

(2012) 08 JH CK 0117
In the Jharkhand High Court
Case No : Criminal M.P. No. 841 of 2010

Samit Gupta and Another	Vs	APPELLANT
State of Jharkhand and Another		RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2012) 08 JH CK 0117

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Brij Bihari Sinha, for the Appellant; Manindra Kumar Sinha, for The O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioners, learned counsel appearing for the opposite party no. 2 and learned counsel appearing for the State. Since a complaint case bearing C.P. Case no. 276 of 2004 for an offence u/s 138 of the Negotiable Instrument Act was filed by the complainant beyond the time prescribed u/s 142 of the Negotiable Instrument Act, it accompanied a petition for condonation of delay. The court having condoned the delay in terms of proviso to Section 142 of the Negotiable Instrument Act did take cognizance of the offence u/s 138 of the Negotiable Instrument Act. That order was challenged before this Court in Cr.M.P. No. 1047 of 2006 wherein it was argued before this Court that the court has taken cognizance in most mechanical manner without satisfying itself that there was sufficient reason on account of which complaint could not be filed within time. The plea having been accepted by this Court, the order taking cognizance was quashed but at the same time, direction was given to pass a fresh order in this regard after giving opportunity to the petitioners to be heard. Accordingly, the matter was raised before the court below by the petitioner that the complaint has been filed beyond the prescribed period of

limitation with a petition praying therein to condone the delay on the ground that the complainant was under treatment of a doctor. In support of that a certificate was filed but that is a forged document.

2. On such allegation, an order was passed on 8.8.2008 whereby it was held that since the plea has been taken that the medical certificate is forged, it cannot be decided at this stage, rather that plea can be decided only when the parties would be adducing their evidences in this respect and, therefore, that matter was kept open to be raised during trial.

3. Being aggrieved with that order, this application has been filed.

4. Mr. B.B. Sinha, learned counsel appearing for the petitioners submits that this Court having quashed the order taking cognizance, vide its order dated 13.2.2007 passed in Cr. M.P. No. 1047 of 2006 directed the court below to pass a fresh order in this respect but the court below instead of deciding the matter relating to limitation, deferred it to be decided during trial and thereby the court has committed illegality in passing the impugned order.

5. Having heard learned counsel appearing for the parties, it does appear that when in the light of the order passed by this Court, the matter was taken up by the court below, plea was taken that the medical certificate on the basis of which condonation of delay is being sought is a forged document. In such situation, the court rightly did hold that the matter cannot be decided at this stage, rather it would be decided during trial when the parties would be leading their evidences in this respect. Thus, I do not find any illegality with the order dated 8.8.2008. Accordingly, this application stands dismissed.