

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 815 of 2024

Gopal Kumar Agarwal

Versus

Sk. Abdul Hasera

For the Petitioner : Mr. Uday Sankar Chattopadhyay, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Rajashree Tah, Adv.
Ms. Aishwarya Datta, Adv.
Ms. Bidisha Chakraborty, Adv.
Ms. Sadia Parveen, Adv.

For the Opposite Party : Mr. Amarendra Chakroborti, Adv.
Mr. Tanmoy Chatterjee, Adv.

Heard on : 24-11-2025

Judgment on : 05-12-2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (In short 'Cr.P.C.'), challenging the legality, propriety, and correctness of the impugned Judgment and Order dated 24th January, 2024 passed by the Learned Sessions Judge, Purba Bardhaman in Criminal Revision No. 62 of 2022 arising out of order dated September 12, 2022 passed by the Learned Judicial Magistrate, 4th Court, Purba Bardhaman in connection with C.R. Case No. 221 of 2016 initiated under Section 138 of the Negotiable Instruments Act (in short 'N.I. Act') thereby dismissed the application and affirming the order dated 12.01.2022 passed by the Learned Judicial Magistrate.
2. By the order dated 12.09.2022, the Learned Magistrate rejected the prayer of the petitioner to re-hear the application filed by the opposite party/complainant for condonation of delay in filing the complaint case since the delay was condoned without affording an opportunity of hearing to the Petitioner.

FACTS OF THE CASE

3. The brief facts of the case are that the opposite party filed a complaint case, being C.R. Case No. 221 of 2016, under Section 138 of the N.I. Act, against the petitioner herein, along with an application

for condonation of delay in filing complaint case, before the Learned Chief Judicial Magistrate, whereby the case was transferred to the Learned Judicial Magistrate, 4th Court, Burdwan, for trial and its disposal.

- 4.** On 3rd September, 2016, the Learned Judicial Magistrate condoned the delay of 12 days without serving the application under Section 5 of the Limitation Act upon the petitioner/accused and without hearing the petitioner/accused.
- 5.** The allegation against the petitioner is that during business transactions, the petitioner submitted a cheque of Rs. 65,00,000/- to one Subhas Chandra Banik on 31.12.2015. Thereafter, Subhas Chandra Banik handed over the said cheque to the opposite party/complainant. On 11.01.2016, the complainant deposited the said cheque into his bank account at Andhra Bank, Burdwan Branch; however, on 13.01.2016, the bank authority returned the said cheque with the endorsement 'stopped payment'.
- 6.** After condoning the delay, cognizance was taken and a summon was issued to the petitioner/accused person. After receiving the summon, the petitioner surrendered before the Court below, and was granted bail.
- 7.** On 17.05.2022, the petitioner filed an application for a de novo hearing of the application under Section 5 of the Limitation Act.

However, on 12.09.2022, the Learned Magistrate rejected the prayer of the petitioner to re-hear the application filed for condonation of delay under Section 5 of the Limitation Act by the complainant after hearing the Petitioner.

8. The Petitioner, being aggrieved, challenged the impugned order dated 12.09.2022, by filing a Revisional application before the Learned Sessions Judge, Purba Bardhaman, and the same was registered as Criminal Revision No. 62 of 2022. However, after hearing the parties, the same was dismissed.
9. Being aggrieved by and dissatisfied with the impugned judgment and order dated 24th January, 2024, passed by the Learned Sessions Judge, Purba Bardhaman, the petitioner filed the instant application.

ARGUMENTS ON BEHALF OF THE PETITIONER

10. It is the case of the petitioner that the Learned Trial Court erred in condoning the delay ex parte, contrary to the principle of natural justice. It is essential for the Court to afford an opportunity of hearing to all the parties, before passing an order of condonation of delay, otherwise the same would be liable to be set aside, as the proceeding would be an abuse of the process of law.
11. Accordingly, both the impugned orders are liable to be set aside as both the courts below mechanically allowed the condonation of delay without giving an opportunity of hearing to the petitioner as gross

illegality in criminal law and also contrary to the principle of natural justice. Before allowing condonation of delay parties must be allowed to give effect to the first principle of natural justice - audi alteram partem since the application of condonation of delay involves a mixed question of law and facts. The Court cannot allow such an application only on a technical ground.

12. Learned counsel for the petitioner placed reliance on a judgment to support his contention passed in the case of ***Amitava Roy v. State of West Bengal & Anr.***¹.

