



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 15.05.2023

Pronounced on : 16.08.2023

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+ CRL.M.C. 2301/2023

PIYUSH KUMAR PAPPU

..... Petitioner

Through: Mr. Lakshay Dhamija and Mr.
Sahil Dutta, Advocates.

versus

MUKESH KUMAR BHARTI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

CRL.M.A. 8684/2023 & CRL.M.A. 8685/2023 (exemption)

Exemptions allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 2301/2023 & CRL.M.A. 8683/2023 (stay)

1. The present petition has been filed under Section 482 Cr.P.C. by the petitioner with the following prayers:

"a) Quash and Set aside the Impugned Order dated 20.03.2023 passed by Ld. Principal District & Sessions Court, New Delhi District, Patiala House Courts, New Delhi in Criminal Revision no. 144 of 2023 titled "Piyush Kumar Pappu Vs. Mukesh Kumar Bharti", and b) Quash and Set aside summoning order dated 19.07.2022 passed by the Ld.



Metropolitan Magistrate, NI Digital Court-02, New Delhi District, Patiala House Court, New Delhi passed in the CC NI Act no. 2461/2022 titled as "Mukesh Kumar Bharti Vs. Piyush Kumar Pappu", and consequently dismiss the complaint bearing CC NI Act no. 2461/2022 titled as "Mukesh Kumar Bharti Vs. Piyush Kumar Pappu", and/or

c) Pass such further direction(s) and other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. It is submitted by the learned Counsel for the petitioner that learned Sessions Court erred in recognising that the learned MM committed gross illegality in taking the cognizance of the offence under Section 138 of the Negotiable Instruments Act and in summoning the petitioner on the basis of the said complaint filed by the respondent relying upon the cheque in question. He further submitted that the learned Sessions Court failed to consider that the learned MM ignored the contents of the said complaint and documents placed on record with the said complaint filed by the respondent under Section 138 N.I. Act and further have exceeded his jurisdiction by wrongly relying upon the allegations in the complaint, documents annexed and issued summons to the petitioner herein. He further submitted that the learned Sessions Court erred in passing the impugned order dated 20.03.2023 by observing that the revision petition is barred by limitation despite there being no delay. He further submitted that the learned Sessions Court overlooked and ignored the contents of the delay application filed by the petitioner along with the revision petition which clearly stated that the said application is filed only by way of abundant precaution even though there was no delay in



filing the revision petition. He further submitted that the learned Sessions Court ignored the order dated 10.02.2023 passed by learned MM which specifically states that the copy of the complaint along with its documents was provided to the complainant on 10.02.2023 itself and the summoning order dated 19.07.2022 could not have been challenged without the Petitioner knowing the contents/allegations levelled against the Petitioner in the said complaint.

3. Learned counsel for the petitioner also submitted that the Ld. Sessions Court erred to consider that the Ld. MM in issuing summoning order dated 19.07.2022 against the Petitioner/ Accused has wrongly presumed that the cheque issued is in discharge of liability towards the friendly loan of Rs. 38,76,000/- given in cash by the respondent/complainant to the petitioner/accused and there is no evidence placed on record to support the same to make it legally enforceable.

4. Learned counsel for the petitioner has also relied on some judgements to support his case, namely, judgment passed by the Hon'ble Apex Court in "**Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel**" reported in **AIR 2022 SC 4961** wherein it was held that for the commission of an offence under Section 138, the cheque that is dishonoured must pass the muster of legally enforceable debt on the date of maturity or presentation. The Hon'ble Apex Court also held that the conditions stipulated in the provisos to Section 138 NI Act need to be fulfilled in addition to the ingredients in the substantive part of Section 138 NI Act. He has also relied on the



settled law laid down on summoning by Hon'ble Supreme Court of India in **Pepsi Foods Ltd. vs. Special Judicial Magistrate** reported in (1998) 5 SCC 749 which held as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

5. In the instant case, for proper adjudication, it is necessary to look into to the orders dated 19.07.2022 and 20.03.2023

