

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.610 of 2019

Arising Out of PS. Case No.-1889 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Surya World College of Engineering and Technology, an institute run by M/s Surya World Educational Research and Charitable Initiative, a Society registered under the Indian Societies Registration Act, 1860 having its registered office at Bapror, Near Shambu Toll Plaza, NH-1, P.S. - Rajpura, Distt-Patiala, State-Punjab, through its President-cum-Authorized Signatory Shri Sohail Goyal @ Suhail Goyal, S/o Shri Rajiv Goyal, R/o House No. 64, Sector 9A, P.S. - Sector-3, Union Territory of Chandigarh 160009.
 2. Sohail Goyal @ Suhail Goyal, Son of Shri Rajiv Goyal, Resident of House No. 64, Sector-9A, P.S.-Sector- 3, Union Territory of Chandigarh- 160009

... .. Petitioners

Versus

1. The State of Bihar
2. Kumar Prashant @ Prashant, Managing Director of M/s Career Solution Pvt. Ltd., 1st Floor, Dumraon Place, Frazer Road, Dak Bungalow Chauraha, P.S. - Kotwali, Distt. and Town - Patna 800001, Bihar.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Senior Advocate Ms. Kanupriya, Advocate Mr. Abhishek Anand, Advocate Ms. Aastha Prakash, Advocate
For the State	:	Mr. Chandrasen Prasad Singh, APP
For the Complainant/O.P. No.2:	:	Mr. Kumar Ravish, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 31-07-2026

The present petition has been preferred for quashing of the order dated 24.08.2016 as passed by the Court of Smita Raj, Judicial Magistrate-1st Class, Patna in Complaint Case No.1889(c) of 2016, presently pending in the Court of Sub Judge-XVII-cum-A.C.J.M.-17, Patna, whereby the cognizance of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I. Act') has been taken against the petitioners and, thereafter, summons have been



issued against them.

2. The case of the complainant, who is the Director of M/s. Career Solutions Pvt. Ltd., Patna, speaks briefly, that the company entered into an agreement with the accused persons (petitioners) for promotions of their colleges and also to secure admission of students. Under the agreement, accused persons authorized the complainant-company to make advertisement and promotion of admissions of students for their college and assured payment of all the expenses incurred in this regard. On the basis of such assurance, the complainant/company invested Rs.67,41,000/- in promoting admission in the colleges of the accused persons and submitted bills in this regard. To discharge the liability of aforesaid bills, four cheques, all dated 18.01.2016 payable at Axis Bank Ltd. were issued by the accused persons, which were dishonoured upon presentation and returned back to the complainant with endorsement that the account was “**blocked**”. The cheques were again represented before the bank by the company-complainant but, same was again dishonoured on 27.01.2016 with same remarks. Whereafter, a legal notice dated 24.02.2016 was issued against accused-petitioners, which was not replied and, therefore, the present complaint case was filed for the offences punishable under Sections 406, 420 of the



Indian Penal Code (in short 'IPC') and for the offence punishable under Section 138 of the N.I. Act.

3. On the basis of allegation as raised through complaint, the statement of complainant-company through its Director and witnesses were recorded on oath during enquiry, who supported the allegation, on the basis of which, the learned Judicial Magistrate-1st Class, Patna after condoning the delay of 118 days in filing of the complaint petition, vide his order dated 24.07.2016, took cognizance in aforementioned complaint case for the offence punishable under Section 138 of the N.I. Act and ordered to issue summon against the petitioners.

4. Mr. Satyabir Bharti, learned senior counsel appearing for petitioners submitted that petitioner no.1 is an institution runs under M/s. Surya World Educational Research and Charitable Initiative, which is a registered society under the Indian Societies Registration Act, 1860 (in short 'the Society'), having its registered office at Bapror, near Shambu Toll Plaza, NH-1, Rajpura, District-Patiala, Punjab. The petitioner no.2 is the President of the said society. It is submitted that petitioner no.1, which is M/s. Surya World College of Engineering and Technology was wrongly arrayed as an accused for the reason that the cheques in question were issued by the Society. It is



submitted that petitioner-accused No.2 has wrongly been addressed as Chairman-cum-Director of M/s. Surya World College of Engineering and Technology. It is submitted that the petitioner no.1 is running under the aegis of the Society and petitioner no.2 is neither the Director nor the Chairman of M/s. Surya World College of Engineering and Technology, rather he is the President of the Society. It is submitted that on this score, as the cheques were never drawn by petitioner no.1, the order of cognizance is bad in the eyes of law.

