

DISTRICT: EAST SIKKIM

**IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CRIMINAL APPEAL JURISDICTION)**

Crl. L. P. No. ___ of 2022

In the matter of:

Kiki Doma Bhutia

.....Appellant

---versus---

Bijendra Kumar Singh

....Respondent

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FiledThrough:

Dated: 09.02.2022

Gangtok



Jorgay Namka
(Advocate)



DISTRICT: EAST SIKKIM

**IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CRIMINAL APPEAL JURISDICTION)**

Crl. L. P. No. ___ of 2022

To,

The Hon'ble Mr. Justice Biswanath Somadder, Chief Justice of Hon'ble High Court of Sikkim and His Lordship's Companion Justice of the said Hon'ble Court.

In the matter of:

An application under Section 378 (4) of the Code of Criminal Procedure, 1973.

-and-

In the matter of:

Impugned Order dated 31.12.2021 passed by the Hon'ble Session Judge, East Sikkim at Gangtok in Crl. Revision Case No. 2 of 2020 titled Mrs Kiki Doma Bhutia versus Shri Bijendra Kumar Singh;

-and-

In the matter of:

Kiki Doma Bhutia aged about 56 years W/o K. W. Bhutia,
R/o Tathangchen, Gangtok - 737101,
East Sikkim. Appellant

-versus-

Bijendra Kumar Singh (Mobile No. 9775456456),

S/o Shri Ben Kumar Singh,
R/o Upper Sichey,
Gangtok - 737101,
East Sikkim. Respondent

The humble petition of the above named appellant-

MOST RESPECTFULLY S H E W E T H:

1. That the appellant has this day preferred an appeal under Section 378 of the Code of Criminal Procedure, 1973 against the Impugned Order dated 31.12.2021 passed by the Hon'ble Session Judge, East Sikkim at Gangtok in Crl. Rev. Case No. 02 of 2020 titled Mrs Kiki Doma Bhutia versus Shri Bijendra Kumar Singh. Copy of the impugned order dated 31.12.2021 is filed herewith as **Annexure P1**.
2. That the detail facts of the case leading to the filing of this application for leave to appeal under Section 378 (4) Cr. P. C., 1973 has been fully described and placed in accompanying criminal appeal. The said appeal may kindly be read as part of this application and the appellant be permitted to refer to and rely on the various paragraphs and the documents annexed thereto in the appeal at the time of hearing of this application.
3. That the facts and circumstances giving rise to the present petition are narrated hereunder:-
 - (i) The appellant and her husband hail from an affluent family in Gangtok, they are financial sound, having

considerable goodwill and reputation in the Society. The respondent/accused who was initially known to the husband and the relatives of the appellant had approached her and introduced himself as a contractor. In their formal meet the respondent had stated that he was in need of money for construction of his resort as well as his family's work and hence he requested the appellant to lend him money.

(ii) The respondent thereafter approached the appellant several times, on some occasion he had come to the appellant's house along with his wife Smt. Woeser Doma Bhutia and requested her to lend him money for a short duration. The respondent and his wife assured the appellant that he will return the money borrowed within a short span of time and that he was also willing to pay interest, even though she told him that she was not into the business of money lending.

(iii) The appellant during that relevant point of time had sufficient money with her after the Sale of her RCC Building built over Plot No. 31/348 situated at Tadong Revenue Block to Sikkim State Co-operative Bank Ltd. (hereinafter referred SISCO Bank) for Rs. 1,75,00,000/- . The appellant's Fixed Deposit with SISCO Bank, Gangtok had also matured and she had encashed her FD also. However, the appellant had not kept any of documents and it was only after the respondent refused to return the money borrowed by him despite receipt of the Legal Notice, that

she approached SISCO Bank vide her application dated 03.07.2018. The appellant then managed to get some of the relevant documents and her SISCO Bank account statement only on 10.09.2018.

(iv) The appellant by now having come to know the respondent and his wife who had approached her on several occasions, could not turn down his request. The appellant in good faith, completely trusting the respondent and his wife who is also a Government employee, wanting to sincerely help the respondent and on their constant persuasion on 05.02.2015 after having withdrawn a sum of Rs. 55 Lakhs from her SISCO Bank account, lent Rs. 20,00,000/- (rupees twenty lakhs) in cash to respondent for a short duration, which he undertook to return within a short span of time.

