

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 608 of 2014

Order Reserved on : 16.06.2021

Order Delivered on : 30.06.2021

Shiv Shankar Agrawal, Proprietor of Shiv Pardawala, S/o Shri Parmeshwari Lal Agrawal, Aged About 40 Years, R/o Nidan Road, Transport Nagar, Korba, P.O.- Korba, P.S.- Kotwali, Tahsil & District- Korba (C.G.)

---- Petitioner

Versus

Khamhan Ram Kashyap, Aged About 45 Years, R/o Village- Kasaipali (Bhadrapara), P.O.- Jawali, P.S.- Darri, Tahsil- Katghora, District- Korba (C.G.)

---- Respondent

For Petitioner : Mr. Sanjay Patel, Advocate.

For Respondent : Mr. Alok Kumar Gupta, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. This petition has been filed by the petitioner under Section 482 of the Cr.P.C. against the order dated 24.06.2014 (Annexure P/6) passed by Additional Sessions Judge (F.T.C.) Korba, District- Korba (C.G.) by which the revision petition filed by the petitioner has been dismissed as barred by limitation.
2. The brief facts as projected by the petitioner are that the petitioner has filed a complaint before the Chief Judicial Magistrate, Korba, District- Korba (C.G.) against the respondent for committing offence under Section 138B of the Negotiable Instrument Act, 1881 (for short "the NI Act") read with Section 420 of I.P.C. stating that the accused/ respondent had given cheque No. 179576 dated 27.01.2012 drawn on State Bank of India, Branch- Gevra Project, Korba for Rs. 40,000/-, which was dishonoured by Oriental Bank of

Commerce, Korba on account of insufficient balance and information in this regard was received by the petitioner/complainant on 25.06.2021. Hence, the accused has committed offence under Section 138B of the NI Act. As per provision of Section 138 of the NI Act, the petitioner sent a legal notice to the accused/respondent on 21.07.2012, which was acknowledged on 16.08.2012 by the accused. Despite this, the accused has not paid the amount, thereby, committed offence under Section 138B of the NI Act.

3. The petitioner filed a complaint on 10.09.2012 under Section 138B of the NI Act and Section 420 of I.P.C. before Chief Judicial Magistrate, Korba and the same was dismissed vide order dated 27.04.2013, thereafter, the petitioner filed Criminal Revision No. 332 of 2013 before this Court and the same was also dismissed on 24.07.2013 with liberty granted in favour of the petitioner to file revision petition before the Sessions Court. Accordingly, the petitioner filed revision petition under Sections 397 & 401 of I.P.C. before Sessions Judge, Korba, District- Korba (C.G.), which was heard by learned Additional Sessions Judge (F.T.C.), Korba and by the impugned order, the same was dismissed as barred by limitation.
4. The petitioner has also filed application under Section 5 of the Limitation Act for condonation of delay in filing the revision petition mainly contending that the learned Chief Judicial Magistrate vide its order dated 27.04.2013 dismissed the complaint, thereafter, he has filed revision petition before High Court of Chhattisgarh and this Court vide its order dated 24.07.2013 has granted liberty in favour of the petitioner to file revision petition before Sessions Judge. The revision petition was filed before this Court on 30.05.2013 as he received copy of the order passed by learned Chief Judicial Magistrate on 03.05.2013. He applied for certified copy of the order passed by this Court on 25.07.2013 which was received by him on 31.07.2013.

