

**(2029) 12 SHI CK 0001**

**Himachal Pradesh HC**

**Case No:** Criminal Miscellaneous Petition (M) No. 706 Of 2024

Roshan Lal

APPELLANT

Vs

Kishori Lal

RESPONDENT

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**Date of Decision:** Dec. 16, 2029

**Acts Referred:**

- Negotiable Instruments Act, 1881-Section 138
- Code Of Criminal Procedure, 1973-Section 313

**Hon'ble Judges:** Rakesh Kainthla, J

**Bench:** Single Bench

**Advocate:** Tanu Sharma, Sumit Sharma

**Final Decision:** Dismissed

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### **Judgement**

Rakesh Kainthla, J

1. The applicant/petitioner has filed the present application for condonation of 355 days in filing the revision petition. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. It has been asserted that the applicant/accused has paid the cheque amount to the complainant/respondent. The complainant promised to return the cheque, but he filed a complaint under Section 138 of the Negotiable Instruments Act (NI Act). The complainant kept on promising that he would withdraw the complaint, but he failed to do so. The accused was convicted and sentenced by the learned Trial Court. The accused filed an appeal, which was dismissed on 11.04.2023. The accused was not advised by his counsel to file an appeal. The police came to arrest the accused on 22.03.2024, and he found that a case was pending against him. The accused remained under the impression that he had made a full and final payment of the cheque, and he was not serious about the complaint. The complainant had also assured the accused to withdraw the complaint, but he failed to do so. There is a delay of 265 days in filing the revision, which is due to the circumstances beyond the

control of the applicant/accused. Hence, it was prayed that the present application be allowed and the delay in filing the revision be condoned.

3. The application is opposed by filing a reply taking preliminary objections regarding the lack of maintainability and the applicant/accused having not come to the Court with clean hands. It was asserted in the complaint that the accused had purchased ten goats from the respondent/complainant for ₹3,00,000/-. He issued a cheque to discharge his liability. However, the cheque was dishonoured with an endorsement insufficient funds. The complainant filed a complaint, and the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of N.I. Act and sentenced him to undergo simple imprisonment for one year and pay a compensation of ₹3,30,000/- to the complainant. The accused preferred an appeal which was decided by learned Sessions Judge (Forests) Shimla (Camp at Roh u) (learned Appellate Court) on 20.01.2023. The accused drafted the present petition on 11.04.2023 after the lapse of more than one year. He has failed to explain the delay. The complainant specifically denied that the amount was paid to him, and he had failed to return the cheque despite promises . . Hence, it was prayed that the present application be dismissed.

4. This Court framed the following issue on 20.09.2024:

(i) Whether there is no reason for condonation of delay? OPP.

5. However, the applicant did not produce any evidence in support of the issue.

6. I have heard Ms Tanu Sharma, learned Legal Aid Counsel for the applicant/accused and Mr Sumit Sharma, learned counsel for the non-applicant/complainant.

7. Ms Tanu Sharma, learned Legal Aid Counsel for the applicant/ accused, submitted that the accused is a poor rustic villager, who was not aware of the intricacies of law. He was not advised by his counsel to prefer a revision. He remained under the impression that the amount had been repaid and that the complainant would withdraw the complaint. The complainant had also assured him to withdraw the complaint, but he failed to do so. Therefore, she prayed that the present application be allowed and the delay in filing the revision be condoned.

8. Mr Sumit Sharma, learned counsel for the respondent/ complainant, submitted that the accused mentioned in the application that he was not serious in pursuing the litigation, which shows his casual attitude. He was aware of the dismissal of the appeal but did not take any steps to assail and judgment passed by the learned Appellate Court. A person who sleeps over his right is not entitled to the condonation of delay. Therefore, he prayed that the present application be dismissed. He relied upon the judgment of the Honble Supreme Court in Rajneesh Kumar v. Ved Prakash, 2024 SCC OnLine SC 3380, in support of his submission

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The application mentions that the applicant/accused had repaid the amount before the institution of the complaint. This is contradictory to his statement recorded under Section 313 of Cr.P.C., in which he had denied any transaction regarding the sale of the goat. He claimed that the cheque was issued to one Satish Kumar in the cross-examination of the complainant and that the cheque was issued to Nareshwar in his statement recoded under Section 313 of Cr.P.C. He had never claimed before the learned Trial Court that he had repaid the amount, and the complainant had assured him to withdraw the complaint. Therefore, his plea before this Court that he had returned the amount and remained under the impression that the complaint would be withdrawn by the complainant is not believable.

11. The applicant/accused admitted that the appeal was dismissed on 11.04.2023. He claimed that he was not advised by his counsel to file a revision against the judgment of dismissal. It was laid by the Honble Supreme Court in Rajneesh Kumar (supra) that throwing the blame upon the counsel will not help the party to get the delay condoned. It was observed:-

**10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers for negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay, as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.**

**11. In the aforesaid context, we may refer to a decision of this court in the case of Salil Dutta v. T.M. & M.C. Private Ltd., (1993) 2 SCC 185, wherein this Court observed as under:**

**8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e. the party who engages him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant, but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations**

made in Rafiq (1981) 2 SCC 788: AIR 1981 SC 1400 must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an ongoing suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic, ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing, they felt piqued and refused to appear before the court. May be it was part of their delaying tactics, as alleged by the plaintiff. May be not. But one thing is clear, they chose not to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

12. Therefore, the plea that the accused was not advised by his counsel to file a revision will not help him. Even otherwise, it was for the accused to seek the opinion from any person regarding the course to be adopted after dismissal of the appeal. He could have even approached the District Legal Services Authority for availing the services of a legal aid counsel; however, he remained satisfied with the judgment of the learned Appellate Court and did not take any steps to assail it. Therefore, there is a force in the submission of learned counsel for the respondent/complainant that the accused kept sleeping over his right, and he cannot claim condonation of delay. The Honble Supreme Court held in Rajneesh Kumar (supra) that the object of the law of limitation is to compel a person to exercise his rights within a reasonable time. It was observed: -

12. As regards the law of limitation, we may refer to the decision of this Court in Bharat Barrel & Drum MFG Co. v. Employees State Insurance Corporation, (1971) 2 SCC 860, wherein this Court held as under:

**The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maxim *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time, as also to discourage and suppress stale, fake or**

**fraudulent claims.(Emphasis supplied)**

13. In the present case, the accused had not exercised his rights within a reasonable time, and it is impermissible to exercise them after the lapse of about one year without showing a reasonable cause. The accused has failed to show any reasonable cause for the condonation of the delay and the delay cannot be condoned.

14. In view of the above, the present application fails, and the same is dismissed.

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15. Since the application bearing Cr.MP(M) No. 706 of 2024 for condonation of delay has been dismissed; therefore, the proposed revision is dismissed as barred by limitation. Pending miscellaneous applications, if any, also stand disposed of.