

C case no. 58/2022

06.03.2025

Today is the date fixed for passing order in respect of the petition filed on behalf of the complainant u/s. 142 (b) of N.I.Act with a prayer for condonation of delay in filing the present case.

A written objection has been filed on behalf of the accused persons in respect of the said petition.

Perused the petition for condonation of delay as filed by the petitioner, written objection of the accused and other materials on record including the medical documents furnished on behalf of the complainant on 21.01.2025.

Heard Ld. Advocate for both the parties on earlier occasion.

It transpires from the petition filed on behalf of the complainant u/s. 142(b) of the N.I. Act praying for condonation of delay in filing the present C. Case by the complainant under the provisions of section 138 and section 142 of the N.I. Act that the instant case has been filed by the complainant on 12.08.2022 but on account of certain health problems as the complainant has been suffering from dysentery the instant case could not be filed within the statutory period i.e within 07.08. 2022, as the demand notice has been received by the accused person on 21.06.2022 and the cause of action had arisen on 06.07.2022 in the present case and as per provisions of the N.I Act the complaint case should have been filed within the statutory period of 30 days from the date on which the cause of action has arisen but there has been a delay of six days from 07.08.2022 till 12.08.2022 in filing the present C.Case.

It further appears from the present petition that there had been no laches/ negligence or lapse on the part of the complainant and that he had been prevented by sufficient causes for not filing the present case within the statutory period. Accordingly, the present petition has been filed by the complainant with a prayer for condonation of delay in filing the present C. case.

On the contrary, it appears from the written objection as furnished on behalf of the accused person that the complainant had initially filed another C. case being 36/2019 against the present accused person which has been subsequently withdrawn by him on 25.03.2021 by filing a petition u/s. 257 of Cr.P.C and during the course of hearing of the said petition, the complainant has adduced his oral evidence before this court from which it transpires that he is having no allegations against the accused person .

It further appears from the written objection that the complainant has failed to mention the date of presentation of the impugned cheque before his banker, date of return of the dishonoured cheque and the date of issuance of demand notice upon the accused person in order to correctly establish the fact that the mandatory pre-proceeding conditions under the N.I Act have been duly complied with by the complainant. Further it also reveals from the written objection that though the present proceeding has been filed after the prescribed period of limitation but no petition u/s. 142 (b) of N.I. Act had been filed along with the present complaint petition for condonation of the delay. Moreover, no reasonable cause or plausible explanation has been given by the complainant regarding the delay in filing the present C.Case beyond its statutory period and therefore, it is clear from the materials on record that the complaint petition has miserably failed to disclose any commission of offence by the accused u/s. 138 of N.I. Act and as such the instant proceeding as filed by the complainant is liable to be rejected.

Before considering the fact as to whether the petition filed by the complainant u/s. 142 (b) of the N.I. Act can be reasonably considered by this court, it is pertinent to traverse through the provisions of section 142 (b) of the N.I. Act which provides that notwithstanding anything contained in the Code of Criminal Procedure, any complaint u/s. 138 of N.I. Act is to be made within one month of the date on which the cause of action

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under (c) of the Proviso to section 138 of N.I. Act arises and that the cognizance of a complaint after the prescribed period may be taken by the court, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

On perusal of the facts and circumstances of the present case, it appears that the demand notice had been given to the accused person on 20.06.2022 which had been received by him on 21.06.2022 as is revealed from the track consignment report furnished by the complainant and thereby the cause of action in the present case had arisen on the elapse of 15 days from the date on which the demand notice had been received by the accused person, viz, i.e 06.07.2022 and the complaint case ought to have been filed within a period of one month from the date on which the cause of action had arisen in the present case i.e within 07.08.2022. However, since the present complaint case has been filed on 12.08.2022 there has been a delay of around 5 days in filing the present complaint. Though the complainant has furnished certain medical documents regarding his illness during the said period stating that he had been suffering from dysentery and other related illness but no medical prescription in that respect has been filed by him before this court. Therefore, it appears that there has been sufficient latches on the part of the complainant in filing the present complaint case within the statutory period. However, since it is the observation of the Hon'ble Apex court in a Plethora of judicial pronouncements that delay of a negligible period can be condoned by a court upon consideration of other material facts, I am inclined to allow the instant petition as filed by the complainant u/s. 142(b) of the N.I Act for a prayer for condonation of delay in filing the present complaint case but of course subject to payment of cost.

Hence, it is

Ordered

that the petition filed by the complainant u/s. 142 (b) of N.I. Act praying for condonation of delay in filing the present C. case is hereby considered and allowed on contest subject to payment of cost of Rs.1000/- by the complainant to the accused person.

To **29.04.2025** for plea.

D/C
Sd./-

Sd./-
ACJM, Raghunathpur