5. Learned counsel for the petitioner submits that after filing of criminal revision before this Court, he enquired about status of the case from his counsel, then he has informed on 03.12.2013 that the revision petition has been dismissed with liberty in favour of him to file revision petition before learned Sessions Judge. As such, the delay in filing the revision petition is bonafide and the same deserved to be condoned by the revisional court, also that the revision petition may be decided on merits.
6. Learned counsel for the respondent would submit that the order passed by learned revisional court is legal, justified and not liable to be interfered by this Court. He would further submit that the petitioner has not made any case for condonation of delay as no sufficient cause has been shown for not filing the revision petition within stipulated time.
7. Learned Sessions Judge vide impugned order dated 24.06.2014 dismissed the revision petition filed by the petitioner as barred by limitation holding that the petitioner is entitled to get relaxation of 79 days for obtaining copy of the orders, but he has filed the revision petition on 10.12.2013 i.e. in total 226 days delay from the date of order i.e. 27.04.2013. delay can be condoned on bonafide reasons, but the petitioner has not explained delay of remaining 147 days whereas each delay has to be explained. The petitioner has not given any justifiable reason. The reasons are not bonafied, therefore, the delay is not liable to be condoned by the revisional court. Learned Additional Sessions Judge further observed that the delay with regard to non-communication of the information, cannot be termed as bonafide delay or justifiable reason of delay, therefore, application filed by petitioner under Section 5 of the Limitation Act cannot be considered. Accordingly, the said application was rejected, consequently, the revision petition was also dismissed. This order was under challenge before this Court.

8. The issue which requires for consideration before this Court is whether there is sufficient ground for condonation of delay and the petitioner has properly explained the delay of 226 days in filing the revision petition.
9. It is well settled by the Supreme Court that there cannot be any rigid ground to be held with sufficient cause for condoning the delay. The basic parameter for treating the reasons as sufficient cause is whether by not filing the case within the stipulated time framed right of any party is adversely affected.
10. The Supreme Court in catena of decisions has held that the Courts should adopt a liberal and justice-oriented approach for condoning the delay. Ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
11. The Hon'ble Supreme Court in **Bhivchandra Shankar More Vs. Balu Gangaram More & others**¹, held as under:-

“15. It is a fairly well settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant. After referring to various judgments, in *B. Madhuri Goud v. B. Damodar Reddy* [(2012) 12 SCC 693], this Court held as under:- (SCC p. 696, para 6)

“6. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the

¹ (2019) 6 SCC 387

parties are not defeated only on the ground of delay.”

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123], this Court held as under: (SCC pp. 127-28, para 11)

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

12. The learned Additional Sessions Judge has committed illegality in wrongly recording of delay and explaining every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner. The Supreme Court in case of **Collector, Land Acquisition, Anantnag & another Vs. Mst. Katiji & others**², considered the sufficient cause,

² (1987) 2 SCC 107

explanation for every day delay and has held in para 3 to 6 as under:-

“3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

13. Similarly, it is also well settled by the Supreme Court that the condonation of delay must be on bonafide reason without any ulterior motive or any deliberately manner on the part of the litigant then only the delay in filing the application before the Court should be entertained. Now coming to the facts of the case in hand, it is apparent that the petitioner was willing to prosecute his case with most sincerity and on the advise of his counsel, he filed criminal revision before this Court directly and after dismissal of the same, there was no communication by his counsel, as such, mistake on part of the counsel, litigant should not be suffered. Moreover, the complaint of the petitioner has been dismissed by learned Chief Judicial Magistrate without deciding on merits, as such, sufficient bonafide reasons have been assigned by the petitioner to condone the delay.
14. Considering the facts and circumstances of the case, the present petition is allowed and the impugned order dated 24.06.2014 (Annexure P/6) passed by learned Additional

Sessions Judge (F.T.C.) Korba, District- Korba (C.G.) is quashed and delay in filing the revision petition is hereby condoned.

15. It is directed that the criminal revision (unregistered) against the petitioner in case of *Shiv Shankar Agrawal Vs. Khamhan Ram Kashyap* be restored. The parties are directed to appear before the District and Sessions Judge, Korba, District- Korba (C.G.) on **12th August, 2021** and the case will be decided in accordance with law.
16. It is made clear that this Court has not expressed any opinion on merits of the case, but the facts have been mentioned to examine, whether the sufficient cause has been made out or there is proper explanation to delay in filing the revision petition.
17. Accordingly, the present petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge