

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1955-2019 (O&M)
Date of Decision: 26.04.2024

Harjinder Singh

... Petitioner

VS.

Amarjit Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Kohli, Advocate for
Mr. Kashish Garg, Advocate for the petitioner

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment/orders dated 21.11.2016 and 16.02.2018 passed by JMIC, Bathinda and Addl. Sessions Judge, Bathinda, respectively to the extent that the petitioner-complainant is praying for grant/enhancement of compensation i.e. compensation double the amount of cheque i.e. Rs.5,90,000/-, be awarded.

(2). The petitioner is the complainant before the trial Court in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) wherein vide judgment dated 21.11.2016, the trial court convicted the respondent-accused under Section 138 of the NI Act and sentenced to undergo RI for 2 years as the allegation that the respondent-accused took cash loan of Rs.4 lakhs from the petitioner-complainant and in lieu thereof, the respondent-accused gave cheque of Rs.5,90,000/- which was subsequently dishonoured. Instead, the petitioner-complainant filed appeal claiming compensation of the double the cheque amount.

(3). The petition is accompanied with an application for condonation of delay of 217 days in filing the appeal.

(4). Learned counsel for the petitioner submits that he acted as per the advice of the counsel before the lower court inasmuch as after the dismissal of the petitioner's appeal by the Addl. Sessions Judge, Bathinda, he was not aware or counsel representing him before the trial court never advised him to file petition before this Court against the judgment dated 16.02.2018 and came to know of such remedy only thereafter and it is due to procedural technicalities that the delay of 217 days has occurred which is unintentional and not deliberate.

(5). Before going into the merits of the case, first of all, it should be stated that in a case of this nature for condonation of delay, it is well settled that length of delay is not material, but the reasons stated thereof for condonation of delay. In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing, acceptable and cogent explanation should be offered for condonation of the delay in default thereof, the Courts could not exercise its discretion in the proper perspective to advance substantial justice. That being so, when the averments made in the application for condonation of delay are untrue, and lacked *bona fide*, then the case falls within the exception to the Rule of Liberal approach and as such, it does not deserve the liberal approach formula in matters relating to condonation of delay.

(6). On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt of hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for.

(7). In **Ram Nath Sao @ Ram Sahu & Others versus Gobardhan Sao & Others, AIR 2002 SUPREME COURT 1201** the position has been succinctly set out in para 12 which reads as under:-

“12. ...Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, and while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner....”

(8). In the present case, the petitioner-complainant has failed to give any explanation, much less justifiable, for the delay of 217 days in approaching this court against the judgment dated 21.11.2016 and 16.02.2018 passed by the courts below. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable for want of acceptable explanation whereas in certain other cases, delay of a very long range are condoned when the Courts are satisfied with the just and fully explained reasons with no scope as to the credibility and bona fide of the applicant and once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion.

(9). Moreover, the prayer in the petition is only for enhancement of the compensation amount but there is nothing on record to show such circumstances or illegality meted out to the petitioner-complainant for claiming compensation to the extent of double the cheque amount.

(10). In view of the above discussion and taking into consideration the fact that the petitioner has not been able to make out any valid ground before this court for condonation of delay of 217 days in approaching this Court, the present petition is dismissed.

(11). Ordered accordingly.

26.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No