5. Mr. Bharti further submitted that M/s. Career Solution Pvt. Ltd. of which the complainant is the Director had entered into an agreement dated 24.09.2014 with petitioner no.1 for facilitating admission of minimum of 200 students in different courses for the academic session 2015-16 and as per the agreement, on fulfillment of minimum intake of 200 students only, the complainant becomes entitled for payment at the rate of Rs.35,000/- student. It is pointed that the record suggest through its unimpeachable documents that the complainant-company upon execution of the agreement with the petitioners had taken an advance of approximately Rs. 1,34,63,879/- (One Crore Thirty Four Lakh Sixty Three Thousand Eight Hundred and Seventy-nine only) through cash



and cheque from the petitioner no.1.

6. Arguing further, it is submitted by Mr. Bharti that a sum of Rs.10,00,000/- (Rupees Ten Lakhs) was paid to the complainant-company namely M/s. Career Solution Pvt. Ltd. by the petitioner no.1 through cheque No.26693 dated 14.02.2015 and cheque No.26695 dated 14.02.2015 payable at Axis Bank, which was encashed by the complainant on 02.03.2015 and 28.02.2015. It is submitted that the complainant-company was also paid a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) vide various cheques, which was encashed by the complainant from 23.01.2015 to 17.03.2015. Again, a sum of Rs. 26,00,000/- (Rupees Twenty-six Lakhs only) was paid to the complainant's wife namely, Smt. Priyanka vide various cheques, which was encashed on various dates from 23.01.2015 to 17.03.2015. It is further submitted that a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) was again paid to M/s. Vinod Enterprises, a firm of the complainant vide cheque No.33624-25, which was encashed on 12.02.2015 and, as such, a total amount of Rs.66,00,000/- (Rupees Sixty-six Lakhs only) was paid to the complainant through various cheques and the remaining amount of Rs.68,65,879/- (Rupees Sixty-eight Lakhs Sixty-five Lakhs Eight Hundred Seventy-nine only) was paid in cash to the



complainant. The receipt whereof is in the possession of petitioner no.1.

7. It is pointed out that all such payments were received by the complainant as an advance and not even a single bill till date has been raised by the complainant or his company against petitioner no.1 against the advance payments already made, despite repeated reminders. Therefore, the bills enclosed in the complaint are false and fabricated bills and no such bills were ever issued by the complainant-company to the petitioners.

8. Arguing further, it is submitted by Mr. Bharti that the bank account of the petitioner no.1 was Axis Bank located in Sector-16, Chandigarh, which was frozen and blocked by letter dated 25.03.2015 on the pretext that the said bank account was opened in violation of R.B.I. guidelines and, therefore, it is not a case where account was blocked by the petitioner rather it was blocked under legal compulsion as directed by enforcing agency and, therefore, it can be safely said that it was not the act of petitioners, due to which, the cheques were dishonoured.

9. After making all such arguments, it is submitted by Mr. Bharti that he is aware about the legal position that aforesaid disputed facts cannot be raised while dealing with the quashing petition as same can be ascertained during trial only,



particularly when law provisioned under the Act, a favourable presumption for complainant i.e. drawee of the cheque u/s 139 of N.I. Act. Therefore, leaving all such arguments at this point, he mainly relied upon the fact that the present cognizance order is bad in eyes of law, after condoning the delay of 118 days as per proviso of Section 142, which is completely illegal and moreover the delay was condoned by such order date, on which the record was not fixed for hearing, there is no speaking order condoning delay rather on the left margin of petition, it was mentioned under caption “Allowed” under signature of Presiding Officer, that too after examination of complainant and inquiry witnesses on 20.08.2016. It is submitted that the manner in which the limitation petition was allowed by condoning the delay is completely illegal and, therefore, the cognizance order dated 24.08.2016 is bad in eyes of law and, as such, the same is fit to be quashed/set aside.

10. In support of his submission, Mr. Bharti relied upon legal report of Hon’ble Supreme Court as reported through **S. Nagesh v. Shobha S. Aradhya [2026 SCC OnLine SC 18]; H.S. Oberoi Builtech Pvt. Ltd. vs. MSN Woodtech [2025 SCC OnLine SC 2906]**.