6. The relevant portion of order dated 19.07.2022 passed by the Ld. MM reads as follows:

*"Let the accused be summoned on filing of PF and the Meta Data form within 7 days through RC-AD, Speed Post/approved Courier Services returnable on 02.12.2022. Endorsement be made to the effect that offence punishable under section 138 of the Negotiable Instruments Act, 1881 is compoundable by virtue of section 147 thereof, and should the Accused disburse/deposit the cheque amount on or before the next date of hearing, the complaint may be compounded in terms of ratio of judgment in the case of **Damodar S. Prabhu Vs. Sayed Babalal H. (2010) 5 sec 663.**"*

7. Further, the relevant portions of the order dated 20.03.2023 passed by the Ld. Principal Judge reads as follows:-



“ First thing first, the present revision petition is barred by limitation. If the version of the petitioner is believed, he came to know about the passing of the summoning order on 27.12.2022, and was supplied with the copy of the complaint and documents on 10.02.2023 and admittedly, there is a delay of 34 days in filing the present revision petition and the application for condonation of delay supported by an affidavit of the petitioner is bereft of any sufficient cause and not explaining the inordinate delay in filing the revision petition.

*I am afraid the pleas raised by the Ld. Counsel for the petitioner cannot be appreciated at this stage of the case. The issues that have been raised by the petitioner could only be decided after leading of evidence. No reliance can be placed on the decision in **Krishna Najardhan Bhat v Dattatraya G. Hedge** MANU/SC/0503/2008 since it was a case where it was held that it was not necessary for the accused to step up in the witness box in proceedings under Section 138 of the Negotiable Instrument Act in order to discharge the onus upon him to rebut the presumption under Section 138 of NI Act, which could otherwise be discharged from the material and evidence brought on record by the complainant by way of preponderance of probabilities.*

*Further, reliance upon decisions in **Sanjay Mishra v Kanishka Kapoor and Ors** MANU/MH/1078/2009 as well as **Monica Sunit Ujjain v Sanchu M. Menor & Ors** in Crl. Rev. Application No. 395/2015 decided on 02.08.2022, are misplaced as the said decisions were made after a full fledged trial. In other words, the plea by the petitioner that the complainant had never advanced any friendly loan and that he did not have the financial capacity to lend such huge amount of loan and/or that advancing of friendly loan is not accounted in the business of accounts and income tax returns, are such defences which could only be established during the course of trial.*

In view of the foregoing discussion, the present revision petition is dismissed without prejudice."

8. The learned Principal District and Sessions Judge, New Delhi District, Patiala House Courts vide impugned order 20.03.2023 has primarily dismissed the revision petition filed by the petitioner on two grounds. Firstly, that there is a delay of 34 days in filing the revision petition and the application for condonation of delay filed by the petitioner was bereft of any sufficient cause.



9. As far as the question of limitation is concerned, it is settled law that rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. In *Apangshu Mohan Lodh & Ors. Vs. State of Tripura & Ors.*, AIR 2004 SC 267, the Apex Court held that the power of condonation of delay is discretionary and is to be liberally construed.

10. No doubt, delay is fatal to the case of any party but as far as possible the matter should be heard and decided on merits. In the instant case, there is a delay of 34 days, which in my opinion should be condoned in order to decide the present case on merits.

11. Reliance can be placed upon the judgment in *Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors.*, AIR 1987 SC 1353, wherein the Hon'ble Supreme Court observed as follows:-

"In fact experience shows that on account an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provisions in the course of interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

12. Secondly, it has been held by the learned Sessions Court that the defences raised by the petitioner that the respondent had never advanced any friendly loan and he did not have any financial capacity to lend any such huge amount of loan and that advancing of friendly loan is not accounted in the business of account and income tax



returns are such defences which can only be decided once the parties lead their respective evidence before the trial court.

13. In the instant case, the issuance of cheque is not denied by the petitioner and there is a presumption under Section 138 of the NI Act that the Court shall presume that the holder of a cheque received the cheque of the nature referred into Section 138 of the NI Act, for the discharge, in whole or in part or any debt or other liability.

14. So all the defences raised by the petitioner herein needs evidence, therefore, I find no infirmity in the impugned order dated 20.03.2023 holding that the matter requires evidence and the petitioner would be entitled to raise all the defences during the course of trial.

15. As far as the question of limitation is concerned, that part of the impugned order is set aside and delay in filing the revision petition is condoned. With these observations, the present petition is dismissed.

16. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

AUGUST 16, 2023/ib