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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-36382 of 2018

Date of Decision: November 14, 2018

Vinod Kumar

.....Petitioner

versus

Surinder Kumar

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Nonish Kumar, Advocate
for the petitioner

Sudhir Mittal, J. (Oral)

The petitioner seeks quashing of order dated 04.06.2018 (Annexure P-5) passed by learned Additional Sessions Judge, Karnal.

2. A complaint dated 23.08.2012 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') was filed by the respondent – complainant. Vide order dated 08.05.2013, the complaint was rejected as barred by limitation by the trial Court, upon an objection having been taken in this regard by the accused–petitioner. This order was challenged by the complainant–respondent before the Sessions Court by way of a revision petition, which has been allowed. Learned Sessions Court has held as under:-

*10. To my mind, there is no quarrel about the proposition. It is only bonafide mistake committed in good faith which is generally regarded as sufficient cause within the meaning of the proviso of Section 142(b) of the Act. It is on these parameters that every request for condonation of delay has to be adjudged. Needless to say that what is bonafide mistake committed in good faith, cannot be put in straight jacket. As held by the Hon'ble Supreme Court in **Perumon Bhagvathy Devaswom***

*versus Bhargavi Amma, 2008(8) SCC 321, the words 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on part of the applicant. It follows that in order to find out as to whether there was good faith, the court has to keep in mind as to whether there was deliberate inaction which could have helped the applicant or whether delay is part of dilatory tactics. Ofcourse, negligence on part of the applicant is also one of the negatives. However, every aspect has to be put together and analyzed on the touch stone of factual matrix, which differs from case to case. It is not necessary that in every case wrong advice given by an Advocate would not be considered as sufficient cause. It is the nature of mistake which has to be the reckoning factor and not that the mistake has been committed by a professional. If the counsel in the instant case thought that the limitation starting from 23.07.2012 will expire on 23.08.2012 and for that purpose, he construed one month as comprising 31 days, it can not be said that he did not take proper care and caution or that the mistake was intentional. Delay in filing of the complaint of one day was not going to gain anything for the complainant-revisionist. Therefore, the law laid down in **Bal Kishan Sharma versus Radhey Shyam** can not be blindly applied to the instant case. Be that as it may, the fact remains that there is nothing to indicate want of bonafides on part of the revisionist himself or his counsel. It appears that instead of looking into the question as to whether the revisionist had been able to explain the reason for delay and if there was sufficient cause, learned Magistrate adopted too technical approach by holding that the*

complainant had nowhere explained as to how his counsel miscalculated the period of 30 days. What is important is that there was miscalculation. Such a miscalculation could have been done by anybody. It is difficult to explain as to how miscalculation is done. Miscalculation is a fact which has actually happened. How it happened, cannot be explained. Learned Magistrate was required to see as to whether miscalculation by counsel was a sufficient cause. It is reiterated that instead of finding this point, learned Magistrate ventured into altogether a different territory by calling upon the revisionist to explain as to how his counsel miscalculated the period of limitation. Such an approach cannot be justified.

11. All said and done, there was sufficient cause for delay of one day in filing the complaint. Therefore, the revision is accepted and the order under challenge is set aside. The matter is remanded to the court concerned with direction to pass fresh order in accordance with what has been observed above and then to proceed further. After due compliance, appeal file be consigned to record room and records of the trial court be sent back along with copy of this judgment.”

3. Learned counsel for the petitioner submits that application for condonation of delay was filed by the respondent-complainant only after an objection was raised by the petitioner-accused before the trial Court. It is also submitted that the respondent-complainant failed to show sufficient cause for condonation of delay of one day and, thus, the order of the revisional court is erroneous in law.

4. Learned revisional court has found as a matter of fact that the delay was of one day only and that the application could not be filed along with the

complaint as the counsel filing the complaint did some miscalculation while computing the period. It has further been found that the mistake could not be said to be intentional and malafide. In terms of proviso to Section 142(1)(b) of the Act, the Court is entitled to condone delay in filing of the complaint in case sufficient cause is shown. Miscalculation in computing the period of limitation can not be stated to be malafide and, thus, the finding of the revisional Court can not be held to be illegal or perverse warranting invocation of the revisional jurisdiction of this Court.

5. The judgment in *Yogendra Pratap Singh vs. Savitri Pandey and another, 2012(2) RCR(Criminal) 578*, relied upon by learned counsel for the petitioner is not applicable in the facts and circumstances of this Court. The issue therein was whether a complaint filed prematurely could be filed again on arising of the cause of action beyond the period of one month from the date of arising of cause of action provided in the statute. That apart, the Supreme Court has not opined upon the said proposition but has only referred the matter to the larger Bench.

6. The petition is without merit and is, accordingly, dismissed.

November 14, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No