

C. Case No:- 547/2015

Order dated: 25.02.2019.

The complainant in order to mark presence before this court has filed hazira.

As stipulated by the previous order today is fixed for hearing and passing of order.

Hence the record is taken up for hearing.

On call ld lawyer for the complainant submitted that there has been a delay of only 24 days as the then representative of the complainant was transferred and no employee was there in that place to carry forward the prosecution. Ld lawyer for the complainant during the course of his submission canvassed that the delay that has occurred in filing this case is totally unintentional, bonafide and this court may condone the delay and proceed against the accused person as per law. In order to amplify his claim he relied on Section 142 (b) of the Act and submitted that this court has every authority to condone the delay that has occurred in this case.

Heard ld lawyer for the complainant. Ld lawyer for the complainant has vehemently stressed upon Section 142 of the Negotiable Instrument Act as amended. The Section runs in the following lines:

“142. Cognizance of offences: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) No court shall take cognizance of any offence punishable under section 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 satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.”

Therefore it is axiomatic that Section 142(b) requires that the complaint is to be made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the Negotiable Instruments Act. It is also worth mentioning that the proviso to Section 142, which has been incorporated by Act of 2002, authorizes the Court to take cognizance on a belated complaint if the complainant satisfies the Court that "he had sufficient cause for not making a complaint within such period."

While interpreting the clause 'sufficient cause' it must be borne in mind that the Court should not adopt an interpretation which helps a dishonest evader and clips payee as that would defeat the very legislative measure. It is sanctified position of law that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice. The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. Therefore the terminology used in the section calls for a liberal and object oriented interpretation. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis. The general rule of limitation is based on the Latin maxim: *vigilantibus, et non, dormientibus, jura subveniunt* (the vigilant,

and not the sleepy, are assisted by the law). No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

From the factual exposition of this case it is limpid that the complainant cannot be said to be “sleeping” over his right to initiate the case on accrual of cause of action. Rather a delay of 24 day due to inevitable official formalities is quite rational. It is apposite to add that at this stage this court should not insist for strict proof of the set of facts ventilated by the complainant, rather preponderance of probabilities would suffice the cause. The Parliament only with a view to obviate the difficulties on the part of the complainant inserted proviso to Clause (b) of Section 142 of the Act in 2002. Thus to hoist the intention of the legislature a liberal interpretation should be adopted. In the lights of the above observation I am thoroughly satisfied that the cause advertised by the complainant in the petition is sufficient as it was beyond the control of the complainant and appears to me as bonafide.

Being pioneered by the above discussion and observation I have no dichotomy to conclude that the complainant has sufficient and justifiable reason for not filing the case within time and hence the delay that has occasioned is required to be condoned. This court must proceed with case as per the provisions of law enumerated in the Negotiable Instruments Act.

Hence the prayer of the complainant is allowed.

Cognizance is taken for allegedly committing offence punishable under section 138 of the Negotiable Instruments Act following the modalities of section 190(1)(b) of the Criminal Procedure Code 1973.

Fix 25-07-2019 for S/A.

Typed by me;

Additional Chief Judicial Magistrate

Bidhannagar