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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20049-2016 (O&M)
Date of Decision: 18.07.2023

Anil

....Petitioner(s)

Versus

Umrao

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Lamba, Advocate, for the petitioner.

Mr. Manish Soni, Advocate, for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 18.05.2016 (Annexure P-4) passed by learned Additional Sessions Judge, Gurgaon and also the order dated 10.11.2012 (Annexure P-2) passed by learned Judicial Magistrate First Class, Gurgaon.

2. Learned counsel for the petitioner has submitted that it is a case where the respondent-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Magistrate which was after a delay of 16 days and alongwith the complaint an application under Section 142 (b) of the Negotiable Instruments Act, 1881 (wrongly mentioned as Section 5 of the Limitation Act) was also filed for the purpose of condonation of delay on the ground of sufficient cause being shown and

learned Magistrate has condoned the delay vide order dated 10.11.2012 without even issuance of notice to the petitioner who was the accused. He submitted that in this way the principles of natural justice have been violated and the Magistrate could not have condoned the delay without issuance of notice to the petitioner. He submitted that thereafter the petitioner had preferred a revision petition before the learned Additional Sessions Judge, Gurugram which was dismissed on 18.05.2016 but it was also observed in para No.14 that the accused/petitioner can still argue on the point of limitation besides arguing the petition under Section 138 of the Negotiable Instruments Act, 1881 on merits and the trial Court would also give a separate finding on the point of limitation by giving a proper hearing to the accused/revisionst. He submitted that no specific direction has been issued to the learned Magistrate in this regard and therefore, a proper direction was required.

3. On the other hand, learned counsel appearing on behalf of the respondent submitted that once the learned Revisional Court has already observed that a separate finding is to be given with regard to the point of limitation, then the requisite relief which is sought by the petitioner has already been given by the learned Revisional Court and therefore, the present petition is not maintainable. He further submitted that even otherwise also the trial has already been completed and statement under Section 313 Cr.P.C has already been recorded and the petitioner had filed a revision petition after a period of one year from the date of the passing of the order by the learned Magistrate.

4. At this stage at the time of addressing of arguments, both the learned counsel for the parties have categorically submitted that they will be satisfied in case a specific direction is issued to the Magistrate to pass an order

on the aspect of limitation after hearing both the parties since the issue of limitation is a mixed issue of law and fact and after passing an order on limitation, the complaint under Section 138 of the Negotiable Instruments Act, 1881 be decided on merits.

5. In view of the aforesaid position, this Court is of the view that in view of the statement made by the learned counsel for the parties, the present petition is disposed of with a direction to the learned Judicial Magistrate First Class, Gurgaon to first consider the point of limitation which is a mixed question of fact and law and to decide the same strictly in accordance with law after hearing both the parties and thereafter to decide the complaint on merits strictly in accordance with law.

18.07.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No