

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 137 of 2017**

M/s Kamakshi Shipping, Acting through Managing Partner, M.V. Ramaiyya S/o Late Konda Babu, aged about 44 years R/o 23-12-35, Indu Mansions, Flat No. 103, 1st Floor Godavari Street, Visakhapatnam-1 (A.P.)

----Applicant**Versus**

M/s A.K.R. Transport, Barbhata (Salkhan), Tahsil and Police Station Nawagarh, Civil and Revenue District Janjgir Champa (C.G.) Acting through Partner, Anjeer Kumar Ratnakar, S/o Shri Dau Ram Ratnakar, aged about 29 years R/o Barbhata (Salkhan), Tahsil and Police Station Nawagarh, Civil and Revenue District Janjgir Champa (C.G.)

---- Respondent

For Applicant	:	Mr. Siddharth Dubey, Advocate
For Respondent	:	Mr. R.L. Bajpayee, Advocate

Hon'ble Shri Justice Arvind Singh Chandel
Order on Board

23/01/2019

1. With the consent of both the parties, the matter is heard finally.
2. This revision has been filed against order dated 16/09/2015 passed in Criminal Complaint Case No. 528/2015 by the Judicial Magistrate First Class, Pamgarh, whereby the learned JMFC had condoned the delay under Section 142 (b) of Negotiable Instrument Act, 1881 (henceforth 'the Act'), taking cognizance of the complaint filed under Section 138 of the Act and issued summons under Section 204 of the Cr.P.C against the Applicant.
3. Briefly stated facts of the case are that the Respondent filed a complaint case under Section 138 of the Act on 20/08/2014 against the Applicant before the Court of Judicial Magistrate First Class, Pamgarh (henceforth 'the JMFC'). At the time of registration of complaint, vide order dated

18/09/2014, the learned JMFC returned the said complaint with the finding that the cheques which were drawn were dishonored at Vishakhapatnam, consequently the Court of JMFC, Pamgarh was not had jurisdiction. The order of the JMFC was also affirmed by the Sessions Judge, Janjgir, District Janjgir-Champa. Against the said order, a CRMP was filed by the Respondent before this Court and while disposing the CRMP vide order 21/08/2015, it was observed that the Respondent, if so advised, may file a fresh complaint before the Court having jurisdiction. However, it has to satisfy the reasons for delay in filing the complaint, which may be adjudicated on its merits by the competent Court. Thereafter, on 11/09/2015, a fresh complaint under Section 138 of the Act was filed by the Respondent before the JMFC, Pamgarh along with an application for condonation of delay in filing the complaint. Vide impugned order dated 16/09/2015, the learned JMFC after condoning the delay in filing the complaint taken cognizance for the offence under Section 138 of the Act and issued process against the Applicant under Section 204 of the Cr.P.C.

4. In this case, the question involves whether without following the principles of natural justice, the application for condonation of delay in filing the complaint could have been allowed under Section 142(b) of the Act by the JMFC.
5. Counsel for the Applicant submits that the JMFC has condoned the delay in filing the complaint without hearing the Applicant and therefore, there is violation of principles of natural justice. He further submits that there is Catina of judgments in which it has been held that in the time barred complaint, before allowing the application for condonation of delay,

opposite party should be given opportunity of being heard. Reliance has been placed upon **(1995) 1 SCC 42, State of Maharashtra v. Sharadchandra Vinayak Dongre & Others, 2007 (1) KLJ 904, In the High Court of Delhi, Prashant Goel v. State and Another, 2010 (4) Criminal Court Cases 386, High Court of Uttarakhand Deep Narain v. Sanjay Kumar Chauhan, 2006 (4) KLT 0033, Kerala High Court Abdurehiman v. Sethu Madhavan.** Reliance has also been placed on **2010 (5) MPHT19 (CG), Gyam Chand Jain v. Anand Bafane.**

6. Counsel for the Respondent opposes the arguments advanced by the counsel for the Applicant and supported the impugned order of the Judicial Magistrate First Class.
7. I have heard counsel for the parties and perused the record.
8. In case of State of **Maharashtra v. Sharadchandra Vinayak Dongre, (1995) 1 SCC 42**, It was observed by the Supreme Court thus:

“Since the Chief Judicial Magistrate condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties. It is after the decision of the application for condonation of delay that the Chief Judicial Magistrate shall proceed further in the matter.”

