

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-34507-2017
Date of decision: 19.08.2019**

Singh Construction Company

...Petitioner

Versus

Gurpal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Shashi Bhushan Galav, Advocate
for the petitioner.

None for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 08.01.2016, passed by the trial Court, vide which, the trial Court has dismissed the application for condoning the delay in refiling the complaint which was returned to the petitioner/complainant in view of the judgment of Hon'ble Supreme Court rendered in *Dasrath Rupsingh Rathod vs. Stated of Maharashtra and another, 2014 (3) RCR (Crl.) 904*, as well as for setting aside the order dated 29.04.2017, passed by the revisional Court, vide which the revision petition, filed by the petitioner, was also dismissed.

It is also prayed that in view of the amendment in Section 142 of the Negotiable Instruments Act, 1881 (*for short 'the Act'*), the order dated 30.09.2014, vide which the original complaint was returned to the petitioner for presentation of the same before the competent Court of jurisdiction, be also set aside.

Brief facts of the case are that petitioner filed a complaint

bearing No. 1276 dated 22.10.2012 under Section 138 of the Act on account of dishonouring of a cheque issued by the respondents/accused. During the pendency of this complaint before the Judicial Magistrate First Class, Patiala, the trial Court, vide impugned order dated 30.09.2014, in view of the judgment in ***Dasrath Rupsingh Rathod's case (supra)***, held that since the cheques in question were issued by Gurdaspur-Amritsar Kshetriya Gramin Vikas Bank, Gurdaspur, the Court at Patiala has no jurisdiction to entertain the said complaint and the same along with other original documents were ordered to be returned to the petitioner/complainant for presentation before the competent Court of jurisdiction.

Learned counsel for the petitioner has argued that after filing of the complaint in the year 2012, the original complaint along with other documents was misplaced by the Ahlmad (Incharge) of the Court of Judicial Magistrate First Class, Patiala and after long persuasion by the petitioner, the same was traced out on 01.03.2014 and in the intervening period, even the District & Sessions Judge, Patiala has sought explanation from the Court about the missing file and vide order dated 01.03.2014, the trial Court, on receiving a report from the Ahlmad (Inhcharge) that the file has been traced along with original documents, opted to proceed further in trial by giving an information to the District & Sessions Judge, Patiala. Thereafter, notices were issued to respondents/accused and ultimately, the complaint was returned on 30.09.2014.

Learned counsel for the petitioner further submits that till 30.09.2014, respondents/accused were not served despite issuance of non-bailable warrants as they were avoiding the service of summons.

Learned counsel for the petitioner further submits that the

petitioner, thereafter, moved an application on 03.09.2015 for return of the documents and the trial Court, vide order of the even date, observed that though the documents were ordered to be returned on 30.09.2014 but the same was not obtained by the petitioner/complainant within a period of 30 days, however, the file was received by the petitioner on 01.10.2015.

Learned counsel for the petitioner further submits that thereafter, the petitioner filed an application for refiling the complaint after the amendment in the Act which was promulgated on 15.06.2015. However, the trial Court, vide order dated 08.01.2016, dismissed the application by passing the following order:

“.....I have heard the submissions made by counsel for applicant and have gone through the file.

Perusal of file transpires that the complaint titled as Singh Construction Versus Gurpal Singh was filed on 22.10.2012 and same was ordered to be returned as per law laid down in ***Dashrath Rupsingh Rathod Versus State of Maharashtra and another*** dated 01.08.2014 in ***Criminal Appeal No. 2287 of 2009*** on 30.09.2014. Thereafter, application was filed for return of documents on 16.09.2015. Meaning thereby, complainant did not refile the complaint after the date of return i.e. 30.09.2014 to 16.09.2015. As per the law laid down in Dashrath Rupsing Rathod's case, complainant was required to file afresh complaint within a period of one month before the competent authority. Though this law no longer hold good but the same was valid on the date of return of the present complaint. Complainant has failed to explain as to why he did not file the complaint before the competent Court within the period prescribed by law.

Reliance is placed upon the law laid down by

Hon'ble Delhi High Court in *M/s Brushman Indian Ltd. And another Versus Standard Chartered Bank, 2013 (7) RCR Criminal 3297* wherein it has been held that the terms 'sufficient cause' should receive a liberal construction for condonation of delay so as to advance the substantial justice. When the delay is not on account of any dilatory tactics, want of bonafide, deliberate in action or negligence on the part of the complainant, then it should be condoned. In the case in hand, the complainant should have filed the complaint before the competent court and that Court have transfer the case to this Court.

No doubt there is no fault on the part of complainant in the change of law. However, complainant is required to refile the case within time preseccribed by law. The Court cannot entertain the complaint which is filed after the period of one year especially when there are no sufficient grounds have not been explained. Mere the fact that the place of work of complainant was at Bihar, do not mean that complainant could not come for a day to get the complaint refiled. Complainant had not shown sufficient reason for such a glaring delay in filing the complaint. Accordingly, no ground is made out to allow the present application for condonation of delay and for refiling the present complaint. Accordingly, present application stands dismissed. File be consigned to record room after completing it in all respects.”

Thereafter, the petitioner preferred a revision before the revisional Court, which was dismissed by passing the following order on 29.04.2017:

“.....Arguments have been head and record has been perused.

