

Ranjit Toppo Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Oct-27-2015

Appellant : Ranjit Toppo

Respondent : State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI ----- Cr.Revision NO.686 of 2012 --- Ranjit Toppo, s/o late Gouri Shankar Toppo, r/o Toppo House, Nayatoli, P.S. Lower Bazar,P.O. Kantatoli, District- Ranchi.Petitioner. Versus 1. The State of Jharkhand 2. Biglal Oraon, s/o late Dibru Oraon, r/o Village-Kisko, P.O. Kisko, District- Lohardaga. Opp.Parties. --- CORAM : HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : Mr. Rahul Kumar Das,Advocate. For the State : Mr. Pradeep Kumar, APP. ----- 07/27.10.2015 This revision is directed against the order dated 10.07.2012 passed by the learned Judicial Magistrate,Ranchi in Complaint Case No.1869/2011 whereby the learned Magistrate has held that the complaint petition was barred by limitation of 126 days as no reasonable explanation was given for the delay and dismissed the complaint under Section 203 Cr.P.C.

2. Learned counsel for the petitioner has submitted that the learned court below has passed the impugned order without appreciating the evidence of the enquiry witnesses who have categorically stated that the petitioner had sent a legal notice dated 30.05.2011 to the complainant on being informed by the Bank vide letter dated 28.04.2011, served on the petitioner on 02.05.2011, that the cheques could

not be encashed due to insufficient fund in the account of the O.P. It is submitted that after receipt of the legal notice the O.P. had approached the petitioner and gave assurances that he would pay the said amount within a period of two months thereafter he again sought further three months time for repaying the amount. That since the O.P. was related to the petitioner and they were on good terms, as such he did not take any legal action due to the assurance given by the O.P. That when the O.P. did not pay the amount within the extended period then the petitioner approached the O.P. and demanded the payment of the money but the O.P. refused to pay and told the petitioner that the period of filing the case under the N.I.Act was over. This has been supported by the inquiry witnesses nos.2,3 and 4 but the learned trial court without appreciating that evidence was led to record reasonable explanation for the delay in filing the case, has held that there is no reasonable explanation for the delay in terms of Section 142(b) N.I.Act. It is submitted that the Hon'ble Apex Court in the case of Ram Nath Sao vs. Gobardhan Sao, reported in AIR2002 Supreme Court 1201 has held that condonation of delay should receive 2. liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. It has been observed by the Apex Court that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice and the rules of limitation are not meant to destroy the rights of parties. Learned counsel has further referred to a decision of the Madras High Court reported in 1(2008) BC656, S. Rajaram vs. S. Seenivasan wherein, in similar circumstances, it was held that sufficient cause, as mentioned in Section 5 of the Limitation Act, does not mean that there was any requirement of explanation of every day's delay and the court should not take a pedantic approach, rather they are required to adopt a rational and pragmatic approach. In the said case a delay of 13 months was condoned. It is submitted that the aforesaid decision squarely covers the case in hand.

3. Learned counsel, appearing on behalf of the O.P. has submitted that the impugned order does not suffer from any illegality or impropriety and the learned Judicial Magistrate has rightly dismissed the complaint under Section 203 Cr.P., as there has been an unexplained and inordinate delay of 126 days in filing the complaint and the same is barred in terms of Section 142(b) of the N.I.Act., which

mandates filing of the complaint within a month from the date on which the cause of action arose. It is submitted that the revision application is fit to be dismissed.

4. Having heard the learned counsel for the parties and on perusal of the impugned order, it is evident that the court below has passed the order without appreciating the evidence of the inquiry witnesses. In fact the order has been passed in a perfunctory manner. On perusal of the deposition of the witnesses as well as the copy of the legal notice annexed with the application, it is evident that the legal notice was sent within the prescribed period of one month in terms of Section 138(b) of N.I.Act and the complainant has categorically stated that the O.P. had sought time and gave assurances that he would repay the amount within two months. The inquiry witnesses no.2 and 3 have stated that O.P. again sought time and finally when the petitioner demanded the money the O.P. categorically stated that he would not return the money as the period for filing the complaint under the N.I.Act had lapsed. The ratio of the decisions cited by the learned counsel for the petitioner is applicable to the present case. It is well settled that the court is invested with the power to condone the delay and the said power and discretion is vested to the court for advancing the cause of substantial justice and not to scuttle the same on the basis of technical approach. It is not denied that the petitioner had 3. sent the legal notice within the prescribed period in terms of Section 138 N.I.Act. At the cost of repetition, it is reiterated that the O.P. had sought time which is supported by the inquiry witnesses and it is a well settled principle that the length of delay is not the matter, but acceptability of the explanation for the delay alone, is the criterion for condoning the delay. The petitioner had loaned a sum of Rs.5/- lakhs which is not denied in the counter affidavit filed by the O.P. There has been no fault or dilatory tactics adopted by the petitioner, rather delay has occurred due to the assurances given by the O.P. Accordingly, sufficient cause and explanation is made out for the delay in lodging the complaint in terms of proviso to Section 142(b) of N.I.Act. Consequently, the impugned order is hereby set aside.

5. The matter is remitted to the court below to proceed with the trial in accordance with law.

6. In the result, the revision is allowed. (Amitav K. Gupta, J.) Biswas./-

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