

**::IN THE COURT OF THE SESSIONS JUDGE, NALBARI::**

Present: Smti S. Bhuyan.  
Session Judge,  
Nalbari.

**(Criminal Revision Case No. 5/21)**

**Revision against the order dated 08/12/2020  
passed by learned Addl. Chief Judicial Magistrate,  
Nalbari in connection with N.I. Case No. 40/20 u/s-  
138 NI Act read with 142 of the NI Act.**

**Sri Pradip Kr Paul**

S/O- Late Dinesh Ch Paul

R/O-Vill-Balikaria, Gnanpith Colony

P.S. & Dist- Nalbari, Assam. .... Petitioner.

-Versus-

**Sri Uttam Dey**

Proprietor of B.G. Enterprise,

Panjabari, near Hori Mandir Bye Lane,

P.O.-Panjabari

Dist-Kamrup(M), Assam ..... Accused.

**Advocates appeared:-**

For the revisionist :- Mr. Jayanta Kalita,  
Advocate.

Date of argument :- 04/01/2022

Judgment delivered :- 18/02/2022

**JUDGMENT**

1. The instant revision has been preferred by petitioner Pradip Kr Paul u/s-397 and 399 Cr.P.C against the impugned order passed by the then learned Addl. CJM, Nalbari in connection with N.I. Case No. 40/20 u/s-138 read with 142 of the N.I. Act whereby the learned Addl. CJM, Nalbari dismissed and disposed off the NI Case holding that petition not filed within the limitation and being aggrieved with the order of dismissal, petitioner filed this case.

2. The brief fact leading to this revision is that the petitioner Pradip Kr Paul who is the complainant in the NI Case is a permanent resident of village Balikaria, Gnanpith Colony under Nalbari PS and there was monetary transaction happened between accused and him. It is further stated by complainant that complainant lends Rs. 3,00,000/- (Rupees three lakhs) to accused vide three numbers of cheque from his bank account maintained in Central Bank of India, Belsor Branch and accused promised to return the borrowed money after one year. After expiry of one year, complainant asked accused to return the money and on repeated demand accused pay Rs.1,25,000/- and to pay the rest amount of Rs.1,75,000/-, accused took six months time and issued three cheque in favour of complainant and accused by not making the payment of cheque committed offence u/s-138 N.I. Act.

3. I have heard learned counsel for revisionist. Learned revisionist counsel Mr. Jayanta Kalita submitted that

accused borrowed Rs.3,00,000/- (three lakhs) from complainant and accused promised to return the money after one year. He further submitted that after expiry of one year, on repeated demand by the complainant, accused issued three numbers of cheque in favour of complainant on 07/02/2020 and cheque was returned by bank citing fund insufficient on 05/02/2020. Thereafter, complainant issued demand notice to accused on 03/03/2020 and notice was served upon accused on 07/03/2020 and cause of action arose from 22/03/2020. But due to lock down and limited court functioning there is delay in filing the case. He further made submission that limitation is extended by the Hon'ble Apex Court vide order in *Suo Moto Writ Petition (Civil) No. 3/2020*.

4. Now points for determination is whether complaint filed by the complainant is time barred and whether impugned order of learned trial court suffer from error in law?

5. I have scrutinized the material on record and statutory provision of law. Statement of complainant is that accused borrowed Rs.3,00,000/- (three lakhs) from him and accused issued three numbers of cheques vide cheque No. 655560 dated 05/12/19, 655561 dated 07/02/2020 and 655562 dated 07/02/2020 of SBI, Bhagarbori Guwahati branch. Complainant deposited the cheque vide cheque No. 655560 in his account at Central Bank of India, Nalbari Branch on 04/02/2020 and on 05/02/2020 bank

returned the cheque citing that cheque was dishonoured due to insufficient fund. Thereafter, complainant served demand notice to accused on 03/03/2020 which was delivered to accused on 07/03/2020 but accused did not repay the amount hence first cause of action arose on 22/03/2020.

6. The complaint was filed on 27/07/2020. Under section 142 of the NI Act, complainant required to file his case within 18/04/2020. Complainant took plea that due to Nation wide lock down imposed by the Govt of India from 24/03/2020, he could not file the case and therefore, there is delay in filing the case.

7. Learned revisionist counsel contended that learned trial court has not applied judicial mind while dismissing the case on the point of limitation and failed to appreciate the decision of the Hon'ble Apex Court which is binding all the court throughout the territory of India. He further submitted that due to Nation wide lock down imposed by Govt of India from 24/03/2020 till 19/07/2020 in various phases, he could not file his case within limitation period and thereafter, due to limited and restricted court functioning of the court and as all filing of cases not took place, there is a delay which is covered by decision of the Hon'ble Apex Court. But learned trial court failed to see the same and thereby committed grave error in law in dismissing the case of the complainant on the point of limitation. In support of his submission, learned counsel

relied on the decision of the Hon'ble Apex Court in Suo Moto Writ Petition (Civil) No. 3/2020, Civil Appeal No. 4085 of 2020.

