

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 07.02.2020

CRM-M-2470-2019, CRM-M-36423-2019, CRM-M-36425-2019,
CRM-M-36427-2019, CRM-M-36434-2019, CRM-M-36436-2019,
CRM-M-36438-2019, CRM-M-36445-2019, CRM-M-36466-2019,
CRM-M-36482-2019, CRM-M-36483-2019, CRM-M-36484-2019,
CRM-M-36486-2019, CRM-M-36487-2019, CRM-M-36489-2019,
CRM-M-36507-2019, CRM-M-36536-2019, CRM-M-36539-2019,
CRM-M-36540-2019, CRM-M-36541-2019, CRM-M-36542-2019
AND CRM-M-36552-2019

P.D. Lakhani

.....Petitioner

Versus

United Bank of India

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.S. Rai, Senior Advocate, with
Mr. Kunal Dawar, Advocate, for the petitioner(s).

Mr. Pankaj Gupta, Advocate, and
Mr. Sumit Batra, Advocate, for the respondent-Bank.

Harnaresh Singh Gill, J.

This order shall dispose of the above mentioned petitions as common questions of law and facts are involved therein. However, for the facility of reference, the facts are taken from CRM-M-2470-2019.

This is a petition under Section 482 Cr.P.C. for quashing the order dated 1.5.2012 passed by the Judicial Magistrate, Ist Class, Faridabad, in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short

`the Act'), vide which an application seeking condonation of delay filed by the complainant Bank, was allowed.

Learned Senior Counsel appearing for the petitioner has argued that vide the impugned order, the delay in filing the complaint beyond the period provided under the Act, was condoned without any notice to the petitioner (accused in the complaint) and without giving any reason and on the same day i.e. 01.05.2012, the petitioner was summoned.

It is further argued that after passing of the summoning order, the petitioner was never served in accordance with law and was declared as a proclaimed person vide order dated 07.02.2014; that after the petitioner made appearance before the Court, regular bail was granted to him on 09.11.2016; that as some other cases were filed/pending against the petitioner, therefore, apprehending his arrest, the petitioner could not appear and was brought on production warrants and that he was finally released on bail vide order dated 06.07.2017. It is, thus, submitted that the petitioner has already suffered a lot of incarceration. Hence, the impugned order dated 01.05.2012 is non-speaking and has been passed at the back of the petitioner.

Learned Senior Counsel has relied upon the judgment of the Hon'ble Apex Court in K.S. Joseph Vs. Philips Carbon Black Ltd. and Anr., 2017(1) SCC (Criminal) 270, to contend that the condonation of delay without issuing notice on

such application, is illegal. He laid emphasis on para No.5 of the said judgment, which would read as under:-

“5. In view of discussion made above, the plea based on Section 200 of the Cr.P.C. is rejected as untenable. The other plea relating to delay of 62 days and taking of cognizance without issuing notice to dispense with such delay is however found to have substance. The relevant provision under Section 142 of the Act requires making of the complaint within one month of cause of action arising on account of non-compliance with the demand in the notice to make payment within 15 days. According to appellant the notice was dated 03.02.2006 alleging non-payment of two cheques each for Rs.1,80,000/-. Allegedly the appellant had sent a reply denying his liability through a reply dated 20.02.2006. The complaint was filed on 24.05.2006. Prima facie, in view of aforesaid dates the complaint was beyond the permissible period. No doubt the court has been empowered to take cognizance even after the prescribed period but only if the complainant satisfies the court that he had sufficient cause for not making complaint within the prescribed period.”

Learned Senior Counsel has also relied upon the judgment of Madras High Court in the case of Jeyaprakash Vs. Arjunan, (2018)3 MadWN (Cri.) 165, wherein it was held that whenever there is a delay in lodging a complaint under Sections 138 and 142 of the Act, an opportunity should be granted to the accused to raise objections as it is a right vested with the accused.

Still further, reliance has also been placed upon the judgment of this Court in Brij Mohan Batra Vs. Ludhiana Beverages Pvt. Ltd., 2014(7) RCR (Criminal) 2345, to contend

that before condoning the delay, it is necessary for the trial Court to issue notice to the accused and only then to proceed with the application.

On the other hand, learned counsel for the respondent-Bank has argued that the trial Magistrate has power to condone the delay if he is satisfied that it will not cause any prejudice to the accused and vide the amendment carried out in the Act in the year 2002 (i.e. w.e.f. 06.02.2003), the Court has been given discretion to extend time for filing the complaint beyond the period of limitation. Thus, by condoning the delay of 1 day or upto 5 days, no prejudice has been caused to the petitioner.

