

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th JUNE, 2021

+ **CRL.M.C. 669/2021 & CRL.M.A. 3272/2021 (Stay)**

MANPREET KAUR & ANR.

..... Petitioners

Through Mr. Ritesh Khatri, Advocate
versus

VINOD BANSAL

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition under Section 482 Cr.P.C is directed against the order dated 23.11.2020, passed by the Principal District & Sessions Judge (North), Rohini Courts, Delhi in Criminal Revision No. 79/2020.
2. The facts, in brief, leading to the instant revision petition are as under:
 - a) The respondent herein filed a complaint against the dishonour of a cheque bearing No.017595 dated 01.12.2016 drawn on Oriental Bank of Commerce for Rs.3,50,000/-, given by the petitioners herein as refund of security amount. The said cheque was returned with endorsement "*Payment stopped by drawer*" vide return memo dated 10.01.2017. A legal notice dated 12.01.2017 was issued by the respondent and on failure of payment of the said amount, a complaint was filed by the respondent herein against the petitioners herein before the learned Trial Court on 28.02.2017.
 - b) The material on record shows that the complaint was listed for

hearing on 18.04.2017 before the learned Trial Court but there was no appearance on behalf of the complainant/respondent herein and the matter was adjourned to 07.07.2017. On 07.07.2017 again due to non appearance of the complainant/respondent herein the matter was adjourned for 11.01.2018. On 11.01.2018, the lawyers were abstaining from work and there was no appearance on behalf of the complainant/respondent herein and the matter was adjourned to 16.05.2018. On 16.05.2018, the complaint was dismissed for non-appearance of the complainant/respondent herein.

c) The respondent herein filed a revision petition on 18.09.2020, being Criminal Revision No.79/2020, under Section 397 Cr.P.C for setting aside the order dated 16.05.2018 and for restoration of the complaint. The said revision petition was accompanied by an application for condonation of delay. A perusal of the abovementioned revision petition shows that the reason given by the complainant/respondent herein for non-appearance was that due to his involvement in some cases regarding some property and financial transactions he was absconding fearing arrest. It is stated that the respondent herein was arrested on 11.02.2019 and he remained in judicial custody till 15.05.2020. It is stated that when he was released from custody on 15.05.2020, there was lockdown due to the outbreak of COVID-19 pandemic. It is stated that the respondent made enquiries regarding the proceedings in his complaint and when he came to know of the dismissal of the complaint for non-appearance he filed the abovementioned revision petition. It is further stated that non-appearance of the complainant/respondent herein in the

complaint case was neither deliberate nor intentional.

d) The learned Principal District & Sessions Judge *vide* order dated 23.11.2020 allowed the revision petition on payment of cost of Rs.5,000/- which was to be paid to the Delhi Legal Service Authority. The revision petition was allowed subject to the following conditions:

“a) That the revisionist will be allowed to conclude pre-summoning evidence on one date given by Ld. Trial Court and the revisionist will not seek unnecessary adjournments, but subject to production of receipt of the cost imposed herein above, before Ld. Trial Court.

b) That the revisionist will ensure that he will appear regularly before the Ld. MIV either in person or through his counsel.”

e) The learned Principal District & Sessions Judge held that the complaint was dismissed for non-appearance of the complainant at the pre-summoning stage and that no prejudice would be caused to the petitioners herein if the complaint is restored back. The learned Principal District & Sessions Judge placed reliance on a Division Bench judgment of this Court in **CRL.M.C. 1737/2011**, titled Hindustan Domestic Oil & Gas Company (Bombay) Limited & Ors. Vs. State & Anr., wherein the Division Bench held that in pre-summoning stage an order dismissing a complaint for non-prosecution or in default does not touch upon the factual or legal merits of the complaint and restoration of such petition, even without notice to the other side, does not cause any prejudice to the opposite side.

f) Against the order passed by the learned Principal District &

Sessions Judge in Criminal Revision No.79/2020 the petitioners have filed the instant petition.

3. Heard Mr. Ritesh Khatri, learned counsel for the petitioner and perused the material on record.

4. Mr. Ritesh Khatri, learned counsel for the petitioners states that there was a delay of more than 575 days in filing Criminal Revision No.79/2020. He states that admittedly the respondent herein was arrested on 11.02.2019 and was in custody till 15.05.2020, but the complaint case was dismissed for non-prosecution before the respondent herein was arrested on 11.02.2019. He states that there is no reason given by the respondent herein as to why he did not appear for the proceedings on 18.04.2017, 07.07.2017, 11.01.2018 and 16.05.2018. He states that the complaint was dismissed on 16.05.2018 and the respondent herein was arrested on 11.02.2019 but there is no reason given by the respondent herein as to why the petition under Section 397 Cr.P.C was not filed between 16.05.2018 and 11.02.2019. He further states the respondent herein was released from judicial custody on 15.05.2020 but there is no reason forthcoming as to why the petition under Section 397 Cr.P.C was filed only on 18.09.2020. He therefore contends that out of 575 days' delay there is no explanation forthcoming from the respondent herein for a delay of 485 days.

