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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL REVISION PETITION NO.1242/2021

BETWEEN:

1 . M/S. A. SEATING
A PARTNERSHIP FIRM,

2 . GANESH KUMAR G

3 . BALAKRISHNAN SUBHRAMANI

... PETITIONERS

(BY SRI CHETHAN A.C., ADVOCATE)

AND:

M/S. NANDINI MODULARS
A PROPRIETORSHIP CONCERN,

… RESPONDENT

(BY SRI RAMESH P. KULKARNI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397(1) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF THE XII ADDL. AND A.C.M.M., (SCCH-8), BENGALURU IN C.C.NO.12481/2017 DATED 31.10.2019 (ANNEXURE-B) CONVICTING THE PETITIONERS HEREIN U/S 138 OF N.I. ACT AND ETC.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.03.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

O R D E R

This revision petition is filed praying this Court to set aside the judgment of the XII Additional and ACMM (SCCH-8), Bengaluru in C.C.No.12481/2017 dated 31.10.2019 convicting the petitioners herein for the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I.Act' for short) and to set aside the judgment of the LV Additional City Civil and

Sessions Judge, Bengaluru in Crl.A.No.2458/2019 dated 17.09.2021 remanding the case to the Trial Court.

2. The factual matrix of the case of the respondent/complainant is that the complainant was running an industry in the name of M/s. Nandini Modulars. The accused gave an undertaking to the complainant that he will discharge the amount of Rs.13,58,921/- within 15 days and also issued four cheques as security to the said loan amount in favour of the complainant. On presentation of those cheques, the same were dishonoured with an endorsement as 'funds insufficient'. Hence, the legal notice was issued on 03.02.2017 calling upon the accused to make payment of the dishonoured cheques amount and the said notice was duly served on the accused and inspite of service of notice, the accused had not complied with the same. Hence, the complaint was filed and cognizance was taken and the petitioners were secured and they did not plead guilty. Hence, the complainant examined himself as PW1 and got marked the documents at Ex.P1 to P60 and the accused not led any defence evidence. The Trial Court after considering both the oral and documentary evidence, convicted the petitioners herein.

Hence, an appeal was preferred before the Appellate Court in Crl.A.No.2458/2019 wherein, the contention was taken that the complaint is barred by limitation and there is no application filed before the Trial Court and very initiation of the proceeding against the petitioners is erroneous and the Court also failed to take note of the material on record and committed an error in convicting the petitioners. The Appellate Court taking note of the grounds urged in the appeal, framed the points for consideration whether the complaint is liable to be dismissed in view of the delay and whether the judgment and sentence passed by the Trial Court requires interference and answered Point No.1 as negative and remanded the matter to consider the same afresh by giving an opportunity to the complainant to file necessary application for condonation of delay and directed the Trial Court to decide the application first and thereafter proceed with the matter as per law relying upon the judgment of the Apex Court in the case of **Pawan Kumar Ralli** and consequently, set aside the order of conviction and sentence passed by the Trial Court. Hence, the present revision petition is filed before this Court.

3. The learned counsel appearing for the petitioners would vehemently contend that the Appellate Court has wrongly relied upon the judgment of the Apex Court in the case of **Pawan Kumar Ralli**. The judgment of the Apex Court clearly says that it pertains to the peculiar facts of that case and it is not laying down a general proposition of law. The counsel would contend that there was a delay of seven days in filing the complaint and the Appellate Court wrongly observed that ground of delay was not raised at all before the Trial Court. It is contended that Appellate Court has no power under the Cr.P.C to remand the case to the Trial Court for the purpose of giving an opportunity to the complainant to file a condonation of delay application. The counsel would contend that by filing the complaint itself, the delay application ought to have been filed and the same is not filed and the question of giving an opportunity does not arise.

4. The counsel for the petitioners in support of his argument relied upon the judgment of this Court reported in **2015 (2) AKR 481** between **G.RAVI v. SHIVANAND REVAPPA REBBANAVAR** wherein it is observed that if the

Magistrate for any reason does not condone the delay in filling the complaint, it would result in dismissal of the complaint.

5. The counsel for the petitioners also relied upon the judgment of the Apex Court in Civil Appeal No.6619/2014 dated 05.08.2021 and brought to notice of this Court to the observations made in paragraph 17, wherein it is held that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. The same cannot be applied as general preposition of law. Law declared by this Court is binding under Article 141. Any direction given on special facts, in exercise of jurisdiction under Article 142, is not a binding precedent.

