to the complainant to prosecute his complaint by directing the trial court to register C.C.

7. As already stated, there is no representation on behalf of the respondent/accused.

8. On perusal of the relevant provisions, particularly, Section 142 of N.I. Act on one hand and Rules 127 and 131 of Criminal Rules of Practice and Circular Orders, 1990, on the other, this Court finds force in the submission of the learned counsel. Section 142(1)(b) of N.I. Act says that a complaint under N.I. Act shall be made within one month of the date on which the cause of action has arisen under clause (c) of the *proviso* to Section 138 of N.I. Act. Provided, the cognizance of the complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period. As rightly pointed out by the learned counsel for

petitioner, this section or other provisions of the N.I. Act did not specify the method and manner in which the delay condoning petition has to be filed. The submission of the learned counsel is that since the *proviso* is appended to Section 142 of N.I. Act, he filed a separate petition for condoning the delay instead of narrating the reasons for delay in the complaint itself and since Section 142 of N.I. Act has not specifically referred to the necessity of filing affidavit, he did not file the affidavit. I find force in the above submission.

9. As rightly submitted, unlike Rules 127 and 131 of Criminal Rules of Practice and Circular Orders, 1990, wherein the need to file an affidavit in support of the petition is specifically mentioned, Section 142 of N.I. Act has not specifically referred to the necessity to file an affidavit. In that view of the matter, the action of the petitioner cannot be found fault. So far as delay of 132 days is concerned, having regard to the submission that the file relating to the case was held up in the head office of the petitioner at Secunderabad, whereas the case was to be filed before the court at Rajahmundry and it was traced out only before filing the complaint, this Court finds the reasons submitted for delay to be a sufficient one to condone the delay.

10. In the result, this criminal revision case is allowed, setting aside the impugned order. The trial court is directed

to register criminal case, if otherwise in order and proceed with it according to law.

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

U.DURGA PRASAD RAO, J

20.12.2018

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