11. Mr. Kumar Ravish, learned counsel appearing for



complainant/O.P. No.2, while opposing the petition could not disputed the aforesaid factual submissions *qua* limitation as raised by learned counsel appearing for the petitioners. However, it is submitted that the petitioner no.2 is the person, who drawn the cheque in issue against the bill. It is submitted that petitioner no.1 is the President of M/s Surya World Educational Research and Charitable Initiative, and he issued a cheque on behalf of the Society, being President and authorized signatory and petitioner no.1 admittedly works under aegis of the said Society. Therefore, the submission as advanced by the learned counsel for the petitioners that the cheque was drawn by wrong person or the petitioner no.1 impleaded wrongly is not convincing argument and moreover same can be cured during the trial also.

12. It would be apposite to reproduce Sections 138, 139 and 142 of the N.I. Act, which are as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement



made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to 68 [two] years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months* from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) 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; and

(c) 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.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

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 Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

[(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account]”.

13. It would be apposite to reproduce paragraph nos.

6, 7 and 8 of the legal report of Hon’ble Supreme Court as



available through **H.S. Oberoi Builtech Pvt. Ltd. case** (supra),
which are as under:-

“6. Having considered the matter, we are of the opinion that the order taking cognizance and issuing summons needs interference. From a purely legal point of view where facts are admitted that the complaint was filed beyond the time prescribed under the statute, there cannot be an automatic or presumed condonation. In the present case, the respondent is on a weaker wicket for the reason, that the Trial Court proceeds on an erroneous presumption and notes that the complaint was filed within the limitation period. Even for the sake of argument, if it is assumed that the power under Section 142 of the Act exists for the Court to condone delay, the first requirement is that the Court has to take note of the fact that there is a delay and thereafter it had to go on the point whether the reasons which have been furnished by the complainant are sufficient to condone such delay and only then move on to take cognizance and proceed for issuing of summons.

7. In the present case, the same has absolutely not been done. The High Court opining that though there may have been delay but still the Trial Court is well within its power to condone the delay and in terms of Section 142(b) of the Act, filing of an application for condonation of delay is not a statutory mandate, again in our considered view, is erroneous.

8. Once the statute prescribes a mandatory time limit for filing a complaint, there cannot be any deviation from the same except when an application accompanying the complaint is filed seeking condonation disclosing reasons for the delay and even then it is obligatory on the part of the Court to take note



of such filing beyond limitation and to consider the reasons disclosed independently and to come to a judicious conclusion that in the facts and circumstances of that case condonation is justified. The same not having been done, the order cannot be sustained”.

14. It would also be apposite to reproduce paragraph nos. 12 and 14 of the legal report of Hon’ble Supreme Court as available through **S. Nagesh case** (supra), which are as under:-

“12. At this stage, we may note that, in *Dashrath Rupsingh Rathod* (supra), it was held that cognisance under Section 142 of the NI Act of an offence under Section 138 thereof is forbidden except upon a complaint, in writing, made by the payee or holder of the cheque in due course within one month from the date the cause of action accrues to such payee or holder under clause (c) of the *proviso* to Section 138. It was observed that the *proviso* to Section 138 simply postpones institution of criminal proceedings and taking of cognisance by the Court till such time the cause of action in terms of clause (c) of the *proviso* accrues to the complainant.

14. It is manifest from the clear and unambiguous language of the above *proviso* that the power conferred upon the Court to take cognisance of a belated complaint is subject to the complainant first satisfying the Court that he had sufficient cause for not making the complaint within time. The satisfaction in that regard, resulting in condonation of the delay, must therefore precede the act of taking cognizance. Ordinarily, a proceeding instituted with limitation-linked delay before a Court of law does not actually figure as a regular matter on its file until that delay is condoned. For example, Order XLI Rules 3A and 5(3)



of the Civil Procedure Code, 1908, make this position amply clear in the context of belated presentation of civil appeals. Therefore, the approach of the High Court in treating this crucial aspect as a mere interchangeable exercise, i.e., either to first condone the delay or to first take cognisance, is not in keeping with the mandate of the aforesaid *proviso*. We may note that the respondent was herself responsible for this imbroglio as she had made a categorical statement in her complaint that it was filed within time, when it was not.”

15. Leaving all such issues related with accounting, forged bills, whether account was closed intentionally or under legal compulsion etc., being disputed facts, this Court confined itself for only issue: whether, the delay of 118 days was condoned by learned trial court on the basis of sufficient reason as to survive the order of cognizance.