9. While dealing with the issue in the matter of **Prashant Goel v. State and Another, 2007 (1) KLJ 904**, it was observed in para 4 thus:

“Therefore, when the complaint is filed which is time barred and along with the complaint an application for condonation of delay is preferred, appropriate procedure would be to first issue notice only

in the application to the other side without taking cognizance of the complaint. On notice being issued and after hearing the parties, if the Court comes to the conclusion that there is no ground to condone the delay is to be dismissed which will entail in demising of complaint as well as barred by limitation. On the other hand, if the Court is of the opinion that there are sufficient grounds to condone the delay and delay is condoned then the MM can condone the delay which will have the effect of the complaint as initially filed and the learned MM can the delay with the complaint in accordance with procedure contained in Section 200 CR.P.C. In any case on an application for condonation of delay, it is necessary to issue notice to the other side before condoning the delay.

10. In **Deep Narain v. Sanjay Kumar Chauhan, 2010 (4) Criminal Court Cases 0104**, the learned Single Judge of Uttarakhand High Court observed in para 6 thus:

"It is settled principal of law that since it was a time barred complaint the other side gets valuable right and, therefore, a time barred complaint cannot be considered on merit unless the delay is first condoned. However, before condoning the delay the accused was liable to be heard"

11. Likewise, in the case of **Abdurehiman v. Sethu Madhavan, 2006 (4) KLT 0033**, it was observed in para 9 thus:

"Court has been conferred with the discretion to waive the period of one month prescribed for taking cognizance. When a Court is invested with discretionary power it has to make a choice between alternative courses of action and act according to the rules of reason and justice. But as opined by the learned Judge in Vijayan's case, supra (2006 (2) Criminal Court Cases 856 (Kerala): 2005 (2) KLT 344) if there is delay in filing a complaint before reaching satisfaction by the Court, the Court should give notice to the Respondent and after hearing the respondent the Court should satisfy itself as to whether the Complainant had sufficient cause for

not making the complaint within the specified period. In our view, a detailed enquiry giving opportunity to the parties to adduce oral evidence is not necessary at the stage of taking cognizance to decide whether delay deserves to be condoned under S. 142 of the Act. Court can exercise its discretion at its initial stage and decide whether the delay has to be condoned or not, however, in the light of the ratio in State of Maharashtra v. Sharadchandra Vinayak Dongre (AIR 1995 SC 231) the Court will have to give an opportunity of being heard to the accused before condoning the delay. In the above mentioned circumstances, we find it unable to accept the reasoning given in Muraleedharan's case. The direction given by the learned Judge in Muraleedharan's case that the delay can be condoned only on the strength of an affidavit filed by the complainant himself cannot be sustained.

12. In light of above, if I examine the facts of the case, it is clear that after passing the directions by this Court vide order dated 21/08/2015, a fresh complaint under Section 138 of the Act was filed by the Respondent on 11/09/2015 along with an application for condonation of delay in filing the complaint. Thereafter, vide order dated 16/09/2015, the learned JMFC without giving any opportunity of hearing to the Applicant allowed the application for condonation of delay and taken cognizance against the Applicant for the offence under Section 138 of the Act and issued process against the Applicant. Thus, it is clear that there is violation of principles of natural justice. Therefore, in these circumstances, the case deserves to be remitted to the learned JMFC, Pamgarh for deciding the application filed by the complainant seeking condonation of delay afresh in accordance with law, after hearing both the parties.
13. In result, the impugned order dated 16/09/2015 passed by the JMFC is set-aside. It is directed that the JMFC shall decide the application of

condonation of delay afresh in accordance with law after hearing both the parties.

14. With the aforesaid observation, this revision is disposed of.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul