

(2023) 04 GUJ CK 0032

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 480 Of 2023

Pratapsinh Kalyansinh Parmar

APPELLANT

Vs

Yusufbhai Kutubudin Bharmal

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 142, 142(B)
Code Of Criminal Procedure, 1973 — Section 482
Limitation Act, 1963 — Section 5

Citation : (2023) 04 GUJ CK 0032

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : H P Baxi, Shivani R Modi

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. By way of this application, the applicant herein challenges the order dated 02.06.2022, by which 9th Chief Judicial Magistrate Court, Jamnagar dismissed the application filed under Section 142(B) of the Negotiable Instrument Act, seeking condonation of delay in filing complaint under Section 138 of the N.I. Act and same has been confirmed by the Revisional Court at Jamnagar.

2. Facts and circumstances giving rise to file the present application are that, the applicant lent Rs.7,00,000/- to respondent no. 2, against which, post dated cheques was issued and same was returned 'unpaid' on 23.06.2016. The statutory notice was served on 08.07.2016 and detailed reply given by the respondent no. 2 on 12.07.2016. The applicant herein could not file the complaint in a statutory period. The complaint presented on 18.12.2019 along with delay condonation application. The delay condonation application being registered as Criminal Misc. Application 1096 of 2019.

3. The learned 9th Additional Chief Judicial Magistrate Court, Jamnagar, after

hearing the applicant herein, was pleased to reject the delay condonation application vide its order dated 02.06.2022. In para-8 of the order, learned trial Court while rejecting the application observed thus:

"that, the actual delay in filing the complaint is 1211 days and there exists inordinate delay and same is attributable to the applicant's inaction and negligence. It is observed by the learned trial Court that, the statute has granted court's with discretionary powers to condone the delay, however, at the same time, it also places the obligation upon the party to justify that he was prevented in filing the complaint by sufficient cause. The learned trial Court further observed that, when a right has occurred in favour of one party due to gross negligence and lackadaisical attitude of the other, the court shall refrain from exercising the discretionary relief. "

4. Dissatisfied with the order of the trial Court, the applicant preferred Criminal Revision Application No. 67 of 2022 before the learned Additional Sessions Judge, Jamnagar, which came to be rejected vide order dated 03.11.2022. In para-5 of the order, the Revisional Court, made following observation:

"5. Having, gone through the contents of application, record of the case and submissions advanced by the learned counsel of applicant, it appears that as per the case of applicant, disputed cheque was issued by opponent on 23.06.2016. Said cheque was returned as unpaid on 23.06.2016. Demand notice was given by the applicant on 08.07.2016. The impugned application for condonation of delay was made by the applicant on 18.12.2019. Perusal of the record further transpires that wife of the applicant was under treatment from the month of November, 2016 to March, 2017. As per the case of applicant, his wife was died on 14.03.2017. There was sufficient time with the applicant to approach the Court after March, 2017. But applicant approach the Court in December, 2019. There is no satisfactory explanation for such delay. Contention of the applicant that he was under depression and mental trauma is not acceptable because even after death of wife of applicant, he took inordinate time in approaching the Court. The delay caused in making the complaint remained unexplained. Therefore, this Court is of view that impugned order of learned Trial Court rejecting the application of applicant for condonation of delay is correct and no interference is required. Learned Trial Court has clearly observed that delay in making the complaint is inordinate and unexplained. This Court is also of view that delay occasioned in making the complaint is inordinate and unexplained. Hence, following final order is hereby passed;

FINAL ORDER

(1) Present Criminal Revision application is hereby dismissed.

(2) No order as to costs.

(3) Impudent order dated 02.06.2022 passed by the Court of learned 9th Additional Chief Judicial Magistrate, Jamnagar in Criminal Misc. Application

No.1096 of 2019 is hereby made confirmed.

(4) Original R & P of Criminal Misc. Application No.1096 of 2019 be sent back to the learned Trial Court along with one true copy of this judgment immediately.

(5) Original File be consigned to record room after due compliance.”

5. Aggrieved with the orders passed by the Courts below, the present application, invoking extra ordinary jurisdiction of this Court has been preferred under Section 482 of the Cr.P.C.

6. This Court has heard learned counsel Mr. H.P. Baxi, for and on behalf of the applicant herein.

7. Mr. H.P. Baxi, learned counsel submitted that, the applicant herein was serving with PGVCL at Jamnagar and due to relations with the respondent no. 2, he lent Rs.7,00,000/-, against which, post dated cheque was issued in favour of the applicant herein. The said cheque was returned back with the endorsement 'funds insufficient'. On 08.07.2016, statutory notice as contemplated under the Act was served on the respondent no. 2 and same was replied by him without making any payment. It is in this context, he submitted that, the wife of the applicant was suffering from terminal cancer and she died on 14.03.2017. After sad demise of the wife of the applicant, the applicant was in depression, as a result, the applicant could not file a complaint in statutory time limit. Thus, whatever delay caused in filing the complaint has been sufficiently explained and pleaded in the delay condonation application by the applicant herein.

8. Mr. Baxi, learned counsel for the applicant submitted that the trial Court has discretion to take cognizance of the complaint after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period. Referring to statutory provision i.e. 142(b) of the N.I. Act, it is argued that, the proviso appended to clause (b) of Section 142, was inserted by the Negotiable Instruments (Amendment and Misc. Provisions) Act, 2002, and the legislative intend was to overcome the technicality of limitation period. In such circumstances, he argued that, the proviso to clause (b) of Section 142 confers a jurisdiction upon the court to condone the delay. The trial Court while considering the application filed under Section 5 of the Limitation Act for condonation of delay, should take programmatic approach and sufficient cause should be liberally construed to do substantial justice. In the case on hand, the applicant herein produced the entire medical files of his wife to show that she was suffering from cancer disease, same was not considered by the trial Court and asked the applicant to explain each day's delay, which is nothing but pedantic approach adopted by the courts below and courts below ought to have liberally construed the reasons for condoning the delay.

9. Mr. Baxi, learned counsel has relied on the decision of the Apex Court delivered in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst Katiji and other, (1987) 2 SCC 107, to contend that, there is not presumption

that delay is occasioned deliberately or on account of culpable negligence or on account of malafide and therefore, the trial Court should have condoned the delay considering the grounds of illness of the wife of applicant and after her death, the applicant suffered mental shock and agony.

10. Mr. Baxi, learned counsel in support of aforesaid contentions, relied on the following decisions :

(i) Pawan Kumar Ralli Vs. Maninder Singh Narula, reported in Laws (SC)2014 8 20;

(ii) MSR Leathers Vs. S. Palaniappan, reported in Laws(SC) 2012 9 57;

11. In view of the aforesaid contentions, learned counsel submitted that the courts below failed to exercise its discretion in its proper prospective and despite having sufficient cause, preventing the applicant herein in filing the complaint, the courts below taking technical approach refused to condonation of delay in filing the private complaint under Section 138 of the N.I. Act, which warrants interference by this Court.

12. Having regard to the facts and circumstances of the case and on perusal of the impugned orders, the issue arise for determination is whether courts below were justified in refusing to condone delay in filing complaint under the provisions of the N.I. Act?

13. It is not in dispute that, the cheque in question dated 23.06.2016 was returned 'unpaid' on the same day and within limitation, the notice demanding the cheque amount was served upon the respondent no.2. The complaint was to be filed on or before 24.08.2016 but same was filed on 18.12.2019. Thus, the actual delay in filing the complaint is 1211 days, which is more than 3 years. The wife of the applicant expired on 14.03.2017. The courts below observed that, even after sad demise of the wife, the applicant herein has kept quite for nearly 21 months. It is no doubt true that length of the delay is no matter but acceptability of the explanation is the only criterion for condonation of delay. In the facts of the present case, courts below have observed that, there is inordinate delay in approaching the courts and the explanation about depression of the applicant cannot be acceptable. It is settled proposition of law that the law of limitation is founded on public policy. The legislature does not prescribed limitation with the object of destroying the rights of the parties but to ensure that, they do not resort dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislation. In the case of Oriental Aroma Chemicals Vs. Gujarat Industrial Corporation and another, (2010) 5 SCC 459, the Apex Court has held that, even while a liberal approach is desirable in condoning the delay of short duration, stricter approach is required to be applied in case of inordinate delay.

14. Reverting back to the facts of the present case, this court is of opinion that, the applicant was not reasonably diligent in pursuing the remedy after sad

demise of wife. The delay of more than 3 years is inordinate delay and applicant has kept quit for long time. In such circumstances, the discretion exercised by the courts below in examining the explanation offered for such a long and inordinate delay, dismissing the application cannot at all characterized as perverse, illegal or arbitrary.

15. For the foregoing reasons, the reasons assigned by the courts below while rejecting the application under Section 5 of the Limitation Act, would not warrant any interference as concurrent findings recorded by the courts are in accordance with law and does not suffer from any infirmities.

16. Resultantly, the application stands dismissed at the admission stage.