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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2798/2023 and CRL.M.A. 10517/2023**

GURMEET SINGH

..... Petitioner

Through: Mr.Rohit Kalra, Mr.Ravindra Kumar,
Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

25.04.2024

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1. By way of present petition filed under Section 482 Cr.P.C, the petitioner seeks setting aside/quashing of the complaint case bearing number 168/2020 titled 'Sangeeta Govil vs Gurmeet Singh' filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 ('*NI Act*') as well as the summoning order dated 29.11.2021 vide which the petitioner has been summoned.

2. In the present case, the facts as discernible from the complaint are that respondent No.2/complainant had advance a friendly loan of Rs.5 lacs on 20.07.2019. It was agreed that the said amount would be returned within a period of three months. In discharge of the said liability, the petitioner issued the subject cheque bearing number 000172 dated 21.10.2019 for Rs.5 lacs drawn on Andhra Bank, Indirapuram, Ghaziabad Branch. The said cheque, when presented for encashment, was dishonoured with the remarks



‘insufficient funds’ vide return memo dated 23.10.2019. A demand notice came to be issued on 16.11.2019, which was statedly served upon the accused on 18.11.2019 vide speed post as well as by DTDC Courier Service. However, the amount under the cheque remained unpaid and consequently, the subject criminal complaint came to be filed on 13.03.2020.

3. It is contended on behalf of the petitioner that the criminal complaint is not maintainable inasmuch as the same was filed beyond the period prescribed under Section 138 of the NI Act. It is further contended that though an application seeking condonation of delay was filed before the learned MM, the impugned summoning order was passed without due application of mind inasmuch as the same is silent on the reasoning behind condoning the delay in filing the criminal complaint. It is also contended that delay could only have been condoned after a notice to the petitioner and after hearing him. Reliance in this regard has been placed upon the decision of Supreme Court in K.S. Joseph v. Philips Carbon Black Ltd. passed in **CRL.A. 247/2016**.

The respondent No.2, on the other hand, has resisted the petition and has stated that delay in filing the petition was on account of serious illness of her husband and that after oral arguments were addressed on the application seeking condonation of delay, the same was condoned and subsequently, the summoning order was issued.

4. I have heard learned counsel for the parties and perused the record.

5. The principal contention raised in the present petition relates to limitation i.e. the petitioner has contended that the criminal complaint was filed beyond the statutory period and thus, the summoning order is bad in law. To appreciate the said contention, it would be apt to reproduce Section



142 of NI Act, which reads as under:-

“142. Cognizance of offences- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.”

6. A perusal of the provision would show that the criminal complaint for under Section 138 of NI Act should be filed within a period of 1 month from the time when the cause of action arises under Section 138(c) of NI Act. Section 138(c) of NI Act states that upon the failure of the drawer of the cheque to make the payment of the amount under the cheque, within 15 days of the receipt of the legal notice demand, the cause of action would arise. At the same time, proviso to Section 142(b) of NI Act provides that cognizance of such a complaint may be taken if sufficient cause is shown for the inability to file the same within the prescribed period.

7. Admittedly, in the present case, the legal notice was issued on 16.11.2019 and the same came to be served upon the petitioner/accused on 18.11.2019. The subject criminal complaint came to be filed on 13.03.2020 with a delay of 100 days, as evidenced in the application filed before the



learned MM with the subject criminal complaint. Thus, while the issue of delay is not disputed, the main issue arises w.r.t the condonation of delay.

8. There can be no cavil with the proposition of law, as sought to be put forth by the petitioner, that while the court is empowered to take cognizance of the complaint even though the same is filed beyond the statutory period, if sufficient cause is shown, condonation of such delay without giving reasonable opportunity of being heard on the delay to the accused would run against the principles of natural justice. It is only after hearing both the sides on the issue of delay, the court can determine whether to condone the delay or not.

9. A perusal of the summoning order dated 29.11.2021 would show that while summoning the petitioner in the subject criminal complaint, nothing has been mentioned in the said order on the aspect of condonation of delay in filing the criminal complaint. Further, nothing has been placed on record showing therein that the learned MM had duly applied his judicial mind before condoning the delay. Condonation of delay cannot be allowed as a matter of right and the same has to be granted after due consideration of the facts of the case. The same is however, found missing in the impugned summoning order.

10. Thus, on a prima facie view consideration of the facts, this Court is of the considered opinion that the summoning order shows non-application of mind. Consequently, the same is quashed and set aside. The petition is disposed of alongwith pending application.

MANOJ KUMAR OHRI, J

APRIL 25, 2024/rd