

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-2325 of 2010 (O&M)
Date of Decision: 30.4.2013.

Jagmal Singh Rana

.....Petitioner

Versus

M/s Sthaneshwar Financer

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Yogesh Chaudhary, Advocate
for the petitioner.

Mr. Anil Kshetarpal, Advocate
for the respondent.

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 3.7.2009 whereby application filed by the respondent under Section 142 of the Negotiable Instruments Act, 1881 ('Act' for short), was allowed by the Trial Court.

Learned counsel for the petitioner has submitted that the Trial Court had erred in allowing the application seeking condonation of delay in filing the complaint. In fact, the complaint in question was not accompanied by the application seeking condonation of delay in filing the complaint.

Learned counsel for the respondent, on the other hand, has submitted that the Trial Court had exercised the jurisdiction rested in it and delay in filing the complaint had been rightly condoned by the Trial Court.

In the present case, respondent has filed the complaint in question against the petitioner with regard to dishonour of cheque in question. In support of his case, respondent led its preliminary evidence and the petitioner was ordered to be summoned to face the trial qua commission offence punishable under Section 138 of the Act. An application was moved by the petitioner seeking recall of the summoning order on the ground that the complaint in question had been filed beyond the period of limitation. The said application was, however, got dismissed as withdrawn vide order dated 6.1.2005 Annexure P-5. Petitioner had filed Criminal Miscellaneous No. M-40358 of 2007 seeking quashing of the summoning order. The said petition was disposed of by this Court vide order dated 23.7.2007 Annexure P-6 as the application moved by the respondent seeking condonation of delay in filing the complaint was pending. The said application was moved by the complainant after an objection was raised in this regard by the petitioner.

Respondent moved the application under Section 142 of the Act seeking permission for condonation of delay in filing the complaint on the ground that the delay had occurred due to the wrong advice given by the counsel for the respondent. The Trial Court, while allowing the application for condonation of delay in filing the complaint, has held as under:-

“Liberal view should be taken when no negligence or inaction or want of bonafide is imputable to party. The substantial justice should be preferred against technical flaws. Complainant had not adopted any dilatory tactics. Cheque amount shows that Complainant's stake is heavy.

Respondent has failed to show what benefit was delivered by Complainant by making delay in filing complaint. Explanation rendered by Complainant does not show any malafide. Complainant has given sufficient reason for condoning the delay. Thus, opportunity must be given to him to contest his case. Therefore, in the interest of justice his application is allowed.”

Section 142 of the Act reads as under:-

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.]

Thus, as per the above provision, the Trial Court has the jurisdiction to condone the delay in filing the complaint.

In the present case, delay in filing the complaint had

occurred due to wrong legal advice. The delay in filing the complaint, thus, could not be said to be deliberate or *mala fide*. The complainant had nothing to gain by filing the complaint after delay. Further, now the complaint in question would be disposed of on merits. Both the parties will get opportunity to lead their evidence before the Trial Court in support of their respective pleas.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

**April 30, 2013
Gurpreet**