Learned counsel has also argued that the conduct of the petitioner is to be seen before entertaining the present petition. The petitioner was declared as a proclaimed person on 07.02.2014 and was granted bail on 09.11.2016. However, in order to delay the court proceedings, he absented himself from the Court proceedings leading to cancellation of bail on 13.01.2017. After his re-arrest, he was again released on bail on 06.07.2017. Thus, the petitioner is not entitled to any relief at this stage as he has delayed the process of law for more than 9 years. Moreover, the petitioner has also bypassed the Court of Sessions by not availing the statutory remedy of revision for which the period of limitation is 90 days, whereas the present petition has been filed after a delay of 7 years and that in the present bunch of cases, delay in filing the complaints was

caused because of the time consumed in obtaining consent/sanction from the authorities of the Bank, which is a public sector undertaking.

Learned counsel for the respondent relies upon the judgment of the Supreme Court in Vedabai alias Vijayanantabai Baburao Patil Vs. Shantaram Baburao Patil and others, (2001)9 SCC 106, to contend that while condoning the delay of a few days, liberal approach be taken as advancing the substantial justice is of prime importance.

Still further, while relying upon the judgment of the Supreme Court in Rakesh Kumar Jain Vs. State, (2000)7 SCC 656, it is contended that as grant of consent/sanction for initiating the proceedings in the instant case was a quasi judicial function, therefore, the learned trial Court, was perfectly justified in condoning the delay in filing the complaint. Reliance is also place upon the judgment of the Delhi High Court in Brushman India Ltd. and another Vs. State and another, 2019(1) RCR (Criminal) 383, wherein while noticing the proviso to Section 142 of the Act, which was added by the amendment to the Act vide Act No. 55 of 2002 w.e.f. 6.2.2003, with a view to enabling a genuine litigant to pursue the case against the defaulter, it was held that refusing to condone the delay would amount to throwing out the meritorious case by adopting hyper-technical approach.

It is also brought to the notice of this Court that against the aforesaid judgment of the Delhi High Court, SLP No.3564/2019 was filed, which was dismissed on 26.4.2019.

Further, reliance has also been placed upon the judgment of Rajasthan High Court in Mahadev Gurjar Vs. State of Rajasthan decided on 6.8.2019.

This Court is of the considered opinion that as per the provisions of Section 142 of the Act, at the stage of taking cognizance, it is not necessary for the Court to issue notice to the accused and hear him before condoning the delay in filing the complaint.

In Vipin Kr. Gupta Vs. Sarvesh Mahajan, 2019 ACD 362 : 2019(3) DCR 120, wherein challenge was laid to the order of the Magistrate passed on 17.11.2014 after four years, without any plausible explanation and without any sufficient cause to invoke the inherent powers of the High Court under Section 482 Cr.P.C. It was held that the order passed on 17.11.2014 challenged in 2019 was barred by the principle of delay and laches and accordingly, the challenged was negated.

After taking the above facts and circumstances into consideration, I do not find any reason to interfere with the order dated 1.5.2012 passed by the learned trial Magistrate, at this stage.

In all the complaints filed by the respondent-Bank, there is delay of 1 to 5 days and as per the proviso to Section 142 of the Act, the Magistrate has power to condone the delay

when there is sufficient cause and there is no prejudice caused to the accused.

The conduct of the petitioner-accused is one of the important issues in the present case. A proclaimed person's order was passed against the petitioner on 07.02.2014 and the petitioner was granted bail on 09.11.2016 which was again cancelled on 13.01.2017 because of the act and conduct of the petitioner and after apprehending arrest, the petitioner was again released on bail on 06.07.2017. Thus, this act of the petitioner is nothing, but a timid approach to delay the proceedings.

In the present case, delay is not inordinate. Liberal approach has to be adopted while considering an application seeking condonation of delay and not condoning the delay will be an act to throwing out a meritorious case by adopting a hyper-technical approach. Thus, no fault could be found with the discretion exercised by the trial Court in a positive manner.

Even impugning order dated 01.05.2012 passed by the Magistrate, in the this petition in the year 2019, by invoking the inherent power of the High Court under Section 482 Cr.P.C. is barred by the principle of delay and laches. This Court has no hesitation to hold that if the Court fails to take into consideration the delay and laches, while invoking the powers of the High Court under Section 482 Cr.P.C., without any reasonable ground, there will be no end to the litigation and trial Court will not be able to move with the criminal proceedings

pending therein. Thus, the present petition, challenging the order dated 01.05.2012 in the year 2019, is liable to be dismissed on the ground of inordinate delay and laches as well.

In view of the above, all the petitions being bereft of any merit, are hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

February 07, 2020
ds

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No