2026 INSC 27

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._____ OF 2026
(@ SLP (Crl.) No. 18127 of 2024)

S. Nagesh **… Appellant**

versus

Shobha S. Aradhya **… Respondent**

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. Challenge in this appeal is to the order dated 28.06.2024 passed by a learned Judge of the Karnataka High Court in Criminal Petition No. 9119 of 2018. This petition was filed by S. Nagesh, the appellant before us, under Section 482 of the Code of Criminal Procedure, 1973, seeking the quashing of the complaint in PCR No. 3144 of 2013, which was converted as CC No. 1439 of 2014 on the file of the learned I Additional I Civil Judge and Judicial Magistrate First Class at Mysore[1]. The learned Judge rejected the petition, holding that the delay of two days in the filing of the complaint was *bonafide* and cognizance had rightly been taken.

[1] For short, 'the learned Magistrate'

3. In her complaint in PCR No. 3144 of 2013, Shobha S. Aradhya, the respondent, averred as follows: The appellant had approached her husband and her, seeking financial assistance to purchase a house and to meet legal necessities. They lent him a sum of ₹5,40,000/- between the dates 27.01.2010 and 26.07.2010. He, thereafter, issued cheque dated 10.07.2013 drawn in her name for the said sum, assuring that it would be honoured upon presentation. However, the cheque was dishonoured on 17.07.2013 for insufficiency of funds. She got issued legal notice dated 13.08.2013 calling upon the appellant to pay the cheque amount within 15 days but the same was returned as 'unclaimed' on 22.08.2013. However, the copy of the notice sent through courier was not returned unserved and the same amounted to deemed service. However, no payment was made by the appellant. She, thereupon, filed the complaint praying that the Court take cognisance of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881[2], and punish the appellant in accordance with law, apart from awarding her compensation.

4. The then learned Magistrate, after perusing the complaint and the documents, noted the presence of the complainant and took cognisance, *vide* order dated 09.10.2013. However, by order dated 23.05.2014, the successor learned Magistrate noted that, though there was a delay of two

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[2] For short, 'the NI Act'

days in the filing of the complaint, his predecessor-in-office had already taken cognisance of the offence and granted liberty to the accused, viz., the appellant, to contest the delay at the time of the trial. The case was directed to be registered against the appellant for the offence punishable under Section 138 of the NI Act and summons were directed to be issued to him to appear on the next date of hearing. It was reiterated that liberty was granted to the appellant to contest the delay at the time of the trial.

5. Thereafter, by order dated 04.02.2016, the learned Magistrate noted that an application had been filed for condonation of the delay of two days in the presentation of the complaint and opined that the same required to be considered before the case went to trial on merits. Having considered the objections on the said application, the learned Magistrate passed order dated 30.10.2018 allowing it. Therein, it was noted that the complainant had stated in the condone delay application that she was suffering from viral fever and was, therefore, unable to present the complaint within time. The learned Magistrate also took note of the medical certificate produced by her, wherein it was stated that she was suffering from viral fever and was under treatment from 04.10.2013 to 07.10.2013. Opining that the delay of two days in the presentation of the complaint was purely *bonafide*, the learned Magistrate allowed the application; condoned the delay in the filing of the complaint; and directed issuance of a non-bailable warrant against the appellant.

6. Aggrieved by this turn of events, the appellant approached the High Court by way of Criminal Petition No. 9119 of 2018. This petition was filed on 06.12.2018. Therein, the appellant contended that there was a delay of sixteen days in the filing of the complaint and not just two days. He pointed out that the respondent had filed the complaint on 09.10.2013 and cognisance was taken by the learned Magistrate on the very same day. He contended that this procedure was totally opposed to the scheme of the NI Act. He further contended that the condonation of the delay of two days by the learned Magistrate, *vide* order dated 30.10.2018, was equally without jurisdiction and contrary to the statutory provisions. His specific argument was that the learned Magistrate did not have the jurisdiction to take cognisance before the delay was condoned and the steps taken to the contrary were in violation of the prescribed procedure. He also contested the matter on merits, denying his liability, and prayed for quashing of the complaint.

7. Perusal of the impugned order dated 28.06.2024 passed by the High Court reflects that the solitary issue focused upon by the appellant before the learned Judge was that the learned Magistrate could not have taken cognisance without first condoning the delay in the filing of the complaint. The learned Judge concurred with the view taken by the learned Magistrate that the delay in the filing of the complaint was actually two days and not more and that it was *bonafide,* justifying its condonation.

