

(2009) 07 PAT CK 0091
In the Patna High Court
Case No : Cr. Misc. No. 20828 of 2007

Jairam Sharma and Vijay Kumar

APPELLANT

Vs

The State of Bihar and Bablu Kumar Singh @ Bablu Kumar

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Citation : (2011) 6 RCR(Criminal) 522

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The petitioners in this case are aggrieved by order, dated 3.1.2008 passed by the Judicial Magistrate, Patna by which cognizance for the offence u/s 138 of the Negotiable Instruments Act, 1881 has been taken.

2. Shorn of all the details the only question to be decided in this case is whether the accused-petitioners should be heard if the complaint is filed beyond the time prescribed for filing the complaint u/s 142(b) of the Negotiable Instruments Act ("the Act; hereinafter). Section 142 of the Act reads as follows:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) no court shall take cognizance of any offence punishable u/s 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 satisfied the Court that he had sufficient cause for not making a complaint within such period.

3. This proviso was inserted by Act 25 of 2002 with effect from 6.2.2003.

4. There is no dispute regarding the fact that the complaint was filed beyond the

time prescribed under the Act for filing such a case.

5. Learned Counsel for the petitioner contends that the order taking cognizance and condoning the delay does not disclose the reasons for condoning the delay and further the counsel for the petitioners also submits that the petitioners ought to have been noticed and heard by the Judicial Magistrate before any order condoning the delay was passed in favour of the opposite party-complainant.

6. On a plain reading of proviso to Section 142 of the Act it would appear that it is an enabling insertion to the section which prescribes that the court has to be satisfied that there was sufficient cause in not making the complaint within the time prescribed and the complaint would not be entertained if the complainant is not able to satisfy the court that he had good reasons for not filing the complaint petition within the time prescribed by the proviso to Section 142 of the Act. Admittedly in the case the delay is of one month. Learned Magistrate has simply condoned the delay without disclosing his mind or even mentioning the reasons put forth on behalf of the complainant to justify the delay. Undoubtedly a right had accrued in favour of the petitioners when there was a delay in lodging the complaint. Section 142(b) of the act has to be read along with Section 142(a) which starts with nonobstant clause that "no court shall take cognizance of any offence u/s 138 except upon a complaint in writing made by the payee or, as the case may be, holder in due course of the cheque." Clause (b) provides that such complaint shall be made within one month from the date on which cause of action arises under Clause (c) of the proviso to Section 142(c). Therefore, when there is a delay in filing the complaint, the other side ought to be heard to refute the factum of delay even though there is no such provision in the section itself, before the court can taken cognizance for the offence.

7. Learned Counsel for the opposite party relying on a Supreme court judgment in the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, submits that an accused in a case does have any locus to appear at the time of taking cognizance and as such the petitioners cannot claim that they ought to have been heard by the Magistrate on the date on which he passed the order taking cognizance of the offence u/s 138 of the Act. The principles laid down in the case of Chandra Deo Singh (supra) have been later reiterated in several judgments of the High courts and the Supreme court. However, the facts and circumstances in those cases are different to the facts of the present case. The N.I. Act is separate code which deals with the offences relating to promissory notes, Bill of exchange and cheques. Before the amendment of Section 142 by Act 55 of 2002 there was no provision for condoning the delay in filing a complaint u/s 138 of the Act and obviously due to nonobstant clause there was a bar in taking cognizance if the complaint was filed beyond the time provided. The introduction of the proviso to Section 142 gave the court power to consider the reasons for the delay in filing the complaint and the use of the term "satisfies" necessarily means that the complaint would only be considered after sufficient reasons were made out for condoning the delay.

8. In the present case apart from the fact no reasons have been made out for condoning the delay. The court ought to have given an opportunity to the complainant to be heard only on the point of delay for the reasons I have already explained in this order. In the circumstances the order taking cognizance is quashed on both the grounds mentioned aforesaid.

9. In the result, this application is allowed.