

MHNG120003952020



Cri. M. A. 95/2020
Anagodsing Chauhan Vs. Vijay Rewatkar

Order Below Exh. 01

(Passed on 06.04.2026)

The present application is filed by the applicant for condonation of 50 days delay for filing the complaint case as per section 138 of the Negotiable Instruments Act,1881.

2. The applicant averted that he has given loan of Rs. 50,000/- (Rs. Fifty thousand Only) to the respondent. The applicant further averted that the respondent failed to repay the loan amount. Hence, the respondent gave a cheque bearing No. 026483 of Bank of Maharashtra on 24/01/2020 towards discharge of the above mentioned amount. The applicant further averted that he presented said cheque in the bank but said cheque dishonored due to funds insufficient. The applicant further averted that he issued a legal notice to the respondent on 27/02/2020 through RPAD. The applicant received back the said notice on 06/03/2020 with remark “not claimed”. The applicant further averted that even after service of legal notice the respondent failed to repay said cheque amount within prescribed time. The applicant further averted that he is bound to file the complaint case as per section 138 of the Negotiable Instruments Act, 1881 on or before 21/03/2022. However, due to Covid-19

pandemic, the applicant could not file the present case in within time, i.e. 30 days from 21/03/2020. Hence, the applicant further averted that due to this reason he could not file complaint case as per section 138 of the Negotiable Instruments Act, 1881 within time. Therefore, delay of 50 days occurred for filing complaint case. Therefore, the applicant filed present application for condonation of 30 days delay and seeking directions for registration of complaint filed along with it.

3. The respondent was issued notice through RPAD. However, he refused to accept it as per remark dated 26/10/2021 at Exh. 07.

4. Heard advocate Mr. M. P. Tiwari for the applicant. Respondent remained absent along with his advocate when called for argument.

5. Before moving towards merits of the present application it is necessary to reproduce relevant legal provisions which are as follows :

1. Section 138 (b) of the Negotiable instruments Act, 1881, the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

2. Section 138 (c) of the Negotiable instruments Act, 1881, the

drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

3. *Section 142 (b) of the Negotiable Instruments Act, 1881, 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 satisfies the court that he had sufficient cause for not making a complaint within such period

6. After considering these legal principles its is necessary on the part of the payee or holder in due course of the cheque to issue a legal notice in writing to the drawer of the cheque within thirty days from the receipt of information by him from the bank regarding dishonor of the said cheque. If the said notice in writing served on the drawer then the drawer has to make the payment to the payee or the holder in due course of the cheque within fifteen days of the receipt of the said notice. If the drawer fails to make the payment to the payee or the holder in due course of the cheque within fifteen days of the receipt of the said notice then the payee or the holder in due course of the cheque can file a complaint case within one month as per section 138 of the Negotiable Instrument Act, 1881.

7. Perused the record. After perusal of record it prima facie appears that the complaint ought to be file in April, 2020. Now the question before the court is that 50 days delay occurred for filing a complaint case as per section 138 of the Negotiable Instruments Act, 1881 is genuine or not? And whether delay of 50 days can be condoned or not?

8. In the present application the applicant averted that the applicant could not filed the complaint due to reasons mentioned above. However, the complaint along with affidavit mentions the date as 08/06/2020. The affidavit bears the signatures of A.S. of this Court mentioning the date as 08/06/2020. The applicant further averted that due to this reason mentioned in the application could not file complaint case as per section 138 of the Negotiable Instruments Act, 1881 on or before 20/04/2020 due to Covid-19 Pandemic. Therefore, delay occurred for filing complaint case.

9. As discussed above it is clear that delay occurred for filing complaint case as per section 138 of the Negotiable Instruments Act, 1881. The complaint along with affidavit is of the date 08/06/2020. Therefore, reasons mentioned in the present application by the applicant seems genuine. No strong objection is raised by the respondent. Therefore, the applicant could not file complaint case as per section 138 of the Negotiable Instrument Act, 1881 on or before time. In my opinion, considering facts and circumstance as discussed above, technicalities does not fatal the applicant's case. Therefore, 50 days delay occurred for filing a complaint case as per section 138 of

the Negotiable Instruments Act, 1881 needs to be condoned in such a facts and circumstances. Therefore, in the interest of justice I proceed to pass the following order.

ORDER

1. The present application is allowed.
2. 50 days delay for filing a complaint case as per section 138 of the Negotiable Instruments Act, 1881 is hereby condoned.
3. The Asst. Superintendent is directed to registered a complaint case as per section 138 of the Negotiable Instruments Act, 1881, filed along with the present application, as per rules.
4. The Asst. Superintendent is also directed, true copy of the present order be kept with the complaint case which is register as per section 138 of the Negotiable Instruments Act, 1881.
5. The present application is disposed of accordingly.

(Dictated and pronounced in open court.)

Place : Narkhed, Dist. Nagpur
Date : 06/04/2026

(**Rohan Vijaykumar Thayil**)
Judicial Magistrate, First Class,
Narkhed, Dist. Nagpur