

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.R. 154 of 2018

With

CRAN 1 of 2018 (Old CRAN 3473 of 2018)

**Dipak Majumder
Vs.
Swapan Poddar**

For the Petitioner : Mr. Mayukh Mukherjee

Heard on : 23.06.2021

Judgment On : 24.06.2021

Bibek Chaudhuri, J.

The instant criminal revision is filed by the accused/appellant of Criminal Appeal No.32 of 2016 challenging legality, validity, correctness and propriety of the judgment and order dated 12th September, 2017 passed by the learned Additional Sessions Judge,

Fast Track Court, Serampore in connection with the above mentioned criminal appeal affirming the judgment and order dated 29th July, 2016 passed by the learned Judicial Magistrate, 3rd Court, Serampore in C.R. Case No.249 of 2012 under Section 138 of the Negotiable Instruments Act.

The opposite party filed a complaint under Section 138 of the Negotiable Instruments Act (hereafter described as the said Act) in the Court of the learned Additional Chief Judicial Magistrate, Serampore which was registered as C.R. Case No.249 of 2012. The said case was transferred to the 3rd Court of the learned Judicial Magistrate. After trial the learned Magistrate held the accused persons guilty for committing offence under Section 138 of the said Act and sentenced him to pay fine of rupees one lakh twenty thousand, in default, to suffer simple imprisonment for six months. The accused/petitioner challenged the said judgment and order of conviction and sentence passed in C.R. Case No.249 of 2012 before the Fast Track Court of the learned Additional Sessions Judge, Serampore in Criminal Appeal No.32 of 2016. The said appeal was also dismissed. Hence, the instant application under Section 482 of the Code of Criminal Procedure.

It is needless to say that sitting in criminal revisional jurisdiction this Court cannot appreciate and evaluate the evidence on record

adduced by the opposite party during trial of the case as witness. In other words, appreciation of evidence is not permitted in criminal revision. The power of the Court is only confined to examine legality, validity, correctness and propriety of the order.

Mr. Mayukh Mukherjee, learned advocate for the petitioner also submits that he will not agitate any ground in support of the instant revision touching the evidence on record. He confines his submission on the issue of limitation. It is submitted by him that the complaint case filed by the opposite party under Section 138 of the said Act is hopelessly barred by limitation. In support of his contention he submits that the petitioner issued a cheque of Rs.75,000/- drawn on the State Bank of India, Serampore Branch on 15th January, 2012. The opposite party presented the said cheque for encashment in the same bank on 16th January, 2012. On 17th January, 2012 he received an information from the bank that the said cheque was dishonoured due to insufficient fund. On 25th January, 2012 he sent a demand notice under registered post to the petitioner requiring him to pay the cheque amount within 15 days from the date of receipt of the notice. The petitioner received the notice on 27th January, 2012. He, however, did not make payment of the said cheque amount. It is submitted by the learned advocate for the petitioner that Clause(b) of Section 142 of

the said Act stipulates that a complaint under Section 138 shall be made within one month of the date on which the cause of action arises under Clause(c) of the proviso to Section 138.

It is submitted by the learned advocate for the petitioner that in view of Clause(c) of Section 138 the petitioner being the drawer of such cheque ought to have made payment of the amount for which the said cheque was issued to the opposite party within 15 days from the receipt of the notice. The notice was received on 27th January, 2012. Clause (b) of Section 142 allows the complainant to file a complaint within one month of the date on which the cause of action arises. However, the opposite party filed complaint under Section 138 of the said Act on 28th March, 2012, i.e., after the expiry of the stipulated period of one month to be counted from the date of expiry of 15 days of the receipt of the notice under Section 138(b) of the said Act.

In support of his argument, Mr. Mukherjee refers to a decision in the case of **Subodh S. Salaskar versus Jayprakash M. Shah and another** reported in **(2008) 13 SCC 689**. In the instant case the petition of complaint ought to have been filed by the opposite party within 12th/13th March, 2012. But the said complaint was filed on 28th March, 2012. Ex facie the complaint was barred by limitation. No application for condonation of delay was filed.

Paragraph 26 of the said judgment is important and quoted below:-

"Ex facie, it was barred by limitation. No application for condonation of delay was filed. No application for condonation of delay was otherwise maintainable. The provisions of the Act being special in nature, in terms thereof the jurisdiction of the Court to take cognizance of an offence under Section 138 of the Act was limited to the period of thirty days in terms of the proviso appended thereto. Parliament only with a view to obviate the aforementioned difficulties on the part of the complainant inserted proviso to clause (b) of Section 142 of the Act in 2002. It confers a jurisdiction upon the court to condone the delay. It is, therefore, a substantive provision and not a procedural one. The matter might have been different if the Magistrate could have exercised its jurisdiction either under Section 5 of the Limitation Act, 1963 or Section 473 of the Code of Criminal Procedure, 1976. The provisions of the said Acts are not applicable. In any event, no such application for condonation of delay was filed. If the proviso appended to clause (b) of Section 142 of the Act contained a substantive provision and not a procedural one, it could not have been given a retrospective effect. A substantive law, as it is well

settled, in absence of an express provision, cannot be given a retrospective effect or retroactive operation.”

Thus, it is held by the Hon’ble Supreme Court in the above referred decision that proviso to clause (b) of Section 142 is a substantive provision and not a procedural one. No application for condonation of delay was filed by the opposite party along with application under Section 138 of the said Act. Even in the application under Section 138 no case was made out in support of condonation of delay that he had sufficient cause for not making the complaint within the statutory period of time.

The learned Additional Sessions Judge, Fast Track Court, Serampore failed to consider the issue of limitation in Criminal Appeal No.32 of 2016.

Therefore, the impugned judgment passed in Criminal Appeal No.32 of 2016 cannot sustain. Accordingly, the instant criminal revision under Section 482 of the Code is allowed on merit and the judgment passed in Criminal Appeal No. 32 of 2016 is set aside.

The learned Judge in the Court of appeal is directed to adjudicate the issue as to whether the appeal is barred by limitation or not and pass a reasoned order on the basis of the submission made by the learned advocates for the parties without

being influenced by any observation made herein above for the purpose of disposal of the instant criminal revision.

Let a copy of this order be sent to the learned Court below for information and compliance.

The petitioner is at liberty to act on the server copy of the order.

The connected application being CRAN 1 of 2018 (Old CRAN 3473 of 2018) is also disposed of.

(Bibek Chaudhuri, J.)