5. The impugned order has, in great detail, recorded the facts of the case. The impugned order relies on the Division Bench judgment of this Court in **CRL.M.C. 1737/2011**, titled Hindustan Domestic Oil & Gas Company (Bombay) Limited & Ors. Vs. State & Anr. The portion of the order of the Division Bench, which though has been quoted by the learned Principal District & Sessions Judge is being quoted again as it is binding on this

Court. The said Order reads as under:

*"21. The decision of Delhi High Court in J.K. International (supra) [(2002) DLT 795] is clearly distinguishable. In the said case, the complaint was dismissed in default and for non-prosecution as the complainant was not present and the process fee had not been paid. In said circumstances, it was held that Section 401 (2) would not be applicable and no notice was required to be issued. An order dismissing the complaint for non-prosecution or in default, which is made the subject matter of the revision, cannot be equated with "revision petitions" that are filed on substantive grounds or touch on the merits. Courts have recognized difference between orders of this nature which are procedural and substantive orders [See Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Ors., 1980 (Supp) SCC 420, which draws distinction between procedural and substantive review. Power of procedural review need not be specifically conferred but power of substantive review has to be conferred by the statute before it can be exercised by a judicial forum/court. Power of procedural review is inherent and, therefore, does not require any statutory provision or conferment. A reading of Section 401(2) illuminates that power of revision should not be exercised without notice when an order prejudicial to the accused or other person is being passed. **The order dismissing the complaint for default or non-prosecution does not touch upon the factual or legal merits of the complaint. The said order is a reflection on or about the conduct of the complainant in the proceedings before the court and the opinion formed by the court about the said conduct. Such orders if they do not reflect and take into consideration the merits of the case or the complaint will not require notice to the opposite side when examined in a revision petition. Such orders are not prejudicial to the other side as they do not reflect and take into consideration merits and demerits of the allegations. When a revision petition is filed against an***

order dismissing a complaint for non-prosecution or in default, and the same is allowed, it is not an order that causes prejudice to the opposite side, if there is no application of mind or reflection on merits whatsoever. The distinction and aspect has to be kept in mind."

(Emphasis supplied)

6. The petitioners herein have given a cheque to the respondent and that cheque has been dishonoured. Section 139 of the Negotiable Instruments Act (hereinafter referred to as ‘the NI Act’) casts a presumption in favour of the holder that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. Section 139 of the N.I. Act reads as under:

“ ***The Negotiable Instruments Act, 1881***

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

7. The purpose of introducing Section 138 of the N.I. Act was to bring sanctity in commercial transactions. The negotiable instruments like cheques started losing their creditability in not being honoured on presentment. The legislature found that an action in civil court for collection of the negotiable proceeds like a cheque was defeating the very purpose of recognizing the negotiable instruments as speedy vehicle of commerce. The objects and reasons for inserting Chapter XVII in the Negotiable Instruments Act was to enhance the acceptability of cheques in settlement of liabilities by making a drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reasons that it exceeds the

arrangements made by the drawer with adequate safeguards to prevent the harassment of honest drawers. It is now well settled that even if the cheque gets dishonoured with endorsement “*Payment stopped by drawer*” and there were insufficient funds on the date when the cheque was presented it amounts to an offence under Section 138 of the N.I. Act.

8. When no prejudice has been caused to the petitioners herein by restoring the complaint to its original number it does not lie in the mouth of the petitioners to raise objections/pleadings that there was a delay on behalf of the complainant in filing a petition under Section 397 Cr.P.C for restoration of complaint which has been dismissed on non-appearance of the complainant at a pre-evidence stage. The present petition is completely bereft of bonafides and merits. It is apparent that the petitioners do not want to contest the case on merits. It was open to the petitioners to state and demonstrate, by providing the bank account details, that there were sufficient funds in the account when the cheque was presented to the complainant and no offence under Section 138 of the N.I. Act was made out. Obviously this is not the case and the petitioners are trying to get the complaint thrown out on technicalities.

9. The complaint is maintainable in law. The petitioners herein had yet not been summoned and as held by the Division Bench, no prejudice will be caused to the petitioners herein if the complaint is restored. The complaint is yet to be heard on merits. Normally no complainant would benefit by permitting his complaint to be dismissed in default. It is not denied by the counsel for the petitioners that the respondent was arrested on 11.02.2019 and was released only on 15.05.2020. It has been stated very candidly in the revision petition that the respondent was apprehending arrest and was

absconding. This has been found to be a good reason by the learned Principal District & Sessions Judge to condone the delay of 575 days. When the respondent was released from jail on 15.05.2020, there was a lockdown and the revision petition was filed in September, 2020. The order of the learned Principal District & Sessions Judge cannot be said to be so perverse that this Court, while exercising its jurisdiction under Section 482 Cr.P.C, should substitute its own conclusion to the one arrived at by the learned Principal District & Sessions Judge. Costs have been imposed on the respondent herein and the learned Principal District & Sessions Judge has directed the respondent to conclude the pre-summoning on one date given by the learned Trial Court and the respondent herein has been prohibited from taking unnecessary adjournments. In view of the directions passed by the learned Principal District & Sessions Judge, this Court is not inclined to interfere with the order.

10. Accordingly, the petition is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J

JUNE 14, 2021

Rahul