Undoubtedly, the complaint of complainant was

returned on 30.09.2014 by learned Trial Court keeping in view the judgment titled as ***Dashrath Rupsing Rathod Versus State of Maharashtra and another***. AS per the judgment, complainant was to refile his complaint before competent court within a period of one month, but he instead of moved an application before ld. Trial Court on 16.09.2015 for return of documents and then ultimately, he moved present application for refiling the complaint before ld. Trial Court as an ordinance was passed on 15.06.2015.

It is all material to mention here that complainant had filed application after a lapse of period of one year and he could not mention any sound reason in his application as to why he did not file that complaint within time frame. Mere involvement in business, at Bihar, is no sound reason to condone such long delay of more than one year and ld. Trial Court has rightly declined the request of complainant for condonation of such delay. Resultantly, there is nothing to interfere in that reasoned finding of ld. Trial Court and the same is affirmed accordingly.

With these observations, present revision petition is dismissed. Revision file be consigned to record room. While record of ld. Trial Court be returned for consignment purpose.”

Hence, the present petition has been filed by the petitioner/complainant challenging the aforementioned orders.

It is worth noticing that respondents/accused in this case were duly served but they refused to take the notices as observed in the order dated 12.03.2018.

The lower courts' record were requisitioned and the arguments have been heard. Learned counsel for the petitioner has challenged the

impugned orders on the following grounds:

(a) Learned counsel for the petitioner argued that the impugned order dated 30.09.2014, returning the complaint along with documents to the complainant in view of the judgment in ***Dasrath Rupsingh Rathod's case (supra)***, lost significance in view of the amendment in Section 142 of the Act. Learned counsel for the petitioner has, thus, argued that the complaint, which was returned, was refiled on 08.01.2016 and, therefore, the objections raised by both the courts below that it was not filed within 30 days has prejudiced the right of the petitioner/complainant as, in view of the amendment, the time period of 30 days given in the ***Dasrath Rupsingh Rathod's case (supra)*** also lost significance as the petitioner was in the process of filing the same before the Court at Gurdaspur.

(b) Learned counsel for the petitioner has further argued that during the pendency of the complaint, despite issuance of non-bailable warrants, the respondents/accused never appeared. Even till the time when the complaint was refiled and dismissed, only on the ground of delay, vide order dated 08.01.2016, no one appeared on behalf of the respondents/accused and even before the revisional Court, no one appeared on behalf of the respondents/accused.

(c) Learned counsel for the petitioner has further argued that even in this petition, despite the notices being served, the respondents/accused are not contesting the prayer of the petitioner for refiling the complaint, therefore, no prejudice will be caused if the trial Court is directed to decide the complaint on merits.

(d) Learned counsel for the petitioner has further argued that even otherwise, the question of delay in refiling the complaint with the Court at

Patiala will not arise as the order dated 30.09.2014, returning the complaint itself, is liable to be set aside in view of the amendment in Act.

(e) Learned counsel for the petitioner further argued that while refiling the complaint, the petitioner has given sufficient reasons for condoning the delay that he has primarily shifted his business to Araria, Bihar for completing his government contract which was required to be completed in a time frame, failing which, a heavy penalty could have been levied by the government, however, the Courts dismissed the application for refiling the complaint.

After hearing learned counsel for the petitioner and perusing the record, I find merit in the present petition.

There is no dispute that the original complaint was filed within time and it was returned in view of the judgment in ***Dasrath Rupsingh Rathod's case (supra)*** for filing the same before the competent Court of jurisdiction and subsequently, the Ministry of Law & Justice (Legislative Department) issued the Negotiable Instruments (amendment) ordinance, 2015, which came into force on 15.06.2015. The aforesaid ordinance carried out the amendment in Section 142 of the Act, which reads as under:-

“3. In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after subsection (1) as so numbered, the following sub-section shall be inserted, namely:-

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction:-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the

account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation:- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

A glance at the aforesaid provision transpires that after issuance of ordinance 2015, offence under Section 138 of the Act shall be inquired into and tried only by a Court within whose local jurisdiction, if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated or if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of drawee bank where the drawer maintains the account, is situated. The aforesaid amendment appears to have been carried out to overcome the judgment rendered in ***Dashrath Rupsingh Rathod's case (supra)***.

In view of the above, it is apparent that the order dated 30.09.2014, passed by the trial Court, returning the complaint, is liable to be set aside and even the subsequent order dated 08.01.2016, passed by the trial Court, refusing to re-entertain the complaint on refiling, merely on the ground of delay in view of the judgment rendered in ***Dashrath Rupsingh Rathod's case (supra)***, is also liable to be set aside.

Further, the findings recorded by the revisional Court in the

impugned order dated 29.04.2017, are also not based on correct appreciation of law and facts as the petitioner, while refiling the complaint has given sufficient reasons for condoning the delay that he has primarily shifted his business to Araria, Bihar for completing his government contract which was required to be completed in a time frame, failing which, a heavy penalty could have been levied by the government. Hence, the petitioner has sufficiently explained the delay in refiling the complaint.

Therefore, in view of the above discussion, the present petition is allowed and impugned orders dated 30.09.2014 (Annexure P-3), 08.01.2016 (Annexure P-2), passed by the trial Court as well as order dated 29.04.2017 (Annexure P-1), passed by the revisional Court, are hereby set aside.

The trial Court is directed to restore the complaint to its original number and dispose of the same in accordance with law.

Since the complaint pertains to the year 2012, the trial Court is further directed to make endeavour to decide the same expeditiously, preferably within a period of one year from the receipt of certified copy of this order.

The trial Court's record be sent back forthwith.

19.08.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*