

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1506 of 2020

Sadhan Mondol

Vs

Arup Biswas & Anr.

For the Petitioner : Mr. Dipankar Aditya,
Mr. Bidyut Baran Biswas,
Mr. Ranjit Rath,
Mr. Alope Chakraborty.

For the Opposite Party : None.

Heard on : 19.12.2022

Judgment on : 10.01.2023

Shampa Dutt (Paul), J.:

The revision is against an order dated 07.03.2020 passed by Learned Judicial Magistrate, at Tehatta, Nadia, rejecting the prayer of the petitioner under Section 138 read with Section 142 of the Negotiable Instruments Act as not maintainable in connection with Complaint Case No. 160 of 2019 though the Learned Additional Chief Judicial Magistrate, Tehatta, Nadia by an order dated 04.09.2019 took cognizance on the petition of complaint under Section 138 and read with Section 142 of the N.I. Act, 1881 (TR – 1203/19) and transferred the same to the Learned Judicial Magistrate, Tehatta, Nadia for trial;

The complainant/petitioner's case in short is that in discharge of liabilities in respect of a loan to the tune of Rs. 5,00,000/- (Rupees Five Lacs) only for the treatment of the accused/opposite party no. 1's wife in April, 2019, the accused person i.e. Arup Biswas issued two cheques being No. 644517 dated 06.05.2019 for Rs. 2,40,000/- (Rupees Two Lacs Forty Thousand) and another cheque No. 64418 dated 11.05.2019 for Rs. 2,60,000/- (Rupees Two Lacs Sixty Thousand) drawn on United Bank of India, Tehatta Branch, Nadia.

The complainant deposited the said two cheques with his Bank United Bank of India, Tehatta Branch, Nadia on 24.05.2019, within its validity period for encashment. The said two cheques were dishonoured

and was returned with return Memo on 27.05.2019 with revealed "Funds insufficient".

The complainant thereafter through his lawyer sent a notice of demand dated 14.06.2019 through Registered Post with acknowledgement duly received by the accused person demanding the said cheque amount of Rs 2,40,000/- (Rupees Two Lacs Forty Thousand) and Rs.2,60,000/- (Rupees Two Lacs Sixty Thousands) from him within 15 days from the receipt of the lawyer's notice.

The accused person despite receipt of the notice of demand did not make any payment of the dishonored cheque amounts.

The complainant was bed ridden due to heavy fever and dysentery and was nearly hospitalized as such there is a delay of about 61 days of filing the instant application. The same is condonable and the petition of complaint is to be proceeded for trial.

The said complaint was filed before the Learned Additional Chief Judicial Magistrate, Tehatta, Nadia which was numbered as Complaint Case No. 160 of 2019 under Section 138 read with Section 142 of the Negotiable Instruments Act.

The matter was taken up for hearing by the Learned Additional Chief Judicial Magistrate and on 04.09.2019 the Learned Magistrate

took cognizance and transferred it to the Learned Judicial Magistrate, Tehatta, Nadia for trial.

The Learned Judicial Magistrate on 07.03.2020 was pleased to take up the petition and observed that on 04.09.2019 the petition was inadvertently transferred by the filing court. The Learned Magistrate also observed that the word cognizance simply denotes the 'admission' of the case and nothing else. The Learned Magistrate observed that she also did find a single sentence or paragraph in the petition in respect of prayer for condonation of delay by the complainant.

The learned Magistrate observed that no reasonable explanation was given as to the delay and there is no petition or prayer.

The petitioner submits that the petition of complaint itself speaks of the delay and there was a prayer for condonation of delay.

The petitioner submits that the primary object of the Negotiable Instruments Act is to give relief to the person who has given the money to the borrower if he fails to repay back the amount.

Ample power has been given by the legislature by inserting the provisions of Section 142 of the N.I. Act to protect the person who has given money from technicalities.

The petitioner states and submits that the delay in filing of the petition have been properly explained supported by medical papers.

Mr. Dipankar Aditya, Learned Counsel for the petitioner

submits that the Learned Magistrate erred in law and in facts of the case.

The Learned Magistrate should have considered the fact that taking of cognizance by the Learned Magistrate implies that the limitation was condoned and the Learned Magistrate after prima facie finding materials in the said complaint was pleased to delegate the power to the Judicial Magistrate to commence trial of the case.

The Learned Magistrate should have considered the fact that after completion of Section 204 of the Code of Criminal Procedure there is no provision for reverting back and question the taking of cognizance and dismissing the same.

The Learned Magistrate erred in law in not considering the fact that N.I. Act is a special act to provide express relief to the deprived and a complete act by itself.

The Learned Magistrate should have considered the fact that proper explanation was given in the petition of complaint supported by medical papers which was overlooked by the Learned Magistrate.

