

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2921-2024

Date Reserved : 28.02.2024

Date of Pronouncement : 05.03.2024

Rachpal Singh

...Petitioner

VERSUS

Sarabjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Ashish Aggarwal, Advocate, for the petitioner.

Mr. Sidhant Vermani, Advocate, for the respondent.

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of the criminal complaint titled as "Sarabjit Singh Versus Rachpal Singh" bearing Case No. NACT-192-2020 pending before the court of Learned Judicial Magistrate First Class, Amritsar and all the subsequent proceedings arising therefrom including the order dated 17.02.2020 vide which delay in filing the complaint has been condoned as well as order dated 19.07.2021 whereby petitioner has been summoned to face the trial under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred as 'NI Act').
2. Briefly stated, facts of the case are that a complaint was filed by the respondent before learned JMFC, Amritsar under NI Act

by making allegations that petitioner entered into an agreement to sell dated 12.03.2019 with the respondent for 10 Kanals of land situated at Village Gumanpura, District Amritsar for consideration of Rs.30 Lacs per acre. It was specified in the agreement to sell that Rs.35 lacs has already been given by the respondent/complainant to the petitioner as earnest money and target date for registration of title deed would be 10.08.2019. But subsequently, petitioner refused to honor the terms and conditions of the agreement to sell and refused to execute the title deed and agreed to return the amount of Rs.35 Lakhs which he received as earnest money and an agreement dated 03.08.2019 was also reduced into writing to this effect. Petitioner, in pursuance to this written agreement and in order to partly discharge his liability issued two (02) cheques bearing No.279705 dated 05.11.2019 for an amount of Rs.9,00,000/- & No.279706 dated 07.11.2019 for an amount of Rs 9,00,000/- in favour of respondent.

2.1 Upon presentation of the aforesaid cheques the same were dishonored for want of sufficient funds vide memos dated 05.11.2019 and 07.11.2019 in pursuance of which a legal notice dated 22.11.2019 was served upon the petitioner seeking payment. After receiving the aforesaid notice, petitioner approached the respondent and requested him not to file the present complaint and promised to honour his commitment by 08.01.2020 and accordingly another agreement dated 05.12.2019 came into existence between the parties regarding the same & because of this the respondent

waited for the repayment and did not file the complaint. It was further alleged that even this agreement was not honoured and on 10.01.2020, when the respondent contacted the petitioner, he refused to return the money. It is further explained that 11.01.2020, 12.01.2020 & 13.01.2020 were declared official holidays in District Courts at Amritsar and on 14.01.2020 instructions were given by the respondent to file the present complaint.

2.3 It was further averred in the complaint that in this process, delay of about 6 days occurred and accordingly an application for condonation of delay was also filed. Vide impugned order dated 17.02.2020, delay in filing the complaint was condoned and vide order dated 19.07.2021, petitioner was summoned to face trial under Section 138 of the NI Act.

2.4 By way of present petition prayer has been made for quashing of the complaint as well as the orders dated 17.02.2020 and 19.07.2021. However during arguments, submissions have been restricted only to the extent of impugning the orders dated 17.02.2020 and 19.07.2021 and no submissions have been made for quashing of the complaint.

3. Learned counsel for the petitioner contended that no opportunity was granted to the petitioner to contest/object to the pleading of the complainant by the Learned Trial Court while allowing the application filed by the respondent for condoning the delay vide

impugned order dated 17.02.2020. Relying upon the judgments passed by the Hon'ble Apex Court in "**P.K. Choudhury v. Commander**", reported as 2008(2) RCR (Criminal) 482 and "**K.S. Joseph Versus Philips Carbon Black Ltd. and another**", reported as 2016 (2) RCR Criminal 788, he contended that for condoning delay in complaint filing beyond the period of limitation, natural justice warrants notice to the accused so as to grant him an opportunity to show that the delay should not be condoned. He further submitted that these judgments have been followed by many High Courts as well as by this Court in many cases and in support of the same; he relied upon the following judgments:-

- i. "**K.C.M.Kumar v. Ch.Bujji**", reported as 2023(1) NIJ 767 2049556
- ii. "**Jeyaprakash v. Arjunan**", reported as 2018(3) MadWN (Cri) 165
- iii. "**Vishal Gupta v. Amrik Singh**", in case bearing No CRM-M-8115-2018 decided on 18.01.2019
- iv. "**Brij Mohan Batra v. Ludhiana Beverages Pvt. Ltd**", reported as 2014(7) R.C.R.(Criminal) 2345

4. On the other hand, learned Counsel for respondent submitted that In view of amended section 142 of NI Act, Id. Trial Court can condone such delay in filing of the complaint if genuine and bona fide reasons are shown to the court. Relying upon the judgment of the Hon'ble Apex Court in "**Birendra Prasad Sah vs State of Bihar**", reported as 2019 AIR (SC) 2496, he submitted that

