

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1055 of 2017**

Arising Out of PS. Case No.-2039 Year-2013 Thana- NAWADAH COMPLAINT CASE
District- Nawada

1. Kameshwar Prasad Singh, S/o Late Brija Singh,
2. Sanjeet Kumar S/o Kameshwar Prasad Singh,
Both R/o Village- Samai, P.S.- Muffasil, District- Nawada.

... .. Petitioner/s

Versus

1. State of Bihar
2. Navin Kumar S/o Jai Narayan Singh, R/o Mohalla- New Area, P.S.- Nawada
Town, District- Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Adv.
For the Respondent/s : Mr. Md. Sufiyan, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 04-03-2024

Heard learned Advocate for the petitioners as well as
learned APP for the State.

2. In connection with Complaint Case No. 209 of
2013, filed in the court of the learned Additional Chief Judicial
Magistrate-V at Nawada, the factual aspect is undisputed. These
are:-

“In order to discharge the existing date or liability, the
opposite party issued a cheque in favour of the complainant on
21st June, 2013. The said cheque was dishonored on the same



date. The complainant issued a notice on 2nd July, 2013 requesting the payee to make payment of the cheque amount within the statutory period of time as stipulated in proviso (b) (2) Section 138. The payee received the said notice and made a reply on 22nd July, 2013. However, the cheque amount was not paid. Therefore, when the cheque amount was not paid, the complainant was under obligation to file a complaint under Section 138 of the Negotiable Instruments Act in terms of the provisions contained in Section 142 (1) (b) i.e. within one month of the date on which the cause of action arises under Clause (e) of the proviso to Section 138. The complainant did not file such application within the statutory period of time.”

3. On the contrary, he sent another notice to the complainant on 28th October, 2013. The accused/petitioners gave reply to the said notice dated 10th November, 2013 and finally the complainant filed complaint under Section 138 of the Negotiable Instruments Act as well as Sections 467, 468, 420, 406, 120B of the I.P.C. against the petitioners on 10th December, 2013. The learned Magistrate on the above facts held that the petition of complaint suffers from delay. No application for condonation of delay has been filed and, therefore, the complaint under Section 138 of the Negotiable Instruments Act



is barred. The complainant preferred a revision before the learned Sessions Judge at Nawada which was registered as Criminal Revision No. 14 of 2016. The said revision was disposed of on 5th August, 2017. The learned Sessions Judge, Nawada has observed as follows:-

“After hearing from both sides and on perusal of complaint petition and the impugned order as well as Section 142(b) of the N.I. Act it is true that the complaint must be filed within three months from the date of cause of action arose for the first time on 22.7.2013 and lastly on 28.7.2013. Even though cause of action is accepted on 22.07.2013 one opportunity should be given to the complainant in the interest of justice.”

4. This Court fails to comprehend as to how a Senior Officer like a Sessions Judge, Nawada holds that a complaint under Section 138 of the Negotiable Instruments Act may be filed within three months of the date on which the cause of action arises under Clause (e) of the proviso to Section 138, when Section 142 (1) (b) clearly states that the complaint is to be filed within one month of the date on which the cause of action arose. Of course, by way of Amendment Act 55 of 2002, which came into effect on an from 6th February, 2003. A proviso



has been added to Clause (b) of Section 142 allowing the Court to take cognizance of a complaint after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for making a complaint within such period. Therefore, in other words, a complaint under Section 138 of the Negotiable Instruments Act may also be filed after the expiry of one month from the date of accrual of cause of action, under Clause (e) of the proviso to Section 138. If the complainant is able to show that he was prevented by sufficient cause from making any complaint within the statutory period of time, no such application was filed before the learned Magistrate. The learned Magistrate, therefore, rejected the complaint on the ground that the complaint was barred by limitation. The court of revision can not grant further time allowing the complainant to file appropriate application for condonation of delay sitting in revision, when such case was not even made before the learned Sessions Judge, Nawada.

5. For the reasons stated above, I have no other alternative but to hold that the impugned order dated 5th August, 2017, passed by the learned Sessions Judge, Nawada is not only bad in law but perverse and beyond his jurisdiction.



6. Accordingly, the impugned order dated 5th August, 2017 is quashed and set aside.

7. The order passed by the learned Additional Chief Judicial Magistrate-V at Nawada is affirmed.

8. The instant revision is accordingly allowed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