ARGUMENTS ON BEHALF OF THE OPPOSITE PARTY

13. Per contra, learned counsel appearing on behalf of the opposite party submits that the learned Trial Court has rightly allowed the condonation of the delay of 12 days in filing the complaint case. He further submits that it is the discretionary power of the learned Trial Court to allow such a prayer. Once the Court is satisfied that the complainant was prevented by sufficient and bona fide reasons from filing the complaint within the prescribed period, such delay may be condoned.
14. It is further contended that the question of giving opportunity to the accused does not arise until and unless the learned trial court takes cognizance of the complaint. Not only that, while dismissing the

¹ 2010 SCC OnLine Cal 2089

Revisional application, the learned Sessions Judge has categorically stated the facts and reasons thereof, relying upon the provisions and judgments of the Hon'ble Supreme Court. Therefore, there is no need to interfere with the judgment passed by the Learned Sessions Judge.

FINDINGS AND ANALYSIS OF THIS COURT

15. Having heard the arguments of the learned counsels representing the parties, and upon perusal of the records, this Court notes that the main issue that arises for determination is whether the Learned Magistrate was justified in condoning the delay under section 5 of the Limitation Act in a complaint case filed under section 138 of the Negotiable Instruments Act without issuing notice or affording an opportunity of hearing to the accused /petitioner herein; and whether the subsequent refusal to rehear the section 5 application suffered from jurisdictional error or perversity.
16. Section 5 confers upon the Court a discretionary judicial power, not an administrative one. The expression "*sufficient cause*" mandates the Court to record satisfaction based on objective materials. Such satisfaction is not mechanical, nor can it be reached unilaterally without testing the explanation through the participation of the parties against whom the condonation order operates.
17. Condonation of delay is never a one-sided affair. A Court must weigh the explanation offered by the applicant and the prejudice likely to be

caused to the opposite party. Such balancing is impossible unless both sides are heard. A condonation order is thus a judicial determination, and its validity is inseparable from adherence to the principles of natural justice.

- 18.** A court cannot mechanically condone a delay in filing the complaint without hearing the accused, once the delay affects the maintainability of the prosecution itself. The condonation order directly determines the continuation of criminal proceedings, and therefore, the accused is entitled to be heard before the delay is condoned.
- 19.** An ex parte condonation is permissible only where the statute expressly allows it or where no prejudice is caused to the other side. Neither condition applies here. The N.I. Act contains no provision excluding natural justice. The Magistrate's discretion under Section 142(1)(b) read with Section 5 of the Limitation Act must be exercised after applying the judicial mind, which necessarily involves affording an opportunity of being heard to the accused where his rights are affected.
- 20.** Condonation of delay becomes the threshold judicial act determining whether the prosecution should proceed at all. The accused, therefore, acquires a right to contest the condonation, even if he enters an appearance later. The subsequent attempt by the petitioner

to seek a *de novo* hearing, therefore, could not have been rejected on the ground that the condonation order had already attained finality, because an order passed in violation of natural justice is void and not merely voidable.

- 21.** It is an admitted fact that the complaint under section 138 was filed beyond the period of 12 days late, along with an application under section 5 of the Limitation Act. The learned trial Court passed an order on 12.09.2022, whereby the prayer of the accused/petitioner for rehearing the application filed under Section 5 of the Limitation Act was rejected. According to the petitioner, the application for condonation of delay should have been heard and disposed of after giving an opportunity to the accused/petitioner.
- 22.** In similar circumstances, the Hon'ble Supreme Court was pleased to observe that the condonation of delay in such a manner is contrary to the principle of natural justice since the said application was allowed without giving an opportunity of hearing. Therefore, same is illegal. The opposite party has filed an application under Section 138 of the N.I. Act and the amount involved in the said case is 65 lakhs. The said case ought to be filed within the stipulated time as per the provisions of Section 142 but the opposite party could not file the same within time, and the same was filed after a 12-day's delay. The learned court below, after satisfying the grounds set forth for such

delay, allowed the condonation of delay and the complainant was examined under Section 200 of the CrPC. Thereafter, the process was issued after taking cognizance. The accused appeared before the learned trial court and obtained bail. Thereafter, he filed an application praying for an order to rehear the petition of the complainant dated 18th March, 2016 after giving opportunity of hearing to the petitioner and same should have decided in proper and effective manner for substantial justice but the same was rejected by the Trial Court.

- 23.** At the same time, the learned Sessions Judge, after hearing the parties, dismissed the application upon relying on a judgment, passed by the Hon'ble Supreme Court in the case of ***Birendra Prasad Sah v. The State of Bihar & Anr.***² The relevant paragraphs are as under; -

“8. The complaint was instituted on 11-5-2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138 [“142. Cognizance of offences.—(1) 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

² (2019) 7 SCC 273

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.”]. The proviso however stipulates that cognizance of the 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. Both in Paras 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6-4-2018. However, if Paras 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the appellant for condoning the delay in instituting the complaint taking the basis of the complaint as the issuance of the first legal notice dated 31-12-2015.