(v) The respondent on receipt of Rs. 20,00,000/- (rupees twenty lakhs) in cash from the appellant on the same day i.e. 05.02.2015 executed a money receipt acknowledging the receipt of Rs. 20,00,000/- (rupees twenty lakhs). The respondent on his free will, voluntarily, as stated earlier, undertook to return the principal amount after six months and he also at the spot on his own agreed to pay interest @ 7% per month, every month by the 5th day of the month amounting to Rs. 1,40,000/-. The respondent also issued State Bank of India Cheque bearing No. 354719 for a sum of Rs. 20,00,000/- (rupees twenty lakhs) in favour of the appellant as security for the money borrowed by him.




(vi) The respondent in the month of April, 2015 again approached the appellant, on some occasion the respondent had come along with his wife and requested the appellant to lend further money. The appellant after being persuaded by the respondent and his wife and request made by the respondent for additional money, further lent Rs. 20,00,000/- (rupees twenty lakhs) only in cash to the respondent. The respondent on 04.05.2015 after having received additional sum of Rs. 20,00,000/- (rupees twenty lakhs) in cash from the appellant executed another money receipt. The respondent once again on his free will, voluntarily, undertook to return the principal amount after three months and agreed to pay interest this time @ 8% per month, every month by the 4th day of the month. He also issued a blank State Bank of India Blank Cheque bearing No. 264576 to the appellant executed by him as security for the borrowed amount.

(vii) The respondent after having borrowed Rs. 40,00,000/- (rupees forty lakhs) in cash from the appellant in two instalments of Rs. 20,00,000/- (rupees twenty lakhs) each on 05.02.2015 and 04.05.2015 in his free will, on few occasions had transferred/deposited money towards interest from his Bank account as well as his wife's Bank account in the appellant's Bank account as well as her sister's account. However, the appellant being concerned only about the

principal amount made several requests to the respondent for return of the said amount.

(viii) That as the respondent had failed to return the money borrowed by him within the time stipulated by him, he approached the appellant and on few occasions with his wife and sought extension of time to return the money borrowed by him which the appellant agreed. Thereafter the respondent executed acknowledgment dated 26.12.2017, in which he admitted that he has borrowed Rs. 40,00,000/- from the appellant and he undertook to return Rs. 20,00,000/- by the end of February, 2018 and the remaining Rs. 20,00,000/- by the end of March, 2018. The respondent on the same day issued two postdate cheques of State Bank of India, bearing Cheque No. 264632 dated 28.02.2018 for a sum of Rs. 20,00,000/- (rupees twenty lakhs) and Cheque No. 264633 dated 31.03.2018 for a sum of Rs. 20,00,000/- (rupees twenty lakhs) drawn by him in favour of the appellant.



(ix) The respondent despite having undertaken to return the money borrowed by him in two instalments of Rs. 20,00,000/- (rupees twenty lakhs) each by the end of February, 2018 and March, 2018 vide acknowledgment and undertaking dated 26.12.2017, once again failed to adhere to the terms of his acknowledgment and undertaking dated 26.12.2017 and thereafter he once again in the month of February, 2018 approached the appellant along with his

wife seeking for further extension of time for repayment of the money borrowed by him.

(x) Thereafter, on the request made by the respondent and his wife, the appellant taking into account the situation in which the respondent was and as the wife of the respondent had personally agreed to stand as surety, once again verbally extend the time for repayment. The appellant on the request made by the respondent then entered into agreement on 07.03.2018 in the presence of one Kishan Tamang and Shri Tashi Norbu Lepcha. The wife of the respondent, Smt. Woeser Doma Bhutia had stood as Surety.