Further, the learned Judge noted that the *proviso* to Section 142(1)(b) of the NI Act empowered the Court concerned to take cognisance of a complaint made even after the prescribed period of one month from the date on which the cause of action arose under clause (c) of the *proviso* to Section 138 of the NI Act, if the complainant satisfied the Court that he had sufficient cause for not making the complaint within that period. The learned Judge, therefore, observed that the legislature had conferred express power on the Court to take cognisance even in respect of a belated complaint, if sufficient cause for such belated presentation was established by the complainant.

8. *Per* the learned Judge, whether the Court condoned the delay after taking cognisance or whether it first condoned the delay and then took cognisance did not, in any way, vitiate the taking of cognisance as what was of consequence was whether the Court had condoned the delay in the presentation of the complaint. The learned Judge held that, if cognisance is taken without the delay in the presentation of the complaint being condoned, it would only be a curable irregularity. According to the learned Judge, it is only when the Court failed to condone the delay altogether, during the pendency of the proceedings, and went on to adjudicate the matter on merits that the proceedings would stand vitiated.

9. On facts, the learned Judge observed that the learned Magistrate had taken cognisance on 09.10.2013 without noticing that the complaint

had been filed with delay, perhaps being misled by the erroneous averment in the complaint that it was filed within time. However, upon noticing the delay of two days in the presentation of the complaint, the learned Magistrate had observed that his predecessor-in-office had taken cognisance without noticing the delay and kept the said issue alive. The learned Judge held that, as the complaint was of the year 2013 and the matter had been pending for more than 11 years, there was no justification in considering the delay of two days in the filing of the complaint as of consequence. The learned Judge affirmed the condonation of that delay by the learned Magistrate and upheld the cognisance taken, though it was irregular, observing that the said irregularity stood cured on the delay being condoned. The appellant's petition was, accordingly, dismissed.

10. The learned counsel for the appellant would argue that cognizance could not have been taken by the learned Magistrate of the belated complaint filed by the respondent without first considering and condoning the delay in the presentation of the complaint, provided sufficient cause was shown for such delay by her. He would contend that, in the light of the law laid down by a 3-Judge Bench of this Court in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another***[3], the learned Judge of the High Court was in error in rejecting the quash petition of the appellant.

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3 (2014) 9 SCC 129

11. Despite service of notice, the respondent did not choose to enter appearance before this Court till after the judgment in this case was reserved on 02.12.2025. However, a mention was made on 05.12.2025 by the learned counsel who was instructed to appear for the respondent. He was, accordingly, permitted to file his written submissions after entering appearance for the respondent. In his written submissions, the learned counsel admitted that the respondent's complaint was filed on 09.10.2013 and cognisance was taken on the very same day. Though the learned counsel stressed upon the order dated 23.05.2014 passed by the learned Magistrate remaining unchallenged, we may note that it was only on 30.10.2018 that the learned Magistrate condoned the delay of two days, thereby validating the cognisance taken by his predecessor-in-office even before an application for condonation of delay was filed. Therefore, the failure of the appellant to challenge the earlier orders is of no consequence. More so, as the learned Magistrate had, in fact, reserved the right of the appellant to raise the issue of delay during the trial but, having stated so, the learned Magistrate, thereafter, took upon himself the task of deciding the limitation issue and condoned the delay by the later order dated 30.10.2018.

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.

13. We may note that the *proviso* to Section 142(1)(b) of the NI Act was inserted by Act 55 of 2002, with effect from 06.02.2003. Section 142(1)(b), to the extent relevant, reads as under: -

> **142. Cognizance of offences.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —
> (a) ……;
>
> (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:
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> 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.

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 Code of Civil Procedure, 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 aforestated *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. On the above analysis, we have no hesitation in holding that the learned Magistrate erred in taking cognisance of the respondent's complaint under Section 138 of the NI Act, even before the delay of two days in its presentation was condoned. The order passed by the High Court refusing to quash the same is, thus, set aside.

The appeal is accordingly allowed. In consequence, the complaint in PCR No. 3144 of 2013, which was converted as CC No. 1439 of 2014 on the file of the learned I Additional I Civil Judge and Judicial Magistrate First Class, Mysore, shall stand quashed.

....., J.
[SANJAY KUMAR]

....., J.
[ALOK ARADHE]

January 6, 2026
New Delhi.