The Learned Magistrate failed to consider and appreciate the petition of complaint in its proper perspective and with erroneous

conception both facts and law passed the impugned order thereby causing serious miscarriage of justice to the petitioner.

That to prevent the abuse of process of law the impugned order is liable to be set aside.

That the order passed by the Learned Magistrate is bad in law and should be set aside and/or quashed.

Inspite of proper service the opposite party No. 1 has not contested this case by his non appearance.

The relevant portions of the order dated 07.03.2020 of the Magistrate is as follows:

“.....I also found that not a single sentence or paragraph is there in the petition in respect of prayer for condonation of delay by the complainant. It is definitely not a proper way to place a petition before the court.

In the present case, there was no promise or assurance on the part of the Ld. Advocate on behalf of the accused person by admitting his claim or when he will pay it, complainant has made a delay of more than one month and there is no reasonable explanation as to the delay. There is no petition or prayer even in that respect.....”

The total order of the Magistrate is confusing without any clear findings. What little could be understood from the said order is that:-

- (a) There was no proper explanation of delay.
- (b) There seems to be no separate petition for condonation of delay under Section 142(b) of the N.I. Act.
- (c) As per the order of the Magistrate, there is delay of more than one month.
- (d) The Petitioner has stated that there is a delay of 61 days.

The Final portion of the Magistrate's order dated 07.03.2020 is "That the complaint case under Section 138 N.I. Act is rejected as not maintainable in law U/s 142 of N.I. Act".

The Supreme Court in **Pawan Kumar Ralli vs. Maninder Singh Narula, Criminal Appeal no. 1684 of 2014, on 11 August, 2014**, held

:-

"16. Section 142 of the Act also puts a limitation on the power of the Court to take cognizance of the offences, which reads as under:

142. Cognizance of offences— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing,

made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138.

20. *However, when the issue of limitation has come up for the first time before the High Court, it ought to have dealt with the same on merits as per proviso to Section 142(b) of the Act. The said proviso appended to clause (b) of Section 142 of the Act was inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the legislative intent was, no doubt, in order to overcome the technicality of limitation period. The Statement of Objects and Reasons appended to the Amendment Bill, 2002 suggests that the introduction of this proviso was to provide discretion to the Court to take cognizance of offence even after expiry of the period of limitation [See MSR Leathers Vs. S. Palaniappan (2013) 1 SCC 177]. Only with a view to obviate the difficulties on the part of the Complainant, Parliament inserted the proviso to clause (b) of Section 142 of the Act in the year 2002. It confers a jurisdiction upon the Court to condone the delay [See Subodh S. Salaskar Vs. Jayprakash M. Shah (2008) 13 SCC 689].*

23. *In view of the settled principles of law in Rakesh Kumar Jain, MSR Leathers. Subodh S. Salaskar (supra) and in the peculiar facts and circumstances of the case, we are of the considered opinion that the High Court was not right in quashing the complaint merely on the ground that complaint is barred by limitation, that too a plea which was taken for the first time before the High Court. On the other hand, the High Court ought to have remanded the matter to the Trial Court for deciding the issue of limitation.*

24. *At the same time, we want to make it very clear that by this observation we are not laying down a legal proposition that without even filing an application seeking condonation of delay at an initial stage, complainant can be given opportunity at any stage of the proceeding. As already discussed by us in the foregoing paragraphs, we have come to the irresistible conclusion, to afford an opportunity for the complainant to move an application seeking condonation of delay, under the peculiar facts and circumstances of the case.*

25. *For all the aforesaid reasons, in order to meet the ends of justice, we exercise our discretion under Article 142 of the Constitution and set aside the impugned judgment of the High Court quashing the criminal proceedings and restore the criminal proceedings before the Trial Court. The appellant is permitted to file an application for condonation of delay before the Trial Court and if such an application is filed, the Trial Court shall be at liberty to consider the same on its own merits, without being impressed upon by any of the observations by this Court, and pass appropriate orders.”*

Keeping with the said guidelines, the order dated 07.03.2020 passed by Learned Judicial Magistrate, at Tehatta, Nadia, in Complaint Case No. 160 of 2019 is set aside/quashed. The Criminal Proceedings in **complaint Case 160 of 2019** in the court of Judicial Magistrate, Tehatta, Nadia, **is hereby restored.**

The petitioner is permitted to file an application for condonation of delay before the trial court and if such an application is filed, the Trial Court shall be at liberty to consider the same on its own merits, without being influenced by any of the observations by this Court, and pass appropriate orders as expeditiously as possible.

The Magistrate will refer to the guidelines of the Supreme Court in **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors, Civil Appeal no. 7696 of 2021, on 16 December, 2021, while considering the delay of a short duration in this case.**

Criminal revision **CRR 1506 of 2020 is accordingly disposed of.**

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)