



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

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Reserved on: 08th December, 2025

Pronounced on: 22nd December, 2025

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W.P. (CRL.)2164/2025

SAJID KHAN

S/o Master Munshi Khan
House No.H.53/A, First Floor,
Abul Fazal Enclave, Jamia Nagar,
New Friends Colony,
New Delhi-110025.

.....Petitioner

Through: Mr. Rachit Gupta and Mr. Zishaan
Iskandari, Advs.

versus

1. STATE

Through SHO
P.S. New Friends Colony.

2. TASLIM UMAR

S/o Mohd. Umar
R/o 3rd Floor, Sangam Plaza,
Nagla Mallha, Tayyab Colony,
Sir Syed Nagar, Koil
Aligarh,
Uttar Pradesh-202002.

Also at:

A-5, Lock A, Joga Bai Extension,
Jamia Nagar, New Delhi-110025.

.....Respondents

Through: Mr. Anand V. Khatri, ASC for the
State with Mr. Anand Dahiya,
Advocate and with SI Naveen, PS
New Friends Colony.



CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Writ Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the Petitioner, Sajid Khan to challenge the Order dated 22.05.2025 whereby the learned JMFC has dismissed the Complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act"*), as barred by limitation.
2. The *brief facts* are that the Complaint under Section 138 NI Act in respect of dishonour of cheque of Rs.6 lakhs issued in favour of the Petitioner by Respondent No.2 on account of 'insufficiency of funds', was filed by the Petitioner on 27.02.2020. An Application for condonation of delay by way of abundant caution as the Legal Notice of Aligarh address, was not showing any update for some time.
3. The learned JMFC *vide* Order dated 22.05.2025 dismissed the Application for Condonation of delay by observing that there was a presumption of delivery of the Legal Notice which expired after 30 days. Thus, there was a delay of 27 days which remained unexplained. Consequently the Complaint was dismissed vide impugned Order dated 22.05.2025.
4. The Petitioner/Complainant has challenged the impugned Order *on the grounds* that the Petitioner had sent the Legal Notice under Section 138 NI Act dated 15.11.2019, through registered Post to Respondent No.2 at the address of Delhi and Aligarh. The Notice sent at Delhi address was received



back on 13.12.2019 with the remarks that “*no such person resides at the given address*”.

5. However, the post sent to Aligarh address was not received back and the Tracking Report was not showing any status for the long time. The Complainant tried to contact the Post Office, but the Department stated that as the *online status* was not being shown, there was a possibility of the item being in transit. The Petitioner, therefore, bonafidely waited for reasonable time for the delivery of the Legal Notice, after which he had filed his Complaint under Section 138 NI Act on 27.02.2020. It is submitted that the delay, if any, was for the bona fide act of the Complainant who waited for reasonable time to ensure the service of Legal Notice. Pertinently, Respondent No.2 in further admission of his liability transferred some more amount towards his part liability.

6. It is submitted that there was no wilful delay on the part of the Petitioner; in fact he was under the *bona fide* impression that the Legal Notice is still in transit and was, therefore, unserved as was informed by the Postal Department verbally.

7. There is a presumption of service of post as per Section 27 of the General Clauses Act. The learned JMFC erred in not interpreting the provisions liberally that such presumption is to benefit the drawer and it should not be stretched to haunt the Complainant, by putting a limitation of 30 days of delivery. There was otherwise, no unreasonable and unnecessary delay, which was caused only to wait for the delivery of the Legal Notice.

8. Furthermore, Section 27 of the General Clauses Act was not applicable because the Petitioner had been informed by the Postal



Department that the Legal Notice was still in transit and would show the update in a few days.

9. The Judgment of Subodh S. Salaskar vs. Jayprakash M. Shah & Anr., 2008 (13) SCC 689 has been wrongly relied upon by the learned JMFC, as it is distinguishable on facts. No Application for Condonation of Delay was filed by the Complainant in that case. Furthermore, in the said case, the moot point was whether the proviso to Section 142(B) NI Act, would be applied retrospectively, which the Apex Court had answered in negative.