6. The counsel for the petitioners also relied upon the judgment of the Apex Court in the case of **INDIAN BANK v. ABS MARINE PRODUCTS PRIVATE LIMITED** passed in **APPEAL (CIVIL) No.10074-10075/2013 DATED 18.04.2006** and brought to notice of this Court on paragraph 21 wherein it is held that any direction issued in exercise of power under Article 142 to do proper justice and the reasons, if any, given for exercising such power, cannot be considered as law

laid down by this Court under Article 141. It is pointed out that other courts do not have the power similar to that conferred on this Court under Article 142 and any attempt to follow the exercise of such power will lead to incongruous and disastrous results.

7. The counsel for the petitioners also relied upon the unreported judgment of this Court in **Crl.A.No.186/2007 dated 23.03.2010** between **SRI T.S.MURALIDHAR v. SRI H NARAYANA SINGH** wherein an observation is made that the learned Magistrate had no jurisdiction to condone the delay in lodging the complaint after the trial was over and when the case was posed for arguments on merits.

8. The counsel for the petitioners also relied upon the unreported judgment of this Court in **Crl.A.No.2640/2011 dated 26.06.2020** between **SRI KRISHNAPRASAD v. SRI DODDAPPA L SHIRUR** wherein this Court has relied upon the judgment of **T.S.Muralidhar**'s case as referred supra wherein condoned the delay and remitted back the case to the Trial Court.

9. The learned counsel for the petitioners relied upon the unreported judgment of this Court in **Crl.P.No.15517/2013 dated 07.11.2015** between **MARUTIRAO HOSMANI v. SURESH** wherein an observation is made referring upon the judgment of the Apex Court reported in **(2014) 15 SCC 245** in the case of **PAWAN KUMAR RALLI v. MANINDER SINGH NARULA** and held that taking of cognizance being vitiated and directed the Magistrate to proceed with the case prior to taking of cognizance and issuance of process.

10. The learned counsel for the petitioners also relied upon the judgment reported in **2019 ACD 1021 (KAR)** in the case of **VENKATESH B.C v. STRATEGIC MARKETING AND RESEARCH TEAM, BENGALURU**, wherein an observation is made that delay of four days infilling the complaint and no application for condonation of delay filed and held that taking of cognizance is not justifiable.

11. The counsel for the petitioners also relied upon the judgment reported in **(2014) 15 SCC 245** in the case of **PAWAN KUMAR RALLI v. MANINDER SINGH NARULA** wherein contended that the exercise of discretion under Article of

142 of Constitution of India is not binding on all the other Courts except the judgment is binding under Article 141 and exercising the powers under Section 142 permitted to file an application for condonation of delay at an initial stage and hence, the general application is not applicable.

12. The learned counsel for the petitioners referring all these judgments would vehemently contend that the order passed by the Appellate Court in setting aside the judgment of the Trial Court and remanding the matter to consider afresh giving an opportunity to file an application for condonation of delay is not permissible under law and hence, it requires interference of this Court and set aside the order of remand and direct the Appellate Court to consider the matter on merits with regard to the conviction and sentence order passed for the offence punishable under Section 138 of N.I.Act by the Trial Court.

13. The learned counsel for the respondent in his argument he vehemently contend that an application was filed before the District and Sessions Court in criminal appeal, since for the first time, the petitioner had raised the objection with

regard to the delay in filing the complaint. Hence, the Appellate Court considering the said application comes to the conclusion that deciding such an application is within the exclusive domain of the Magistrate to exercise his discretion to condone the delay and not the Appellate Court and also comes to the conclusion that the Appellate Court cannot usurp the jurisdiction of the Trial Court. Hence, directed the complainant to prefer an application under Section 142(b) of the N.I. Act before the Trial Court and the Trial Court after taking objections from the petitioners herein shall decide the application first and then proceed in accordance with law. Hence, this Court cannot find fault with the order passed by the Appellate Court in Crl.A.No.2458/2019. The learned counsel submits that the Appellate Court in paragraph No.12 has observed that for the first time, in the appeal memo and also in the appeal, the contention of delay is raised. The learned counsel also made the submission that no application is filed before the Trial Court for condonation of delay and the Trial Court after confirming the same on perusal of the entire order sheet gave an opportunity since for the first time, the question of delay is raised in the Appellate Court. Hence, the Appellate Court has not committed any error in setting aside the judgment

of conviction and sentence and remitting the matter for fresh consideration and in giving an opportunity to file the application.

14. The learned counsel in support of his argument relied upon the judgment of the Apex Court in the case of **Pawan Kumar Ralli** (supra), wherein the issue of limitation raised for the first time before the High Court was taken note of by the Appellate Court and the proceedings was quashed without considering the limitation issue on merits in terms of provision of Section 142(b) of the N.I. Act and permitted the complainant to file an application for condonation of delay before the Trial Court setting aside the order of the High Court and restored the criminal proceedings. It is also observed that by making said observation, the Supreme Court herein was not laying down a legal proposition that without even filing an application for condonation of delay at a initial stage, the complainant can be given an opportunity in respect thereof at any stage of the proceedings.

