

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49335 of 2025

Arising Out of PS. Case No.-7331 Year-2022 Thana- PATNA COMPLAINT CASE District-
Patna

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Asirvad Micro Finance Ltd., through its Authorized Representative Mohan Kumar Yadav Office-Star Plaza A.S. Complex, Near Punjab National Bank, Sarai Bazar, Vaishali, through its Representative and Area Head Mohan Kumar Yadav, S/o Shivjee Yadav, R/o Vill - Bankal, P.S.- Sahpur, Distt.- Bhojpur, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vikash Kumar Soni S/o Lallansah R/o Vill - Akhtiyarpur Paterha, Near Durga Temple, Dhobighat, Sarai, Vaishali

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dharam Deepak Vishwash, Advocate
For the Opposite Party/s : Mr. Anil Kumar Singh No. 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

2 04-08-2025 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The present application has been preferred by the petitioner, Asirvad Micro Finance Ltd. Challenging the order dated 02.06.2025 passed by learned District Judge, Patna Sadar, Patna, passed in Criminal Revision No. 255 of 2025, whereby the Restoration Application of the petitioner was dismissed on the ground of delay and also the order dated 18.07.2024, passed by learned Judicial Magistrate First Class-VIII, Patna Sadar, Patna passed in Complaint Case No. 7331(C) of 2022, whereby the Complaint Petition of the petitioner was dismissed for want



of prosecution under Section 203 of the Code of Criminal Procedure.

3. The brief facts giving rise to the present application is to the effect that a complaint case was filed by the petitioner alleging therein that the Accused person/Opposite Party No. 2, namely, Vikash Kumar Soni was in urgent need of money for personal/business purposes and had thus requested the petitioner's company for financial assistance as a loan. The petitioner's company sanctioned a gold loan of Rs. 9,31,640/- (Rupees Nine Lakh Thirty One Thousand Six Hundred and Forty) only after pledging/depositing 261.01 gram of Gold Ornament at the Sarai branch of the company. It is further alleged that since the Gold Ornaments deposited by the Accused/Opposite Party No. 2 was not of 22 Carat Gold, thus as Security, the Accused/Opposite Party No. 2 issued a Cheque of Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand), vide Cheque No. 680827 of Indian Bank, Arara Branch, Vaishali, which was dishonoured on 02.05.2022 with a return memo within 'insufficient funds' and despite demand being made from the Accused/Opposite Party No. 2, the said amount was never paid to the petitioner.

4. On account of such dishonest act of the



Accused/Opposite Party No. 2, the petitioner filed a Complaint Case No. 7331(c) of 2022 before the learned Chief Judicial Magistrate, Patna, which was transferred to the Court of Miss Dipti Singh Chauhan, Judicial Magistrate First Class, Patna Sadar, which was subsequently dismissed for want of prosecution vide order dated 18.07.2024.

5. Being aggrieved by the dismissal order passed in the complaint case, the petitioner preferred a Revision Application bearing Criminal Revision No. 255 of 2025 before the learned District Judge, Patna for restoration of Complaint Case No. 7331(C) of 2022, however, the Revision Application was dismissed on the ground of delay vide order dated 02.06.2025, which is under challenge in the present application.

6. The learned counsel for the petitioner submits that the Accused/Opposite Party No. 2 had taken loan and on account of the gold not having adequate purity a cheque of Rs. 3,60,000/- (Rupees Three Lakh Sixty Thousand) was deposited with the petitioner's company, however, the same was dishonored on account of insufficient funds and despite demand notice being sent, the same was not compensated for and thus, the Complaint Case No. 7331 (c) of 2022 was filed on 20.06.2022.



7. The learned counsel for the petitioner further submits that it was on account of inaction of the learned counsel for the petitioner's company appearing before the learned Court below, the said complaint case stood dismissed for want of prosecution. It has been submitted that though the petitioner's company was diligent enough and had been contacting the learned counsel for the date fixed for examination of the complainant as well as witnesses, the learned counsel informed the petitioner's company that there was no need of physical presence of the authorized officer of the petitioner's company. The learned counsel next submits that it was on account of consistent non-appearance of the learned counsel for the petitioner's company before the learned Court below, the said case was dismissed which could only be known to the petitioner in the month of July, 2024 and thereafter upon much deliberation and receipt of the Order Sheet on 29.09.2024 a decision was ultimately taken for appropriate action on 05.10.2024 and thereafter finally an approval for filing Criminal Revision was taken from the senior officials of the petitioner's company on 22.10.2024 and ultimately the file was handed over to the learned counsel for filing of the revision application on 18.11.2024 along with the *Vakalatnama*.