16. Coming to the aforesaid issue, it appears that after examination of complainant and enquiry witnesses, a petition was filed by the complainant to condone the delay of 118 days on 12.08.2016, as it is transpired from the order dated 12.08.2016 for which, the record was put on 17.08.2016, which is as under:-

“12.8.16 परिवादी की ओर से द्वारा अधिवक्ता हाजरी दी गई है। परिवादी की ओर से एक आवेदन दाखिल किया गया। जिसे संचालित नहीं किया गया। इसे अभिलेख के साथ रखे। वाद दिनांक 17.8.16 वास्ते सुनवाई।

अज्ञापित
ह०-अस्पष्ट”



17. Thereafter, no order-sheet was drawn on 17.08.2016 and straightway through order dated 24.08.2016 cognizance was taken, which is as under:-

“IN THE COURT OF SMITA RAJ, J.M. 1ST CLASS,
COURT NO.-6, PATNA
Complaint case No.-1889(c) 2016
Kumar Prasant alias Prasant

vs.

Ms. Surya World College of Engineering and Technology
Dated-24.08.2016

A complaint petition has been filed on behalf of the complainant, Kumar Prashant alias Prashant against accused no.1, M/S Surya world college of engineering and technology and accused no.2, Sohail Goyal u/s 406, 420 of I.P.C. and 138 of N.I. Act. The case record is put up for order as per the date fixed.

Attendance has been filed on behalf of the complainant through his learned counsel. S.A. of the complainant has been recorded. In support of his case the complainant has produced two witnesses IW-1 Sonu Kumar and IW-2 Amit Kumar. Photocopy of cheques, photocopy of cheque return memo, photocopy of legal notice are available on record. A petition u/s 142 N.I. Act has been filed on behalf of complainant for condonation of delay, which was allowed on 20.8.2016.

On perusal of S.A., examination of witnesses and documents on record, it appears that prima facie the case is made out for the offence punishable u/s 138 N.I. Act against both accused. The complainant is directed to file appropriate requisites of summon within 30 days and in doing so the office is directed to issue summon for appearance of aforesaid accused person. Put on 27.09.16 for appearance of the accused



person.

Ordered by

Sd/-
Smita Raj
J.M. 1st Class
Patna”

18. It appears from the record that on the petition, which was filed for condonation of delay, in the left margin, it was simply mentioned “Allowed” by putting initial by learned Magistrate mentioning date 20.08.2016, which is as under:-

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In the Court of Sub Judge XII, Patna

GOVT. OF BIHAR
REGISTRATION, EXCISE & PROMOTION DEPT.
PATNA SCORE, PATNA

COURT FEE

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12.8.2016

374 148

INDIA

BIHAR

Authorization No. 2211

ANNEXURE 8

The Court Of Smt. Smita Raj, J.M. 1st class, Patna

Complaint case No. 1889/ 2016

In,
The Court Of Smt. Smita Raj, J.M. 1st class, Patna

Kumar Prashant

Complainant

Versus

M/S Surya World College of Engineering and Technology &
others

Accused

The humble petition for
condonation of delay U/S
142 of N.I. Act filed on
behalf of the complainant
above named.

Allowed
20.8.16

Most Respectfully Sheweth:

1. That the complainant has filed the instant complaint for realization of Rs. 67,41,000/- which was invested in promotion taking admission in colleges conducted and linked by the accused-person.
2. That the complainant has made demanded of the aforesaid amount from the accused person several times.

19. From the aforesaid factual aspects of the proceedings, it is clear that the delay of 118 days was condoned without assigning any reason, dealing with sufficient cause to prevent complainant to file complaint within the statutory period as available in terms of said Act. In fact, there is no order.



Merely mentioning “Allowed” with initial and date in the left margin of petition cannot be treated as any order, where in actual no order-sheet on that date was drawn, as it is apparent from the proceedings.

20. In view of aforesaid, this Court is convinced enough that the limitation of 118 days was condoned illegally by the learned trial court in very mechanical and casual manner without supplying any reason for its satisfaction that complainant was prevented to file complaint within limitation period due to sufficient cause.

21. Hence, the impugned order dated 24.08.2016 as passed by the Court of Smita Raj, Judicial Magistrate-1st Class, Patna in Complaint Case No.1889(c) of 2016 is hereby quashed/set aside, with all its consequential proceedings *qua* both petitioners.

22. The present petition stands allowed.

23. Let a copy of this order be sent to the learned trial court forthwith, along with TCR, if any.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	23-07-2026
Uploading Date	31-07-2026
Transmission Date	31-07-2026

