

(2020) 08 MP CK 0197

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 901 Of 2020

Anil S/o. Hari Patidar.

APPELLANT

Vs

Shantilal S/o. Shivabhai Fogala (Patidar)

RESPONDENT

Date of Decision : 19-08-2020

Acts Referred:

Limitation Act, 1963 — Section 5
Negotiable Instruments Act, 1881 — Section 138

Citation : (2020) 08 MP CK 0197

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Manish Yadav, R.K. Gupta

Final Decision : Dismissed

Judgement

Heard on IA No.1512/2020, an application under Section 5 of the Limitation Act. This Revision is barred by 966 days, hence, the petitioner has filed the present application for condonation of delay.

According to the petitioner, he is a sole and effective bread earner in the family and his wife could not manage the documents and fees, therefore, he could not prefer the Revision within time. Hence, the delay is bona fide and liable to be condoned.

Shri Manish Yadav, learned counsel for the petitioner submits that the petitioner is in jail since 29.08.2019, therefore, he could not prefer the Revision within time. He has virtually become bankrupt hence unable to pay the dues and, he is in jail since last eight months, hence, the delay be condoned.

The present Revision is filed against the judgment dated 24.03.2017 passed by the Second Additional Sessions Judge, Barwani, District Barwani. The petitioner has surrendered before the Trial Court on 29.08.2019 and has been sent to the judicial custody. He has not given any explanation for the delay caused between 24.03.2017 to 29.08.2019. He did not surrender before the Additional Sessions

Judge at the time of pronouncement of judgment, therefore, there is no valid explanation for the delay, hence, the same is not liable to be condoned.

Learned counsel for the petitioner submits that petitioner has a good prima facie case and he hopes to succeed, therefore, in the interest of justice, the delay in filing the Revision be condoned. In order to examine the prima facie case in favour of the petitioner, it is necessary to examine facts of the case which are as under:-

The respondent being the complainant filed a complaint under Section 138 of the Negotiable Instruments Act against the present petitioner contending that both had family terms. The petitioner/accused is a proprietor of PMT Auto International and in order to run the business and maintaining the account, he took a friendly loan of Rs.3,50,000/- from him. To repay the aforesaid amount, he issued two cheques i.e. Cheque No.009702 dated 15.3.2011 for Rs.1,00,000/- and cheque No.009711 dated 20.3.2011 for Rs.2,50,000/- of his Bank Account No.163/990825200000163 in Anjad Branch of Bank of India. The complainant presented the said cheque in his account for encashment. Vide memo dated 9.9.2011 the Bank having the account of the present petitioner returned the cheque unpaid due to insufficient amount in his account. Thereafter complainant gave a legal notice dated 15.9.2011 and when the present petitioner failed to make the payment to him, he filed a complaint under Section 138 of the Negotiable Instruments Act before the Addl. Chief Judicial Magistrate, Anjad, District Barwani. In support of the complaint, the complainant examined himself as PW-1. He was cross-examined by the petitioner. The petitioner did not deny his signature and issuance of cheque to the complainant. He did not give any evidence in rebuttal to prove his innocence, therefore, vide judgment dated 23.07.2016 learned Additional Chief Judicial Magistrate, Anjad has convicted him under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months RI with fine of Rs.4,00,000/- and in default of payment of fine six months additional rigorous imprisonment.

Being aggrieved by the aforesaid judgment petitioner preferred a Criminal Appeal by depositing Rs.60,000/-. Vide judgment dated 24.03.2017 the Additional Sessions Judge, Barwani has dismissed the appeal. At the time of the pronouncement of the judgment, the petitioner was not present in the Court and later on he surrendered himself before the J.M.F.C. On 29.08.2019 and was sent to the judicial custody. The petitioner has completed the jail sentence of six months and he is going to complete the remaining jail sentence i.e. six months in default of payment of fine, therefore, no useful purpose would be served to condone the delay as the petitioner is neither having a good prima facie case nor hopes to succeed in it. He has already undergone a major part of the sentence. He has no amount to offer for payment to the complainant. He has already applied before the competent Court seeking a declaration to be bankrupt, therefore, even if the delay is condoned, there would be a chance of success in this Revision on merit. The Tehsildar, Anjad has initiated proceeding for

attachment and auction sale of his house No.15, M.G. Road, Anjad for recovery of Rs.19,55,000/- for payment of the fine amount already imposed in five cases filed against him under Section 138 of the Negotiable Instruments Act, therefore, I do not find any ground to condone the delay and admit this Revision for final arguments. Accordingly, the Revision fails and is hereby dismissed. All the pending applications are also disposed of. The records be sent back to the concerned court forthwith.