

CRM-M-48970-2023 [1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48970-2023
Reserved on 07.05.2024
Date of decision: 31.05.2024

Sovika Aviation Services Private Limited and others ...Petitioner

Versus

State of Haryana and Another ..Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Puneet Bali, Sr. Advocate with
Mr. Vaibhav Jain, Advocate,
Mr. Faizal Sheikh, Advocate,
Mr. Shivam Sharma, Advocate for the petitioners.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. R.S. Rai, Sr. Advocate with
Mr. Amitabh Tewari, Advocate,
Mr. Farhad Kohli, Advocate,
Ms. Dilmrig Nayani, Advocate,
Ms. Prachi Gupta, Advocate and
Mr. Aayush Marwaha, Advocate for respondent No.2.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by petitioners/accused persons seeking quashing of the order dated 17.01.2023 (Annexure P-2) passed by the Court of Judicial Magistrate Ist Class, Gurugram whereby the application filed by respondent No.2/complainant seeking condonation of delay in filing of criminal complaint No.38701-2022 titled as TATA SIA Airlines Limited Vs. M/s Sovika Aviation Services Private Limited and others filed under Section 138 of Negotiable Instruments Act (in short NI Act) has been allowed.



2. The brief facts of the case as are given in the aforesaid complaint are that respondent No.2/complainant and Sovika Aviation Services Private Limited entered into a cargo agreement dated 01.01.2015. To ensure continuance, the complainant in good faith entered into three addendums to the cargo agreement with Sovika Aviation Services Private Limited. The term of the agreement was for a period of 60 months from the date of commencement of the agreements till 31.12.2019. Even after entering into multiple addendums Sovika Aviation Services Private Limited continued to default and breach its obligation and finally respondent No.2 terminated the agreements. That the said company in partial discharge of its liability toward the complainant issued 40 post dated cheques including the following 10 cheques of Rs.5 crores as are detailed below:-

<i>Sr. No.</i>	<i>Amount (INR)</i>	<i>Cheque No. and Date</i>	<i>Bank (drawn on)</i>	<i>Date of dishonour of cheques</i>
1.	50,00,000/-	12538601 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
2.	50,00,000/-	12538602 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
3.	50,00,000/-	12538603 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
4.	50,00,000/-	12538604 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
5.	50,00,000/-	12538605 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
6.	50,00,000/-	12538606 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
7.	50,00,000/-	12538607 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020



8.	50,00,000/-	12538608 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
9.	50,00,000/-	12538609 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020
10.	50,00,000/-	125386010 dated 30 November 2019	Union Bank of India, Andheri (East), Mumbai-400069	29 February 2020

3. That the said cheques were issued under the signatures of Shirish Khushal Chand Desai and Sohan Chota Lal Mehta both directors of Sovika Aviation Services Private Limited. On presentation, the said cheques were dishonored as is detailed above. That then legal notice dated 16.03.2020 was issued under Section 138 NI Act with regard to dishonor of the said cheques. The accused persons failed to make payment of the aforesaid amount within statutory period of 15 days. On the contrary, the accused sent an email dated 01.04.2020 through their legal counsel refusing to make payment of the aforesaid amount. Consequently, the present complaint was filed on 01.07.2022 and the said delay occurred due to outbreak of COVID-19 infection. Along with the criminal complaint, respondent No.2 also filed an application for condonation of delay in filing of the criminal complaint.

4. The notice of the said application seeking condonation of delay in filing of the criminal complaint was issued to the accused persons and in response to the said notice Sovika Aviation Services Private Limited, Shirish Khushalchand Desai, Sohan Chotalal Mehta and Sahil Mehta appeared in the trial Court and filed reply to aforesaid application. The said application was allowed by the trial Court vide impugned order dated



17.01.2023 (Annexure P-2) which reads as follows:-

*Present: Sh. Bhawani Singh, AR for complainant.
Accused No.1-Company.
Sh. Faisal Fa Shaikh, Counsel for accused
No.2, 3 and 4.

Today, the case was fixed for consideration on application for condonation of delay. Keeping in view, the contents of application and in the interest of justice, application is hereby allowed. Now to come upon 18.04.2023 for consideration on the point of summoning of accused.