Id. magistrate is entitled to condone the delay if sufficient cause is shown and there is no requirement for giving any notice to the accused. He further submitted that the order for condoning the delay is dated 17.02.2020 & summoning order is dated 19.07.2021, while the present petition has been filed after almost after two and half years and no explanation has been provided by the petitioner as to why he waited so long to file the present petition. In support of his submissions, he has also placed reliance upon the following judgments:-

- i. **"Pawan Kumar Ralli v. Maninder Singh Narula"**, reported as 2014(15) SCC 245
- ii. **"P.D. Lakhani v. United Bank of India"**, reported as 2020(3) R.C.R.(Criminal) 291
- iii. **"Park Polymers v. Subir Dass"**, reported as 2023(2) R.C.R.(Criminal) 670
- iv. **"R. Kanthimathi v. Bank of India"**, reported as 2007(4) R.C.R.(Criminal) 191

5. I have heard learned counsel for the parties and gone through the paper book and I find substance in the submissions made on behalf of the petitioner.

6. In **P. K. Choudharury** (Supra) and **K.S.Joseph** (supra), it was held by the Hon'ble Apex Court that accused was entitled to get an opportunity of being heard before the delay could be condoned and if Id. trial Court did not issue any notice upon the accused to show cause as to why the delay shall not be condoned, such order is

liable to be set aside and matter should be referred back to the learned magistrate for fresh consideration after giving an opportunity of hearing to the accused.

7. Since the proviso to Section 142(b) is substantive and not procedural, therefore, natural justice warrants that requirement of notice and reasonable opportunity of hearing to be given to the accused would be mandatory. As specifically relied upon by the learned Counsel for the petitioner as well, observation by the Telangana High Court in **K.C.M.Kumar's** case (supra) are apt in the present context and reproduced here under:

“10. So, to avail the benefit of proviso to Section 142(b), the complainant is mandated to file an application for condonation of delay explaining sufficient and satisfactory reasons for such delay, since the said proviso appended therein is substantive and not procedural. On receipt of such delay condonation application, the learned Magistrate has to issue notice by enclosing a copy of the complaint and dispose of the same after giving the accused reasonable opportunity of hearing and the learned Magistrate would pass appropriate orders on merits on the application seeking condonation of delay at his discretion and without passing through this stage, cognizance shall not be taken.”

8. Further, as depicted by the learned Counsel for the petitioner, these judgments have been followed by coordinate

benches of this court in **Vishal Gupta's** case (supra) and **Brij Mohan Batra's** case (supra) as well.

9. Ratio of **Birendra Prasad Sah's** case (supra) as well as other cases relied upon by the learned Counsel for the respondent is that in view of proviso of Section 142(1), learned magistrate is entitled to condone the delay if sufficient cause is shown. Even this Court is also in complete agreement with this legal position, but the primary contention of the petitioner regarding no notice being given to the petitioner/accused was neither raised in those cases, nor the judgments relied upon by the learned Counsel for the petitioner were discussed therein. Accordingly, most of these judgments are not applicable to the fact and circumstances of the present case.

10. Though in **P.D.Lakhani's** case (supra), in almost similar circumstances, it was observed by a Coordinate Bench of this Court that if delay is not inordinate, it should be condoned by the trial Court. However, the abovementioned observation was made in the factual scenario when impugned order was challenged approximately after 4 years and in view of delay and laches, this Court was not inclined to interfere with the order passed by the trial Court.

11. Further the contention of learned counsel for the respondent that even in the present case, the impugned orders were passed way back on 17.02.2020 & 19.07.2021, while challenge has been made in year 2024 only and there is significant

delay without any explanation. On the other hand, after taking through this Court through the orders passed by the trial court, Ld. Counsel for the petitioner submitted that the petitioner was not aware about the proceeding before the trial Court and he was even declared proclaimed person in the present case. He further submitted that he came to know about the pending proceeding only in May 2023 and after that he surrendered himself before the trial Court and took steps to challenge the impugned orders before this court and in that case there is no delay as such. From the perusal of zimni orders passed by the learned trial Court, It is evident that earlier there was no participation by the petitioner in the proceedings before the trial court and the petitioner was also declared proclaimed person and he surrendered before the trial court on 02.05.2023 only and in that case it cannot be stated that there has been excessive delay in the present case. Accordingly, observations made in **P.D.Lakhani's** case (supra) also cannot be made applicable in the present case.

12. In view of the discussion made hereinabove, present petition is partly allowed and order dated 17.02.2020, vide which delay in filing the complaint has been condoned, and order dated 19.07.2021 vide which petitioner has been summoned to face trial, are set aside. Matter is referred back to the learned magistrate for fresh consideration after issuing notice to the petitioner / accused, giving him an effective opportunity of hearing before passing order on

the application for condonation of delay.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

05.03.2024
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No