15. The learned counsel also relied upon the judgment of this Court in the case of **G. THIMMAPPA v. SHIVARAJ** reported in **ILR 2015 KAR 5064,** wherein referring the judgment of the

Apex Court held that the Trial Court dealing with offence punishable under Section 138 of the N.I. Act has to decide the application for condonation of delay before issuing process. If there is an application for condonation of delay, it must be considered at the threshold and to proceed only if the delay is condoned. It is further held that the proviso to Clause (b) of Section 142 came to be inserted in the year 2003 keeping in mind the reasons and objects of the Act and to obviate the complainant of the hardship. If proceedings are held without condoning delay, such proceedings do not have any force of law. If delay is noticed, the Trial Court can even call upon the complainant to file an application for condonation of delay. Therefore, it is expected of all the Trial Courts dealing with offence punishable under Section 138 of the N.I. Act to direct the office to put-up a specific note about the delay, if any, in filing the complaint and whether any application is filed for condonation of delay. It is also expected that before issuing process, the Judge to specifically indicate that there is no delay in filing the complaint.

16. The learned counsel also relied upon the judgment of the Madras High Court in the case of **A. RAHAMATHULLAH @ MAULANA v. P.A.K. MANOHRAN** reported in **2015 (1) MWN (Cr.) DDC 75 (Mad.),** wherein it is discussed with regard to introduction of provision as to condonation of delay in filing the complaint wherein the matter was remanded to the lower Court with liberty to the complainant to file an application for condonation of delay showing sufficient cause.

17. The learned counsel also relied upon the decision of the Division Bench of this Court in the case of **STATE OF KARNATAKA v. NAGAPPA** dated **28.06.1985** passed in **C.R.P.No.3947/1984,** wherein it is held that filing of application for condonation of delay with time barred appeal mandatory. Does not attract penalty of dismissal of appeal for non-compliance of procedural defect.

18. The learned counsel also relied upon the judgment of this Court in the case of **MARUTIRAO HOSMANI v. SURESH** reported in **LAWS (KAR) 2015-11-14** and brought to the notice of this Court that this Court referred the judgment of **T.S.Muralidhar's** case (supra) which has been referred by the

learned counsel for the petitioner, wherein it is held that the principles laid down in the judgment in **T.S.Muralidhar's** case (supra) is not a good law. The learned counsel would submit that in the said case, application was filed at the stage of Section 313 statement to condone the delay of ten days in filing the complaint and I.A. and complaint was dismissed and hence the Court remanded the case to the Trial Court to proceed with the case from the stage prior to the taking of cognizance. The learned counsel would vehemently contend that the judgment relied upon by the learned counsel for the petitioner in **Venkatesh B.C.** case (supra), the said judgment is passed only hearing one side. The other judgments which have been referred have not considered the judgment of the Apex Court in the case of **Pawan Kumar Ralli** (supra) and in other unreported cases also the case was remanded to consider the delay application. Hence, there is no merit in the petition to entertain the revision.

19. Having heard the learned counsel for the petitioners and the learned counsel for the respondent and also on perusal of the material available on record, the points that arise for the consideration of this Court are:

(i) Whether the Appellate Court has committed an error in setting aside the order and remanding the matter to the Trial Court to consider the delay and whether it requires interference of this Court?

(ii) What order?

Point No.(i):

20. Having heard the respective learned counsel and also considering the principles laid down in the judgments referred supra, admittedly no application was filed before the Trial Court along with the complaint for condonation of delay. The material discloses that there is a delay of seven days in filling the complaint. It is not in dispute that the proviso is made in N.I. Act under Section 142(b) to condone the delay, if any, in filing the complaint. On perusal of the order of the Appellate Court, it is clear that an application is filed before the Appellate Court and also it is not in dispute that the delay aspect has been raised for the first time before the Appellate Court and no such defence was taken before the Trial Court. The said aspect also has been discussed by the Appellate Court in paragraph No.12 that for the first time in the appeal memo, the issue of delay has been raised. The Appellate Court in paragraph No.13 discussed that

the accused nowhere contested the matter on the pretext of delayed complaint. It is observed that he participated in the proceedings on merits and he has waived off the right to claim that the complaint was delayed. However, for the first time, the issue of delay is raised before the Appellate Court. The Appellate Court also relied upon the judgment of the Apex Court in the case of **Pawan Kumar Ralli's** (supra) and observed that even the judgment of this Court in the case of **Marutirao Hosamani** has held that **T.S.Muralidhar's** case cannot stand in view of the Apex Court's pronouncement. Having considered those judgments, allowed the appeal and set aside the order and remanded the matter to the Trial Court.