*Date of order: 17.01.2023 JMFC/Gurugram
UID No.xxxx*

5. The senior counsel for the petitioner has submitted that the application filed by respondent No.2/complainant under proviso to Section 142(b) of the Act was contested by the petitioners who filed detailed reply to the same wherein petitioners specifically pleaded that there was delay of three months in filing of the complaint under Section 138 NI Act by respondent No.2 against the petitioners. That a table depicting the timeline is also given in the said reply which is reproduced as follows:-

<i>Complaint Number</i>	<i>38701</i>
<i>Cheque Numbers</i>	<i>601-610</i>
<i>Date of Cheque</i>	<i>30.11.2019</i>
<i>Date of deposit of cheque</i>	<i>27.02.2020</i>
<i>Date of dishonor of cheques</i>	<i>29.02.2020</i>
<i>Date of legal notice</i>	<i>10.03.2020</i>
<i>15 days from legal notice</i>	<i>25.03.2020</i>
<i>Date till cause of action in ordinary circumstances</i>	<i>25.04.2020</i>
<i>Date till cause of action, as per suo moto writ petition 3/2020</i>	<i>01.04.2022</i>
<i>Date of filing of complaint</i>	<i>01.07.2022</i>
<i>Delay</i>	<i>3 months</i>

6. The senior counsel for the petitioners has further argued that

while passing the impugned order (Annexure P-2), the learned trial Court failed to take into consideration the aforesaid pleas taken by the petitioners and the learned trial Court allowed the application filed by respondent No.2, without assigning any reasons and in this manner, the impugned order (Annexure P-2) being not passed in accordance with law, deserves to be set aside. The counsel for the petitioners has further contended that otherwise also the complaint filed by respondent No.2 under Section 138 NI Act is clearly time barred and respondent No.2 has failed to satisfy the learned trial Court that there were sufficient reasons to condone the delay in filing of the complaint. That thus, the impugned order (Annexure P-2) being not passed in conformity with the settled position of law, is not sustainable in the eyes of law and deserves to be set aside. In support of his contentions, the counsel for the petitioners has placed reliance on the decision dated 30.05.2022 having CRL.A.No.09-2020 titled ***Sri Sumit Deb Vs. Sri Joy Deb and another*** wherein the High Court of Tripura (Agartala) held as follows:-

“13. On bare perusal of Section 142 of the Act, it is clear that if a complaint is filed beyond the statutory period, as prescribed under Section 138 of the NI Act, then the complainant must satisfy the Court that he had sufficient cause for not making the complaint within such prescribed period i.e. within one month of the date the cause of action arises under the proviso(s) of Section 138 of the Act.”

14. xxxxx

15. The question which is required to be responded to, is whether before passing the order of condonation, the respondent No.1 had the right to be heard or not. The answer to the said question has already been settled by this Court in Sankar Chaudhury (supra), where it is held that under Section 138 of NI Act, if original complaint is filed after expiry of statutory period, then in such cases, before condoning the delay, according to the proviso to

Section 142(b) of the NI Act, the accused shall be given a notice along with a copy of application for condonation of delay. Upon hearing the parties (the complainant and the accused) the learned Magistrate shall decide whether the delay is to be condoned or not. If the Court is satisfied with the cause as assigned, in such application for condonation of delay, due cognizance may be taken or an appropriate order in the event of not condoning the delay may be passed by the learned Magistrate.

16.xxxxx

17. On bare perusal of Section 138 of NI Act, it becomes aptly clear that before asking the Court to take cognizance of offence under the said provision, the complainant has to satisfied the Court that the complaint has been filed within the statutory period of 30 days in terms of proviso to Section 142(b) appended thereto. It is settled position of law that the essential requirements as embodied in Section 138 of NI Act are not mere procedural but substantive.

