

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.47 of 2023

Sri Deepjyoti Das
.....Petitioner(s)
Versus
Sri Sanjoy Roy and another
.....Respondent(s)

For Applicant(s) : Mr. S. Lodh, Advocate.
For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

30/08/2023

Heard Mr. S. Lodh, learned counsel for the petitioner and Mr. Ratan Datta, learned Public Prosecutor for the State.

[2] The learned revisional Court of Additional Sessions Judge, Gomati Judicial District, Udaipur, vide order dated 27th July, 2023 passed in Criminal Revision No.12 of 2022, reversed the order dated 4th November, 2022 passed by the learned Chief Judicial Magistrate-cum-Civil Judge (Sr. Div), Gomati, Udaipur in Crl. Misc. No.10 of 2022 arising out of CR (NI) No.43 of 2022 whereby and whereunder the learned Chief Judicial Magistrate-cum-Civil Judge (Sr. Div), Gomati, Udaipur had refused to condone the delay of 61 days in preferring the complaint under Section 138 of the NI Act, 1881 by the respondent-complainant. An application was filed by the complainant under Section 142(1)(b) of the NI Act read with section 5 of the Limitation Act for condonation of the delay taking the grounds that the communication from the Postal Department regarding delivery of notice on 13th April 2022 upon the

accused/petitioner was received only on 10th July, 2022 only whereafter the complaint was filed on 29th July, 2022. The notice was issued on 7th April, 2022 after return of the memo from the bank due to dishonor of the cheque on the grounds of insufficient funds. The complainant had also taken a plea that he was in a bed ridden condition as he was seriously injured on his leg and medically advised to take one and half months bed rest. Learned Trial Court, however, did not find any substance in the explanation urged so as to constitute sufficient cause to condone the delay of 61 days in preferring the complaint petition vide order dated 4th November, 2022 (Annexure -2). The complainant went before the learned Court of Additional Sessions Judge, Gomati Judicial District, Udaipur in revision where the order was reversed holding that the reasons for delay are properly explained and the complaint should be entertained even beyond the permissible period of one month since proviso to Section 142(b) permits condonation of delay in justifiable circumstances. The petitioner is the opposite party in the complaint petition against whom the complainant has alleged that the cheque amounting to Rs.4,73,000/- issued by him stood dishonor on account of insufficient funds. Therefore, the complaint case was lodged under Section 138 of the NI Act with a delay condonation application under Section 142(1)(b) of the NI Act.

[3] Mr. S. Lodh, learned counsel for the petitioner submits that the order of the learned Trial Court is well considered and does not suffer from any perversity. The complainant had completely failed to show sufficient cause for the delay. Not a single chit of paper was submitted by the complainant to show that he was advised to take rest by the doctor on account of injury in his leg. Further, the complainant had written to the Postal Department after a long delay of one month of the receipt of notice, and therefore, did not appear to be

diligent in pursuing the complaint petition. Interference in revisional jurisdiction is limited to the findings of perversity in the order passed by the inferior Court. Learned revisional Court has, however, failed to record any such finding that the order dated 4th November, 2022 passed by the Chief Judicial Magistrate-cum-Civil Judge (Sr. Div.), Court No.2, Gomati Judicial District, Udiapur suffered from any perversity in finding or there was any irregularity or illegality. As a result of rejection of condonation of delay petition, petitioner has been effectively discharged from the complaint. Therefore, being aggrieved by the revisional order he has approached this Court.

[4] Learned counsel for petitioner does not question the maintainability of the revision petition before the learned revisional Court at the instance of the complainant but he submits that no grounds for interference was made out for passing the impugned order. As such, interference has been prayed for.

[5] Mr. Ratan Datta, learned Public Prosecutor has also relied upon the contents of the order dated 4th November, 2022 and revisional order dated 27th July, 2023 and submitted that the order of the revisional authority is sound and well considered. It is further submitted that the grounds urged by the complainant before the learned Trial Court were not completely non est since it appears that there was a delay in communication from the Postal Department regarding the delivery of notice upon the opposite party/petitioner herein apart from medical grounds taken by him. Therefore, interference may not be called for.

[6] I have considered the submissions of the learned counsel for the parties and taken note of the pleadings placed from the records. I have also gone through the order dated 4th November, 2022 passed by the learned CJM-cum-Civil Judge (Sr. Div), Gomati Judicial District, Udaipur and the impugned order dated 27th July, 2023 whereby the learned revisional Court has reversed the order dated 4th November, 2022 and remanded the matter to the learned Trial Court. Learned counsel for the petitioner has taken a plea that the order dated 4th November, 2022 did not suffer from any perversity in finding which could be interfered in revisional jurisdiction. It, however, appears from perusal of the delay condonation application (Annexure-1) and the order dated 4th November, 2022 that the complainant after issuing notice on the opposite party on 7th April, 2022 under registered cover for being sure about the delivery of the legal notice requested the Department of Post for certificate with delivery slip regarding delivery of the notice on 6th July, 2022. The same was replied on 10th July, 2022 and thereafter the complaint was filed on 29th July, 2022. Though there appears to be some delay in seeking such certificate from the Postal Department on the part of the complainant but the learned Trial Court has taken a view that at the first instance, the complainant failed to take any due action in due course of time and even after certificate of the Postal Department took 19 days for filing the complaint petition which shows lack of bonafide interest. The learned Trial Court has also taken a view that the offence under Section 138 of NI Act is technical one and as such delay has not been reasonably explained.

[7] Learned revisional Court has taken a broader view of the matter, and relying upon certain decisions of the apex Court, come to a conclusion that

delay has not been occasioned on account of malafide or culpable negligence on the part of the litigant/complainant preferring the complaint petition as ordinarily a litigant does not have a right to seek benefit from filing a late complaint. The case is at the pre-summoning evidence stage and as such the more pragmatic approach in the matter of condonation of delay has been taken by the learned revisional Court, which this Court in the present revision petition does not deem it proper to interfere with. It would depend upon whether the complainant would be able to satisfy the ingredients of the offence by making solemn affirmation before the Court with the support of these witnesses. It is a stage which has not yet reached for issuance of summons upon the petitioner. In such circumstances, this Court is of the opinion that no interference is required in the order of the learned revisional Court.

Accordingly the instant revision petition is dismissed.

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

(APARESH KUMAR SINGH), CJ