10. It is further stated that the Complainant was suffering from several ailments and had undergone tests at AIIMS, Delhi as the doctors apprehended cancer, which should have been considered sympathetically.

11. It has also not been considered that the Accused has already been summoned and put in appearance through learned Counsel *vide* Order dated 23.08.2024. The conduct of the Respondent in appearing before the Court in response toailable warrants, should have also been considered.

12. The Petitioner cannot be rendered remediless and he would suffer irreparable loss, if the Impugned Order dated 22.05.2025, is not set-aside. It was his hard earned money that he had given as a loan to the Respondent.

13. A prayer is, therefore, made that the Impugned Order dated 22.05.2025 dismissing the Condonation of Delay Application, be set-aside and the Complaint be restored for trial on merits.

14. The summons of the present Petition were served on the Respondent No.2, who appeared but failed to file a Reply to the Application.

Submissions heard and the record perused.

15. The Petitioner/Complainant had allegedly given a friendly loan of Rs.7.5 Lakhs in October, 2018 to the Respondent, which he had promised to



return in the following months. The Respondent No. 2 transferred a sum of Rs.1.15 Lakhs in the Account of the Petitioner in January, 2019 in discharge of his part liability. He thereafter, handed over a cheque of Rs.6,00,000/- to the Petitioner under his signatures on 26.07.2019 in discharge of his remaining legal liability. However, the cheques got dishonoured for the reasons 'insufficient funds' on 17.08.2019. Thereafter, on the request of the Respondent, the cheques were presented again but were dishonoured on 19.10.2019 for the same reason. The Legal Notice of Demand dated 15.11.2019 was sent to the Respondent No. 2 on the correct Delhi and Aligarh address, as per the knowledge of the Petitioner. The Notice at Delhi address was returned unserved on 13.12.2019. However, he kept waiting for the service of Notice to Aligarh Address, for which the tracking report was awaited.

16. The significant fact is that no tracking update of the Legal Notice sent by the Registered Post on the Aligarh address was available for the long time. It was on the advice of the learned Counsel for the Petitioner, he waited for sometime for the Tracking Report on the service of the Legal Notice at Aligarh address which was not forthcoming. Pertinently, as per the submissions made by the Petitioner, he contacted the Post Office to confirm the service but was told that it may still in transit. After waiting for sufficient time, the Complaint under Section 138 of N.I. Act, was filed with the delay of 27 days along with the Condonation Application.

17. From the narrative of the Complainant, it is evident that he had duly issued the Legal Notice, in accordance with the provisions of N.I. Act and it was under a genuine belief that no tracking report was forthcoming in respect of the service of Notice at Aligarh address and he kept on waiting



before the filing the Complaint. However, when there was no Report forthcoming, he eventually filed the Complaint under Section 138 of N.I Act.

18. The explanation given by the Complainant for delay of 27 days, is genuine and *bona fide* who under the advice of the learned counsel, was merely waiting for the confirmed service report of the Legal Notice at the Aligarh address.

19. Though Section 27 of General Clauses Act provides a presumption of service of Notice within 30 days of posting the Legal Notice, but the fact remains that it is the presumption that would have been invoked only if the facts were not established. Here was a case where the Complainant was actually looking for service of Legal Notice, rather than depending upon a presumption under Section 27 of the General Clauses Act.

20. It can also not be overlooked that as per the Petitioner, after the Petitioner sent the Legal Notice, some part payment had been made by the Respondent in discharge of his partial liability towards the loan amount.

21. In this backdrop, it cannot be said that the delay of 27 days in filing the Complaint, was without any genuine explanation. The reasons for delay have been sufficiently explained and are *bona fide*.

22. In the circumstances, the Impugned Order dated 22.05.2025 dismissing the Condonation of delay Application, is hereby set-aside. The delay is condoned and the Complaint is restored to its original number, which shall be tried by the learned JMFC, in accordance with law.

23. The parties are directed to appear before the learned JMFC on 23.12.2025.



2025:DHC:11742



24. The Petition along with pending Applications, is disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 22, 2025/va/RS