

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Petn. No.08/2023

Sri Tridip Chanda

..... Petitioner(s).

V E R S U S

Md. Saha Alam Miah & another

.....Respondent(s).

For Petitioner(s) : Mr. Saugat Datta, Advocate.

For Respondent(s) : Mr. Ratan Datta, P.P.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

31/05/2023

Heard Mr. Saugat Datta, learned counsel appearing for the petitioner and Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent No.2-State.

2. On the first occasion, the learned Additional Chief Judicial Magistrate, West Tripura, Agartala had taken cognizance of the complaint filed by the respondent No.1 under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act, for short) though it was suffering delay of 7 days, by order dated 25.01.2018 by condoning the delay without hearing the accused. The last date for filing of the complaint petition as per the ingredients of Section 142(b) read with Section 138 of the N.I. Act was 18.09.2017 but the complaint petition was filed on 25.09.2017. The accused-

petitioner, i.e. the present petitioner approached this Court in Criminal Petition No.06 of 2020 which was decided on 20.02.2020 by remanding the matter back to the Magistrate for consideration of the reasons stated by the complainant for filing the complaint after the period of limitation. The learned Magistrate was also asked to decide whether the complainant had made out sufficient cause for not making the complaint within such period. This exercise was to be undertaken after hearing the accused as well. The order dated 25.01.2018 was set aside.

3. Petitioner is aggrieved by the order dated 11.05.2022 passed by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in Misc. case No.05 of 2021 whereby such delay has been condoned. Petitioner has taken a plea that, in fact, the delay was 1198 days from the due date of filing of complaint till it was condoned by the impugned order which has not been sufficiently explained by the complainant. Moreover, the complainant had quoted Section 5 of the Limitation Act instead of Section 142(b) of the N.I. Act for condonation of the delay and as such, the delay condonation petition was also not maintainable.

4. Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent No.2-State, has in turn submitted that after the matter was

remanded by this Court in Criminal Petition No.06 of 2020 vide judgment dated 20.02.2020, the learned Magistrate has considered the question of actual delay consumed in preferring the complaint petition on 25.09.2017, i.e. after 7(seven) days of the last date for filing complaint petition, i.e. 18.09.2017. The delay of 1198 days attributed to the complainant is thus not made out as the litigation journey has been responsible for the delay in passing the order dated 11.05.2022 whereby, upon remand, the learned Addl. Chief Judicial Magistrate, West Tripura, Agartala has after hearing the accused/petitioner herein condoned the delay of 7 days. It is also submitted that the learned Court has also considered the objection relating to non-quoting of Section 142(b) under the N.I. Act as technical in nature and that the complainant being an ordinary citizen may not be aware of the rigours of the provisions of law. As such, petitioner should participate in the proceedings and take all his defences instead of prolonging the litigation on such pretext.

5. I have considered the submissions of learned counsel for the parties and taken note of the materials placed from record and also perused the impugned order. As noted in the opening paragraphs, the delay of 1198 days alleged on the part of the petitioner is not the actual delay in filing of the complaint by the respondent No.1/complainant since the complaint

petition was filed on 25.09.2017 only after 7 days of the last date for filing the complaint petition on 18.09.2017 after observing the necessary formalities under Section 138 of the N.I. Act. However, since the order dated 25.01.2018 condoning the delay was passed without hearing the accused, this Court in Criminal Petition No.06 of 2020 set aside the said order and remanded the matter to the learned Magistrate to pass a fresh order in accordance with law after hearing the accused. On the instant occasion, the learned Court has after hearing the accused/petitioner herein and after taking note of the actual delay of 7 days only condoned the delay. It is obvious that there has not been any serious delay or laches on the part of the complainant and the delay allegedly attributed by the petitioner is on account of the litigation journey and not attributable to the complainant. The learned trial Court has also observed that wrong quoting of the provisions for condonation of delay may not be held against the complainant as it was technical in nature and the complainant being an ordinary person may not be fully aware of the correct provisions which is the responsibility of the counsel representing him.

6. As such, I do not find any reason for interference in the impugned order dated 11.05.2022 passed by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in case No. Misc. 05 of 2021.

7. The instant petition is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.06.02
18:28:35 +05'30'



सत्यमेव जयते