21. The main contention of the learned counsel for the petitioners before this Court is that the said judgment is not applicable since the Appellate Court in the said judgment invoked Article 142 of the Constitution of India in order to meet the ends of justice and the impugned judgment of the High Court quashing the criminal proceedings is set aside and the criminal proceedings before the Trial Court are restored. It is observed that the appellant is permitted to file an application for condonation of delay before the Trial Court, and if such an

application is filed, the Trial Court shall be at liberty to consider the same on its own merit. It has to be noted that this judgment is passed challenging the order passed by the High Court invoking Section 482 of Cr.P.C. on the ground that the said complaint was barred by limitation. The Apex Court observed that the issue of limitation is raised for the first time before the High Court, but in the case on hand, the issue of limitation is raised for the first time before the Appellate Court. The Appellate Court also observed in the judgment that the Trial Court did not get an opportunity to exercise the discretion in terms of proviso of Section 142 (b) of the N.I. Act to condone the delay. It is also observed that in these peculiar facts and circumstances of the case, the High Court ought to have remanded the matter to the Trial Court for deciding the issue of limitation and ought to have given an opportunity to the complainant to file an application for condonation of delay before the Trial Court.

22. It has to be noted that in the case on hand also this is a peculiar facts and circumstances of the case and no such contention was taken before the Trial Court by the petitioners and if they had raised the issue of delay before the Trial Court,

the complainant ought to have been given an opportunity to make necessary application to condone the delay and admittedly for the first time, the issue has been raised before the Appellate Court. Only on the ground that there is a delay, the complaint of the complainant cannot be thrown to the dustbin. If such defence was taken before the Trial Court as directed by this Court in the case of **G. Thimmappa** (supra), ought to have filed an application for condonation of delay. It is further observed that if delay is noticed, the Trial Court can even call upon the complainant to file an application for condonation of delay. No circumstances was arisen before the Trial Court. It is important to note that an amendment is brought in the year 2003 to Section 142 and clause (b) was inserted keeping in mind the reasons and objects of the Act and to obviate the complainant of the hardship. The Court has to take note of the wisdom of the legislature in bringing such an amendment and when the issue is raised for the first time in the appeal, the Court has to take note of all these factors into consideration.

23. I have already pointed out that if a defence was taken before the Trial Court that there was a delay and if the

complainant has not filed any application after raising the said issue before the Trial Court, then the very contention of the petitioners in this case can be accepted, but no such contention was taken. No doubt, the Apex Court in the case of **Pawan Kumar Ralli** (supra), made an observation that by making the said observation the Supreme Court was not laying down a legal proposition that without even filing an application for condonation of delay at initial stage, the complainant can be given an opportunity in respect thereof at any stage of the proceedings. But the fact is that when the issue of limitation is raised before the Appellate Court, immediately the complainant has filed an application before the Appellate Court for condonation of delay and the Appellate Court comes to the conclusion that the delay cannot be considered in Appellate Court usurping the powers of the Trial Court and the same has to be dealt with by the Trial Court and the same is in accordance with the judgment of the Appellate Court. Hence, I do not find any force in the contention of the learned counsel for the petitioners that the said judgment is laid down invoking Article 142 of Constitution of India. The Court has to look into the principles laid down in the judgment and the fact is that the

Appellate Court has observed that in the peculiar facts and circumstances i.e., with regard to raising of issue of limitation for the first time in the High Court passed an order and in the case on hand also, the very same circumstances of issue of limitation is raised for the first time before the Appellate Court. The Court has to take note of the very proviso of Section 142(b) of the N.I. Act which confers jurisdiction upon the Court to condone the delay i.e. original Court or otherwise the very purpose and wisdom of the parliament would be defeated. The issue of limitation for the first time is raised before the Appellate Court and the Court exercising the discretion to condone the delay did not arise at all before the Trial Court and hence I am of the opinion that the Appellate Court has not committed any error in setting aside the judgment and directing the complainant to file necessary application to condone the delay and the Trial Court by giving an opportunity to the petitioners to consider the said application. Hence, the very contention of the learned counsel for the petitioners that the Appellate Court has committed an error in setting aside the judgment of conviction and sentence and committed an error in remanding the matter cannot be accepted. Hence, I answer point No.(i) as negative.

Point No.(ii):

24. In view of the discussions made above, I pass the following:

ORDER

The petition is dismissed.

The original complaint is of the year 2016 and already six years have been elapsed. Hence, the Trial Court is directed to dispose of the matter within one year from today.

Sd/-
JUDGE

SN/MD

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