

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2439 of 2018**

Jagnnath Prasad, son of Brijmohan Yadav, Aged about 37 years, R/o Village – Tripuri, Sarnatoli, P.S. – Kusmi, District – Balrampur-Ramanujganj (C.G.)

----- **Petitioner**

Versus

Ashish Kumar Sahu, son of late B.R. Sahu, aged about 36 years, residence through Ashok Diksena, Ambe Auto Parts, Gramin Bank Ke Bajju Me Hardibazar, Tahsil Katghora, District Korba (C.G.)

----- **Respondent**

For Petitioner : Mr. Vikash Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/11/2019

(1) The petitioner is complainant before the trial Magistrate. He filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (henceforth "NI Act, 1881") and the said complaint was delayed by 16 days, therefore, an application as per proviso to Section 142 (1) (b) of the NI Act, 1881 for condoning the delay showing sufficient cause was also filed, but that application was not supported by affidavit of complainant.

(2) Learned trial Magistrate, vide its order dated 21.03.2018, dismissed that application holding that no sufficient cause has been shown for delay in filing the

compliant, which has been affirmed by the revisional Court, in the criminal revision filed by the complainant, against which instant petitioner under Section 482 of the Cr.P.C. has been preferred.

(3) Mr. Pandey, learned counsel appearing for the petitioner would submit that both the courts below are absolutely unjustified in holding that there is no sufficient case for condoning the delay in filing the complaint has been shown by the petitioner, whereas the trial Court ought to have granted an opportunity to file affidavit in support of application for condonation of delay in filing the complaint as provided in proviso to Section 142 (1)(b) of the NI Act, 1881, which has not been afforded and complaint was dismissed by trial Magistrate as well as by the revisional Court.

(4) None for respondent, though served.

(5) The Supreme Court in the matter of **Pawan Kumar Ralli Vs. Maninder Singh Narula**¹ qua the condonation of delay in filing the complaint under Section 138 of the NI Act, 1881 has held as under :-

“20. However, when the issue of limitation had come up for the first time before the High Court, it ought to have dealt with the same on merits as per proviso to [Section 142\(b\)](#) of the Act. The said proviso appended to clause (b) of [Section 142](#) of the Act was inserted by the Negotiable Instruments (Amendment and [Miscellaneous Provisions](#)) Act,

¹ (2014) 15 SCC 245

2002 and the legislative intent was, no doubt, in order to overcome the technicality of limitation period. The Statement of Objects and Reasons appended to the Amendment Bill, 2002 suggests that the introduction of this proviso was to provide discretion to the Court to take cognizance of offence even after expiry of the period of limitation [See MSR Leathers Vs. S. Palaniappan (2013) 1 SCC 177]. Only with a view to obviate the difficulties on the part of the Complainant, Parliament inserted the proviso to clause (b) of [Section 142](#) of the Act in the year 2002. It confers a jurisdiction upon the Court to condone the delay [See Subodh S. Salaskar Vs. Jayprakash M. Shah (2008) 13 SCC 689].

21. It is no doubt true that at the time of filing the complaint, the Magistrate has to take cognizance of the complaint when it is within limitation and in case of delay in filing the complaint, the complaint has to come up with the application seeking condonation of delay. But, the peculiar fact of the present case is that in the complaint, the complainant had only averred that he has sent the legal notice dated 24th May, 2012 but not mentioned about the handwritten note dated 27th April, 2012. Basing on the said averment, the learned Trial Judge was satisfied that the complaint is within the prescribed period of limitation. Hence, in this case, raising the plea of limitation and Court exercising the discretion to condone the delay did not arise at all.

22. In the peculiar facts and circumstances of the case, while keeping in mind the legislative intent and the specific plea of the appellant raised in the grounds for the Special Leave Petition that he should have been allowed to move an application for condonation of delay before the Trial Court as the respondent has not suffered any prejudice by reason of 25 days delay, we strongly feel that the appellant should not have been deprived of the remedy provided by the Legislature. In fact, the remedy so provided was to enable a genuine litigant to pursue his case against a defaulter by overcoming the technical difficulty of limitation. Hence, the High Court has committed an error by not considering the issue of limitation on merits.

23. In view of the settled principles of law in *Rakesh Kumar Jain, MSR Leathers*. *Subodh S. Salaskar (supra)* and in the peculiar facts and circumstances of the case, we are of the considered opinion that the High Court was not right in quashing the complaint merely on the ground that complaint is barred by limitation, that too a plea which was taken for the first time before the High Court. On the other hand, the High Court ought to have remanded the matter to the Trial Court for deciding the issue of limitation."

(5) Reverting to the facts of the case in light of the judgment of the Supreme Court in the matter of **Pawan Kumar Ralli (supra)** *qua* proviso to Section 142 (1)(b) of the NI

Act, it is quite apparent that application for condonation of delay as provided under proviso to Section 142 (1)(b) of the Act, 1881 was filed but admittedly it was not supported by affidavit, therefore, the trial Magistrate ought to have granted an opportunity to file affidavit to satisfy as to whether he has sufficient cause for not making complaint well within time, that was not granted and the complaint as well as application for condonation of delay in filing the complaint, both were rejected summarily without notice to the other side, which has caused prejudice to him and occasioned serious failure of justice.

(6) In view of above, the order passed by the trial Magistrate dated 21.03.2018 as well as revisional order dated 27.07.2018 both were set aside. The complaint and application under proviso to Section 142(1)(b) of the NI Act, 1881 are restored to the said court for hearing and disposal in accordance with law, in which, petitioner/complainant will file his affidavit in support of application under proviso to Section 142(1)(b) of the NI Act on or before 13th December, 2019, and the matter will be heard / considered by the trial Magistrate on 16th December, 2019, in accordance with law.

(7) The Cr.M.P. is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