7. On the other hand, the senior counsel for the complainant/respondent No.2 in support of the impugned order (Annexure P-2) has submitted that the cheques in question were dishonored on 29.02.2020, on their presentation. It has been further contended that due to the outbreak of the COVID-19 pandemic, the Hon'ble Supreme Court while taking into consideration, the adversities faced by the litigants in the prevailing conditions, suo moto took cognizance for extension of limitation period and in this regard, first order was passed by the Hon'ble Supreme Court on 23.03.2020 and thereafter, Hon'ble Supreme Court passed orders dated 08.03.2021, 27.04.2021 and 23.09.2021 and 10.01.2022. The Hon'ble Supreme Court while passing order dated 10.01.2022 specifically clarified that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of

90 days from 01.03.2022. The Hon'ble Supreme Court further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the period prescribed under provisos (b) and (c) of Section 138 of the Negotiable Instruments Act 1881, which prescribed period of limitation for instituting proceedings.

8. The counsel for respondent No.2 has further contended that the complaint under Section 138 NI Act was filed by respondent No.2 against the petitioners on 01.07.2022 and along with the said complaint respondent No.2 also filed an application seeking condonation of delay (if any) in filing of the complaint wherein while referring to the aforesaid order dated 10.01.2022 passed by the Hon'ble Supreme Court, it was pleaded that the period prescribed under proviso (c) of NI Act within which the accused had to make the payment to the complainant/respondent No.2 expired on 29.05.2022 and thus, the cause of action to file complaint under Section 138 NI Act, arose on 29.05.2022 and the complainant was having one month after 29.05.2022 to file the complaint i.e. by 29.06.2022. That District Courts at Gurugram were closed from 16.06.2022 to 30.06.2022 due to summer vacations. That accordingly, the complaint in question was filed within a period of limitation under the NI Act. That otherwise also the complainant had indicated the reasons for delay (if any) in filing of the complaint. In support of his contentions, the counsel for respondent No.2 has placed reliance upon order dated 10.01.2022 passed by the Hon'ble Supreme Court in ***re:Cognizance for extension of limitation, Miscellaneous Application No.21-2022 in Suo Moto Writ Petition No.3-2020*** and decision of Delhi High Court in ***Naresh Chand Jain Vs. State of***

NCT of Delhi at New Delhi and another 2022 SCC Online Del 3480. The counsel for respondent No.2 has also referred to decision of Hon'ble Supreme Court in ***Jindal Steel and Power Limited and another Vs. Ashoka Alloy Steel Limited and others (2006) 9 SCC 340*** wherein it was held that the day on which cause of action had accrued has to be excluded for reckoning the period of limitation for filing a complaint under Section 138 of the NI Act.

9. I have considered the submissions made by counsel for the parties.

10. From the perusal of the impugned order, it is evident that the application filed by respondent No.2 seeking condonation of delay in filing of the complaint under Section 138 NI Act, was allowed vide said order by the learned trial Court. So, it is apparent that while passing the impugned order, the learned trial Court was of the view that there was certain delay in filing of the complaint which the said Court condoned by allowing the concerned application vide the said order (Annexure P-2).

11. From the perusal of order (Annexure P-2), it could be easily made out that the said order is very brief whereby application filed by the complainant/respondent No.2 seeking condonation of delay in filing the complaint was allowed by the trial Court without assigning any cogent reasons in this regard. The impugned order (Annexure P-2) is sketchy and passed in a very casual manner by the trial Court without assigning any cogent reasons. The Hon'ble Supreme Court in ***Raj Kishore Jha Vs. State of Bihar and others (2003) 11 SCC 519*** observed that reason is the heart beat of every conclusion and without the same it becomes lifeless. Right to

reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the effected party can know why the decision has gone against him. Thus, in the instant case, the senior counsel for the petitioners is right in submitting that the order under challenge is a non speaking order as no reasoning is reflected in the same.

12. In light of the above discussion, this Court is of the considered opinion that the impugned order being non speaking is unsustainable and deserves to be set aside.

13. Consequently, the present petition is allowed and impugned order dated 17.01.2023 (Annexure P-2) is hereby set aside. The matter is remanded back to the learned trial Court to decide afresh the application filed by respondent No.2/complainant seeking condonation of delay in filing the complaint, expeditiously, in accordance with law as has been discussed above after giving proper opportunity of hearing to both the parties.

31.05.2024
YOGESH

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No