

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 03.09.2010

*C.R.R. No. 1667 of 2010*

*Sri Amitava Roy*

*versus*

*The State of West Bengal & Anr.*

Points:

**Delay-** Delay in filing the complaint under section 138 of the N.I.Act whether can be condoned without giving notice of hearing to the opposite party.-Negotiable Instrument Act, 1881 S.138

Facts:

The complaint under section 138 of the Negotiable Instrument Act was filed beyond the period of limitation as prescribed under the Negotiable Instruments Act and after condoning the delay the Court below took cognizance but without giving any opportunity of hearing to the petitioner, who happened to be the accused in the said case.

Held:

When any application is barred by limitation as because such an application, here in this case the petition of complaint, has been filed beyond the prescribed period of limitation, before condonation of delay and taking of cognizance on such complaint, the party whose rights and interests are likely to be affected adversely by such order, if delay is condoned, must be given reasonable opportunity of hearing before such an order is passed, in other words notice of hearing must be sent to such a party. This is what principle of natural justice demands. However, in this case delay being condoned

without hearing the present petitioner the accused persons and even without making any order of issuance of notice, there has been a complete violation of principle of natural justice and the order impugned cannot be sustained and is set aside. Para 3

For Petitioner : Mr. Joydeep Basu

For State : Mr. Alope Roy Chowdhury

The Court: In this application under Article 227 of the Constitution the petitioner has challenged a proceeding instituted on a complaint relating to the offence punishable under Section 138 of the Negotiable Instruments Act on the ground the complaint was filed beyond the period of limitation as prescribed under the Negotiable Instruments Act and after condoning the delay the Court below took cognizance but without giving any opportunity of hearing to the petitioner, who happened to be the accused in the said case.

2. Heard the learned advocate appearing on behalf of the petitioner as well as the learned advocate appearing on behalf of the State. In spite of repeated calls none appeared on behalf of the complainant/opposite party. It appears from the affidavit of service filed in Court that the copy of the application was sent to the opposite party no. 2 under registered speed post from the Esplaned Post Office and it further appears from the Internet. Speed/Net detailed movement dated June 7, 2010 that said article has been delivered to the opposite party no. 2 herein.

3. It appears from the petition of complaint annexed with this application and the averment made in Paragraph 9 thereof, according to the complainant's own case the said complaint was to be filed on or before December 22, 2006. It further appears that the said application for

condonation of delay under Section 142 (b) of the Negotiable Instruments Act was taken up for hearing on January 8, 2007 by the Learned Chief Metropolitan Magistrate, Calcutta. It appears from the finding of the Learned Court below that there has been a delay of 15 days in filing the complaint. The Learned Magistrate allowed the said application for condonation of delay being satisfied with explanation of the complainant, and took cognizance, but before condoning the delay the Learned Magistrate has not given any opportunity of hearing to the present petitioner, who has been arraigned as accused therein. It further appears there was no order of issuance of any notice as regards to the application for condonation of delay. When any application is barred by limitation as because such an application, here in this case the petition of complaint, has been filed beyond the prescribed period of limitation, before condonation of delay and taking of cognizance on such complaint, the party whose rights and interests are likely to be affected adversely by such order, if delay is condoned, must be given reasonable opportunity of hearing before such an order is passed, in other words notice of hearing must be sent to such a party. This is what principle of natural justice demands. However, in this case delay being condoned without hearing the present petitioner the accused persons and even without making any order of issuance of notice, there has been a complete violation of principle of natural justice and the order impugned cannot be sustained and is set aside.

4. However, this order will not preclude the Learned Court below to consider the opposite party's prayer for condonation of delay in filing the complaint in question after giving both the parties the reasonable opportunity of hearing and then to proceed in accordance with law.

5. The Office is directed to communicate this order to the Court below by Special Messenger at the cost of the petitioner in course of this week.

6. The Learned Court below is directed to immediately upon receipt of this order shall issue notices to both the parties and shall fix a date for hearing of the application for condonation of delay within two weeks thereafter and after hearing both the parties the Learned Magistrate shall proceed with the complaint case in accordance with law.

7. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

*( Ashim Kumar Roy, J. )*