(xi) The appellant as per agreement dated 07.03.2018 after having informed the respondent then presented one the above said **Cheque bearing No. 264632 dated 28.02.2018** for Rs. 20,00,000/- drawn by respondent for encashment to her Banker, HDFC Bank Ltd., Gangtok, Sikkim. When presented the said Cheque was returned unpaid through her Banker, i.e. HDFC Bank Ltd., Gangtok, Sikkim vide return Memo dated 20.04.2018. The appellant thereafter issued legal notice through her Advocate dated 07.05.2018 to the respondent in his last known address with a demand, calling upon the respondent to make payment of the above mentioned cheque amount. The said Legal Notice was delivered on 14.05.2018.

(xii) The respondent after receipt of the Legal Notice dated 18.06.2018 issued by the appellant once again approached

the appellant along with his wife and they both requested the appellant not to pursue the matter before the Hon'ble Court and as previously done, sought further time, so that the respondent and his wife could arrange money to pay for the dishonoured cheque and in the meantime paid the interest amount. The respondent verbally agreed and undertook to pay the cheque amount on or before 31.08.2018. The appellant having once had a good relationship with the respondent, agreed not to pursue the matter before the Hon'ble Court at that point of time. The appellant on the assurances given by the respondent and his wife in the presence of Karma Wangdi Bhutia, did not initiate any legal action against the respondent at that point of time hoping that the respondent would pay the Cheque amount demanded by the appellant on or before 31.08.2018. However, the respondent despite undertaking to pay the cheque amount failed to do so on or before 31.08.2018 and hence the delay in filing this instant complaint. The delay was also due to the reason that the appellant's Bank i.e. SISCO Bank took some time to search for the relevant documents asked by the appellant and thereafter issue certified copies of the same, including her statement of account and the said delay was beyond the control of the appellant.

(xiii) The respondent having failed to re-pay the money borrowed by him despite receipt of the Legal Notice dated 18.06.2018, within the additional time sought by him i.e. on

or before 31.08.2018, the appellant being left with no other option filed **P. C. Case No. 34 of 2018** against the respondent along with an application for condonation of delay of **78 days** in filing the said PC Case on 14.09.2018.

(xiv) The appellant in the P. C. Case No. 33 of 2018 as well as the application for condonation of delay under Section 142(b) of the NI Act had clearly laid down the reason for the delay of 39 days in filing the said case. However, despite the appellant having specifically laid down the reasons for delay the Ld. Trial Court rejected the application for condonation of delay filed by the appellant and consequently the P. C. Case No. 34 of 2018 was also dismissed.



(xv) That being aggrieved by the Order dated 26.02.2019 the appellant had preferred an appeal before the Hon'ble High Court of Sikkim. However, this Hon'ble Court vide Order dated 04.03.2020 was pleased to dismiss the same with **liberty to pursue remedy in accordance with law** and hence the appellant preferred Crl. Rev. Case No. 2 of 2020 before the Hon'ble Session Judge, East Sikkim at Gangtok.



(xvi) The Hon'ble Session Judge, East Sikkim at Gangtok vide impugned Judgment dated 31.12.2021 was pleased to dismiss the revision petition preferred by the appellant.

4. That in the aforesaid facts and circumstances the appellant seek to invoke the appellate Jurisdiction of this Hon'ble Court and craves for leave to appeal under Section 378 (4) of the Cr.PC, 1973 on the following, inter alia grounds taken without prejudice to one another:-

GROUND:-

- a. For that the Ld. Trial Court as well as the Hon'ble Session Judge, East Sikkim at Gangtok failed to appreciate the facts of the case and thus arrived at an erroneous finding;
- b. For that the Learned Trial Court as well as the Hon'ble Session Judge, East Sikkim at Gangtok not only erred in Law, it also failed to appreciate the facts and then take judicial consideration into account and hence arrived at a wrong conclusion;
- c. For that despite the appellant having specifically laid down the reasons for delay and the appellant having satisfied the Ld. Trial Court as well as the Hon'ble Session Judge, East Sikkim at Gangtok, that she had sufficient cause for not making the complaint within such time the Ld. Trial Court as well as the Hon'ble Session Judge, East Sikkim at Gangtok arrived at different view and thus rejected the application for condonation of delay filed by the appellant and consequently the P. C. Case No. 33 of 2018 filed;

