

21.06.2022

CRR 721 of 2021

Anil Kumar Agarwal @ Keshav Agarwal

-Vs-

The State of West Bengal & Anr.

For the Opposite Party: Mr. Pawan Kumar Gupta,
Mr. Kaushik Chowdhury,
Ms. Sofia Nesar,
Mr. Santanu Sett,
Mr. Ishan Bhattacharjee.

For the State: Mr. Imran Ali,
Ms. Debjani Sahu.

1. None appears on behalf of the petitioner.
2. Mr. Pawan Kumar Gupta learned Advocate represents the opposite party No.2
3. In the instant criminal revision, the petitioner has prayed for setting aside of order dated 11th December, 2019 passed in C Case No.5319 of 2019 under Section 138/142(b) of the Negotiable Instrument Act and all order in connection therewith pending before the learned Judicial Magistrate, 1st Court at Alipore.
4. It is contended by the petitioner that section 142(b) of the Negotiable Instrument Act states that no court shall take cognizance unless the complaint is made within one month of the date on which the cause of action arise. The said provision is appended with a proviso which came into effect on and from 6th February, 2003 which provides that the court may take cognizance even after expiry of the

statutory period of one month in the event the trial court is satisfied that the complainant was prevented by sufficient cause in filing the petition of complaint within the specified statutory period of time. In that C Case No.5319 of 2019 the complainant filed an application for condonation of delay along with the petition of complaint. It is pleaded in the said petition that the complainant could not file the complaint because of his illness during the period between 18th June, 2019 and 13th October, 2019. The petition of complaint was filed on 4th November, 2019. In support of his case, the complainant filed a copy of medical prescription along with the said application for condonation of delay. It is also contended by the petitioner that the complainant/opposite party No.2 did not specify any ground as to why the petition of complaint was filed on 4th November, 2019 in spite of the fact that she recovered from illness on 13th October, 2019.

5. It is further contended by the petitioner that on 4th November, 2019 the learned Chief Judicial Magistrate at Alipore took cognizance on the basis of the petition of complaint under Section 138 of the Negotiable Instrument Act and fixed another date for hearing of the application under Section 142(b) of the said Act.

6. The petitioner further alleged subsequently that the order sheet was tampered by inserting the word (not) before cognizance. The learned Magistrate heard the application for condonation of delay on 4th November,

2019 and delay of 143 days in filing the petition of complaint under Section 138 of the Negotiable Instrument Act was condoned. It is alleged by the petitioner that delay was condoned without considering the fact that the complainant failed to establish sufficient cause for his delay in filing the petition of complaint under Section 138 of the said Act. The learned Magistrate have no occasion to record the factum of taking cognizance or not taking cognizance before considering the application under Section 142(b) of the Negotiable Instrument Act. The impugned order is an instance where judicial sanctity was compromised. Therefore, the petitioner has prayed for setting aside of the order dated 11th December, 2019.

7. It is submitted by Mr. Pawan Kumar Gupta, learned Advocate for the opposite party No.2 that the instant revision is filed only to drag the proceeding under Section 138 of the NI Act. The complainant/opposite party No.2 filed the petition of complaint under Section 138 of the NI Act along with the petition under Section 142(b) of the said Act for condonation of delay in filing the petition of complaint. From the order sheet it appears that the complaint was filed on 4th November, 2019. The learned Magistrate fixed 11th December, 2019 for hearing of the petition under Section 142(b) of the NI Act. It appears from the order dated 11th December, 2019 passed by the learned Chief Judicial Magistrate at Alipore that notice of hearing of the said petition under Section 142(b) of the NI

Act was sent to the opposite party and the said notice was served as per the postal service report. The petitioner has not challenged service of notice of hearing of the application under Section 142(b) of the said Act in the instant revision. The learned Trial Judge has passed a reasoned order and condoned the delay of 143 days in filing the petition of complaint under Section 138 of the NI Act. Therefore, delay was condoned and the petition of complaint was admitted and cognizance was taken by the learned Chief Judicial Magistrate, Alipore.

8. I have carefully perused the entire record and the impugned order. I do not find any illegality or material irregularity in the order impugned.

9. Accordingly, the instant criminal revision being devoid of any merit be dismissed.

(Bibek Chaudhuri, J.)