8. On scrutiny of the statement of complainant made in his complaint petition and in initial deposition along with copy of documents submitted in support of the plea taken by the complainant, there appeared accused issued three numbers of cheque vide cheque No. 655560 dated 05/12/19, 655561 dated 07/02/2020 and 655562 dated 07/02/2020 of SBI, Bhagarbori Guwahati branch in favour of complainant. Complainant deposited cheque vide No. 655560 in his bank account maintained under Central Bank of India on 04/02/2020 and his bank returned the cheque on 05/02/2020. Thereafter, complainant issued demand notice on 03/03/2020 to accused and accused received demand notice on 07/03/2020. But accused did not repay the amount.

9. As per section 138 read with section 142 of the NI Act, accused is liable to make payment within 15 days from the date of receipt of the demand notice. As such from 07/03/2020 date of payment is till 21/03/2020. Therefore, date of filing of case started from 22/03/2020. From 22/03/2020 limitation period is till 18/04/2020. Nation wide lock down started from 24/03/2020 due to first wave of covid-19 pandemic which was continued till 19/07/2020 in various phases. During the period of lock down on account of first wave of covid-19, normal functioning of the court

halted and there was a restricted and limited court functioning in the State of Assam vide Notification No. 11 dated 15/03/2020, Notification No. 19 dated 24/03/2020, order dated 02/04/2020, Notification dated 15/04/2020, Notification No. 23 dated 02/05/2020, Notification No. 26 dated 15/05/2020, notification No. 28 dated 22/05/2020, Notification No. 39 dated 24/06/2020, Notification No. 48 dated 04/07/2020 of the Hon'ble Gauhati High Court.

10. While there was lock down, Hon'ble Apex Court has taken out the Sua Moto Writ Petition (Civil) No. 3/2020. In the case in hand, petitioner filed the complaint petition on 08/07/2020 which was registered by the filing section of learned CJM office on 28/07/2020 and this is happened as several staffs of CJM, Nalbari were infected with covid disease. So thus when filed case was not registered due to the fact of suffering of staffs in covid-19 disease, it may also happen in the mind of common people that when bar rooms are closed, there was restricted functioning of court work and court taking case of only emergent nature, there is every possibility that people may presume that filing of cases may not start and outsiders are restricted from entering into the court during the lock down period.

11. The Hon'ble Apex Court vide order dated 23/03/2020 passed in Sua Moto Writ Petition (Civil) No. (s) 3/2020 ordered that ".....a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall extended w.e.f. 15<sup>th</sup>

March 2020 till further order/s to be passed by this court in present proceedings.”

12. The Hon’ble Apex Court vide order dated 06/05/2020 passed in Suo Moto Writ Petition (Civil) No. (s) 3/2020 ordered that “.....In case of limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lock down...”. In the case in hand limitation started from 22/03/2020 and case is filed on 08/07/2020. There was lock down in the State of Assam from 24/03/2020 till 19/07/2020 in various phases.

13. The Hon’ble Apex Court vide order dated 17/12/2020 passed in Civil Appeal No. 4085 of 2020 holds that: “.....“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15<sup>th</sup> March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.” (Emphasis supplied)

The above order is still operative and by subsequent orders, the scope has been enlarged so that the said order applies in other proceedings also. In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in SMW(C) No.3 of 2020 was continuing. In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 that the extended period of limitation was applicable to all petitions/ applications/suits/appeals and all other proceedings.”

14. From the above facts, I find that complainant was prevented from coming to the court to file the case in view of staggered limited court functioning due to restriction imposed by court for entry of outsiders, close of bar rooms due to covid-19 pandemic 1st wave and in compliance of the decision given by the Hon’ble Apex Court in Suo Moto Writ Petition (Civil) No. 3/2020, I opined that petitioner case fall and squarely covered by the aforesaid decision of

the Hon'ble Apex Court. Petitioner entitled the benefit given by the Hon'ble Apex Court to the litigant in respect of covering of limitation period in filing the case such as Civil, NI Act etc. Accordingly, delay in filing the NI Act case by the petitioner is condoned.

15. In the light of above order, the revision is allowed. However no costs to the parties. The impugned order of dismissal dated 08/12/2020 passed by learned Addl. Chief Judicial Magistrate, Nalbari in connection with N.I. Case No. 40/20 u/s-138 read with section 142 of the NI Act is hereby set aside.

16. Learned trial court is directed to proceed the case further from the initial stage of recording initial deposition as per law.

17. Send the LCR to the learned trial court with a copy of judgment immediately.

Judgment delivered under hand and seal of this court on this 18<sup>th</sup> day of February, 2022 at Nalbari, District-Nalbari.

(Smti S. Bhuyan)  
Session Judge, Nalbari

Dictated and corrected by me

(Smti S. Bhuyan)  
Session Judge, Nalbari

Typed by: Biswajit Bhattacharjya, U.D.Assistant