

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 565 of 2017 (O&M)

Date of decision : 7.2.2018

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Manohar Lal Kumar @ M.L. Kumar

.....Petitioner

vs.

Kuldeep

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. A.P. Setia, Advocate for the petitioner.

Mr. Ashwani Gaur, Advocate for the respondent.

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H. S. Madaan, J.

Complainant – Kuldeep had filed a complaint under Section 138 of the Negotiable Instruments Act, against Manohar Lal Kumar @ M.L. Kumar, which was registered as criminal complaint No. 371 of 2009.

Briefly stated, facts of the case as per version of the complainant are that accused Manohar Lal Kumar @ M.L. Kumar had issued three cheques bearing Nos. 513755, 514700 and 514764, total amounting to Rs.8,97,600/- drawn on Post Office Saving Bank, Main Post Office, Sonapat, in the name of complainant to discharge the

financial liability. However, on presentation, the cheques were dishonoured due to insufficiency of funds in the account of the accused. On getting information in that regard, complainant got served a legal notice upon the accused, calling upon him to make payment of the cheque amount within 15 days of receipt of notice, but to no effect. Feeling aggrieved, he filed the complaint before Judicial Magistrate Ist Class, Sonapat.

After recording of the preliminary evidence, the accused was summoned. He put in appearance and was admitted to bail. Notice of accusation for offence under Section 138 of the Negotiable Instruments Act, was served upon him, to which he pleaded not guilty and claimed trial. The complainant adduced the evidence. Thereafter statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him, but he denied the same contending that he is innocent and has been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Magistrate acquitted the accused of the notice of accusation vide judgment dated 9.9.2011.

Feeling aggrieved, the complainant preferred an appeal before the Court of Sessions, which was assigned to Additional Sessions Judge, Sonapat, who vide judgment dated 15.3.2013, accepted the said appeal, setting aside the judgment of acquittal passed by the trial Magistrate and convicted the accused for offence under Section 138 of the Negotiable Instruments Act, and vide order dated 18.3.2013 sentenced him to undergo rigorous imprisonment for

1 year and 6 months and to pay a fine of Rs.17,95,200/- to be payable to the complainant as compensation.

The accused – convict has since undergone the sentence of imprisonment and the amount of fine is also stated to have been recovered by attachment and sale of his properties.

He has approached this Court by way of filing the present revision petition contending that the Court of Sessions was not having the jurisdiction to hear and decide the appeal in view of the observations made in authority reported as **M/s Tata Steel Ltd. vs. M/s Atma Tube Products Ltd. and others 2013 (2) RCR (Criminal) 1005.**

The revision petition has been filed belatedly, as such an application under Section 5 of the Limitation Act for condonation of delay of 1341 days, has been filed.

Upon notice, the respondent – complainant has put in appearance.

I have heard learned counsel for the parties, besides going through the record.

Admittedly, the present revision petition has not been filed within the period of limitation prescribed under the Limitation Act. There is a delay of 1341 days in filing the revision petition. Although an application under Section 5 of the Limitation Act has been filed for condonation of delay, contending therein that learned Additional Sessions Judge, Sonipat, assuming the jurisdiction which he was not having, while accepting the appeal, setting aside the judgment of acquittal, passed by the trial Magistrate, where as

convicting and sentencing the accused, the judgment having been passed in violation of the legal provisions, is nonest and furthermore, the petitioner was undergoing sentence and was released from jail on 21.2.2016, therefore the delay in filing the revision petition took place, which is not intentional or willful. Therefore, the delay be condoned.

The application is being resisted by counsel for the complainant-respondent vehemently, submitting that no ground for condonation of delay in the instant case is made out.

After hearing the rival contentions, I am of the considered view that keeping in view the huge delay in approaching the Court by way of filing the revision petition, without any satisfactory reason being assigned for the same, the revision petition is liable to be dismissed at the threshold. Section 3 of the Limitation Act, 1963, deals with bar of limitation, which provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

The petitioner has failed to come up with any justifiable explanation, which might have prevented him to approach the Court within the period of limitation stipulated under the Limitation Act. The impugned judgment is dated 15.3.2013. The accused had been sentenced to imprisonment for 1- ½ years, he is shown to be in custody at the time of pronouncement of judgment. That means, even if the period of custody is counted from that date, then by 15.9.1994, the period of imprisonment would have been completed. Then how

he is saying that he was released from jail on 21.2.2016, is beyond comprehension. Even otherwise, he could have filed the revision petition from jail by giving necessary instructions to his counsel or could have availed of the services of Free Legal Aid counsel, but he did not chose to do so. As pleaded by him in paragraph No.4 of the application he was released from jail on 21.2.2016, but the petition is shown to be filed a year thereafter on 15.2.2017. What he was doing in the intervening period, has not been explained. Therefore, the petitioner has failed to cross the hurdle of limitation. The petition is liable to be dismissed on that score.

On merits also, it is to be seen that the judgment was pronounced on 15.3.2013 in terms of the authority in **M/s Tata Steel Ltd.'s case Supra,** which was decided on 18.3.2013. The Ist Appellate Court had already decided the appeal and this judgment in **M/s Tata Steel Ltd.'s case Supra** has prospective effect and not any retrospective effect. Therefore, it cannot be said that Additional Sessions Judge, Sonapat, had assumed jurisdiction not vested in him and the judgment so delivered by him is null and void or nonest. No provision of law could be shown to me by the learned counsel for the petitioner that judgment of such type could be challenged at any time without being bound by the provisions of Limitation Act.

In view of the above discussion, the criminal revision petition stands dismissed.

7.2.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No