9. *In the view which we have taken, we have come to the conclusion that the impugned judgment [Subodh Kumar Singh v. State of Bihar, 2018 SCC OnLine Pat 4431] of the High Court is unsustainable. The appeal is accordingly allowed and the order passed by the learned Single Judge is set aside. The complaint shall accordingly stand restored to the file of the trial court.”*

- 24.** After going through the aforesaid judgments as well as judgment relied upon by the petitioner as well as the learned Sessions Judge, this Court is of the view that both the learned Trial Court as well as the learned Sessions Judge committed an error while allowing the limitation of 12 days' delay in filing a cheque bounce case under

Section 138 of the N.I. Act because even one day or more days' delay in filing application under Section 138 of the N.I. Act, a formal application for condonation of delay under Section 142(b) with sufficient reason, must be filed to maintain the validity. Courts are now required to verify the limitation period and existence of proper explanation for such delay in condonation application before issuing summons, since it requires fairness, statutory compliance and transparency in cheque bounced prosecution. As per Section 138 of the N.I. Act, the complaint filed beyond the 30-day limitation is not maintainable unless a written application for condonation of delay under Section 142(b) is filed.

- 25.** In the present case, the petitioner had filed a separate application for condonation of delay and the said application was fixed for hearing on 03.09.2016 and finally allowed the same after being satisfied with the reasons disclosed by the petitioner and, thereafter, cognizance was taken and summons was issued. However, the learned Trial Court did not give opportunity to the other side particularly the accused person to controvert the facts and reasons as stipulated in the said application. The learned counsel for the Petitioner has placed reliance of a judgment passed in the case of **Amitava Roy v. State of West Bengal & Anr**,³ which clearly held that opportunity must be

³ 2010 SCC OnLine Cal 2089

given to the opposite party prior to consideration of the application for condonation of delay. The principle of natural justice should not be violated.

- 26.** The audi alteram partem (“hear both sides” or “no one should be condemned unheard”) is the basic fundamental right required to be given to the opposite party since condonation of delay involves a mixed question of fact and law. Without giving an opportunity to the parties to satisfy the reason for the delay in filing the application, the acceptance of the complaint and issuance of summons is not maintainable and the same is liable to be quashed. The proceedings under Section 138 of the N.I. Act are quasi-judicial in nature. It reflects criminal as well as civil liability. Therefore, the opposite party ought to have been given an opportunity of being heard before initiation of any criminal case under Section 138 of the N.I. Act when the application is filed beyond the period of 30 days’ limitation as enshrined under Section 138 of the N.I. Act. Therefore, both courts have erred in passing the judgments and orders.
- 27.** The Hon’ble Supreme Court in the case of ***State of Maharashtra v. Sharadchandra Vinayak Dongre***⁴ specifically held that condonation of delay is a judicial exercise affecting the rights of the opposite party, and ordinarily notice and hearing are required. In the

⁴ (1995) 1 SCC 42

said case, the Hon'ble Supreme court remitted the case to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties.

- 28.** The Learned Magistrate committed a fundamental jurisdictional error in condoning delay without hearing the petitioner. The Learned Sessions Judge erred in mechanically affirming an order that was void ab initio. The revisional court failed to appreciate that the violation of natural justice goes to the root of the matter and vitiates the entire proceedings.
- 29.** In the above backdrop, this Court finds that both the courts below erred in allowing condonation of delay without affording an opportunity of hearing to the petitioner/accused. Accordingly, this Court finds it necessary to intervene in the exercise of its inherent jurisdiction under section 482 of the Cr.P.C., to prevent abuse of the process of the Court and to secure the ends of justice.
- 30.** With the above observations, **CRR 815 of 2024** is, thus, **allowed**.
- 31.** Connected pending applications, if any, are also, thus, disposed of.
- 32.** Both the impugned orders dated 12.01.2022 and 24.01.2024 are set aside.
- 33.** Let a copy of this judgment shall be communicated to the Learned Court below for information and further directed to decide the

application for condonation of delay filed by the complainant/opposite party seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties.

- 34.** All parties shall act in terms of the copy of this Judgment downloaded from the official website of this court.
- 35.** Urgent Photostat certified copy of this Judgment, if applied for, is to be supplied to the parties upon compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J)

P.A.