8. The learned counsel further submits that despite handing over the file to the learned counsel and regular follow up thereafter the petitioner was not getting an update with regard to the position of the Revision Application and finally on 22.04.2025 when the authorized officer visited the Civil Court, Patna Sadar, he could know that the learned Advocate for the petitioner's company had not filed the Revision Application till then. The learned counsel submits that thereafter a new advocate was engaged and ultimately the Criminal Revision No. 255 of 2025 along with limitation petition was filed on 06.05.2025.

9. The learned counsel for the petitioner submits that the learned District and Session Judge, Patna without appreciating the facts and circumstances of the case and the valid reasons of the delay caused in filing the revision application, which was explained in the limitation petition, dismissed the Revision Application on the ground of delay of 201 day without appreciating the fact that the delay caused was unintentional and was caused mainly due to the laches on the part of the former Advocate.

10. The learned counsel for the petitioner, thus, submits that the complaint case was dismissed by the learned Court below under Section 203 of Cr.P.C. for want of



prosecution, however, the learned Judicial Magistrate, First Class, Patna was competent enough to dismiss the complaint under Section 249 of Cr.P.C. The learned counsel submits that on account of default of the learned Advocate, the petitioner's company should not be left remediless especially when there is no intentional or deliberate laches on the part of the petitioner's company. The learned counsel submits that the petitioner's company works under the guidelines of the Reserve Bank of India and any loss occurred to the company would also amount to loss of public money.

11. The learned counsel has lastly submitted that the petitioner would suffer irreparable loss if the complaint case is not restored by this Hon'ble Court using the inherent powers under Section 482 of the Cr.P.C. especially when the dismissal of the complaint was completely on account of negligence of the learned counsel for the petitioner's company, who was not diligent enough in pursuing the complaint case.

12. The learned A.P.P. for the State submits that *prima facie* it seems that the petitioner had not been following up with the aforesaid case after filing of the complaint and as such, the same stood dismissed for non-prosecution and even the Revision Application was filed after a delay of 201 days.



Therefore, there is no illegality in the two impugned orders and thus the present application is devoid of any merit and is fit to be dismissed.

13. After having heard the learned counsel for the petitioner as well as the learned A.P.P. for the State, this Court finds that in the present case, after filing of the complaint, the advocate was not diligent enough to pursue the complaint as the case was filed in the year 2022 and till the year 2024, the complainant had not been examined on solemn affirmation and as such, the learned court below had dismissed the application under Section 203 of Cr.P.C. for want of prosecution. This Court is aware that a party should not normally suffer for default of the advocate especially when the complainant despite being in touch with the advocate was not informed about the status of the complaint and was neither called by the learned counsel in order to appear for examination.

14. This Court has observed that from the pleadings made in the present petition as well as the revision petition, it has been stated that it was on account of communication gap between the advocate and the complainant, the complaint got dismissed and there was no deliberate or intentional laches on the part of the petitioner. From perusal of the limitation



application filed along with the Revision Application before the learned Court below, it also appears that the petitioner had tried to explain the delay, however, not in very clear terms. This Court has observed that this is not a case where day to day or a meticulous explanation was needed in strict sense to explain the delay as the complainant has reasonable cause for waiting for the confirmation of his lawyer to appear and pursue the complaint by giving his statement under solemn affirmation and also to bring other witnesses, if any. It is a settled law that condonation of delay is based on sufficient cause under Section 5 of the Limitation Act and not on rigid explanation of every single days delay. It has been held that a pragmatic and rational approach is to be taken over a pedantic one.

15. From various judicial pronouncements, the proposition is no more *res integra* that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the decree of acceptability of the explanation, the length of delay being immaterial.

16. In view of such legal proposition and taking into account a pragmatic view of the fact that the case concerns recovery of an amount from the accused who had issued a



cheque in lieu of a loan taken from the petitioner's company which is a Micro Finance Company and on account of mere negligence or lack of due diligence of the learned Advocate, initially the complaint stood dismissed and thereafter there was delay in filing the Revision Application for restoration of the complaint.

17. In view of the discussions made hereinabove, this Court is of the view that the petitioner has made out a case wherein on account of improper diligence shown by the learned Advocate of the petitioner before the Court below, the complaint stood dismissed for default and therefore one opportunity should be given to the petitioner's company to pursue the complaint case and therefore the impugned orders dated 18.07.2024 passed in Criminal Complaint Case No. 7331 (c) of 2022 and 02.06.2025 passed in Criminal Revision No. 255 of 2025 respectively is set aside.

18. The Complaint Case No. 7331(c) of 2022 is restored to its original file and it is expected that the inquiry as contemplated under Section 200 of Cr.P.C be completed within three months from the date of production of this order.

19. It goes without saying that the learned Magistrate shall follow the due procedures and weigh the facts and



circumstances of the case on its own merit without being prejudiced by any observation made hereinabove.

20. The application stands allowed.

(Sourendra Pandey, J)

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