- Maitri.*
- d. For that the Ld. Trial Court as well as the Hon'ble Session Judge, East Sikkim at Gangtok overlooked or did not considered vital materials available on record;
- e. For that the Ld. Trial Court as well as the Hon'ble Session Judge, East Sikkim at Gangtok has grossly erred and ignored the various averments/statements made in the complaint as well as the application for condonation of delay.
5. That the appellant reserves his right to urge other ground/s at the time of hearing of this appeal and further seeks leave of this Hon'ble Court to add and amend all or any of the statements, submissions and grounds if advised.
6. This application for special leave to appeal under Section 378 (4) Cr. P. C., 1973 is made bonafide and in the interest of Justice.
7. That in view of the above pleadings, this Hon'ble Court ought to allow this application for special leave to appeal filed by the appellants under Section 378 (4) Cr. P. C., 1973 in the interest of Justice.
- S.*

PRAYER

Under the circumstances, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to grant special Leave to the appellant to file appeal against the Impugned Order dated 31.12.2021 passed by the Hon'ble

Session Judge, East Sikkim at Gangtok in Crl. Rev. Case No. 2 of 2020 titled Mrs Kiki Doma Bhutia versus Shri Bijendra Kumar Singh.

And for which the appellant as in duty bound shall ever pray.



Appellant



**IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CRIMINAL APPEAL JURISDICTION)**

Crl. L. P. No. .. of 2019

In the matter of:

Kiki Doma BhutiaAppellant
---versus---
Bijendra Kumar SinghRespondent



AFFIDAVIT

I, Kiki Doma Bhutia aged about 56 years W/o Shri Karma Wangdi Bhutia R/o Tathangchen, Gangtok, East Sikkim do hereby solemnly affirm and declare as under: -

1. I am the appellant in the instant petition filed by me and as such I am well conversant with the facts and circumstances of the instant appeal and the leave petition.
2. That the contents of paragraph 1, 2, 3, 4 and 5 are true and correct to my personal knowledge and belief and nothing material has been concealed therefrom; the rest of the paragraphs are my humble submissions made on legal advise received which I belief to be true and correct and the last paragraph are my humble prayers before this Hon'ble Court.

DEPONENT

...V E R I F I C A T I O N...

I, Kiki Doma Bhutia the appellant herein do hereby verify that the contents of paragraph 1 and 2 above are true to my knowledge and belief that no part of it is false and nothing material has been concealed therefrom.

I, sign this verification on this the 5th day of February, 2022 at Gangtok.

Identified by:


Bidyta Rai
(Gangtok)

solemnly affirm before me on this the
5 day February 2022 Smt.
 Miss Kiki Doma Bhutia
Tathangechen Gangtok who is known
 to me & identified by Shri/Smt./ Miss
Bidyta Rai or
Gangtok East Sikkim

DEPONENT


 Mr. Simeon Subba
 Oath Commissioner (East)
 High Court of Sikkim
 Vide Notification No. 34mCS 31/03/2010





**IN THE COURT OF THE SESSIONS JUDGE,
EAST SIKKIM AT GANGTOK**

DATED: 31.12.2021

PRESENT: (Prajwal Khatiwada)

Criminal Revision Case No.02 of 2020



Kiki Doma Bhutia,
W/o Karma Wangdi Bhutia,
R/o Tathangchen, Gangtok
East Sikkim

.....Revisionist/Petitioner

-VERSES-

Bijendra Kumar Singh,
S/o Ben Kumar Singh,
R/o Upper Sichey, Gangtok
East Sikkim

.....Respondent



FOR THE REVISIONIST : Ld. Counsel Shri Jorgay Namka,
Ms. Tashi Doma Sherpa & Ms.
Nisha Biswakarma

FOR THE RESPONDENT : Ld. Counsel Shri Karma Phintso
Wangdi

*Lk
31/12/21*
Sessions Judge
East Sikkim at Gangtok

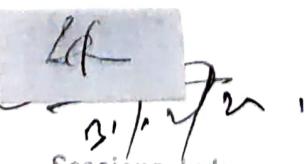
O-R-D-E-R

1. This Criminal Revision has been preferred by the Revisionist against the order dated 26.02.2019 passed by the Ld. Judicial Magistrate, East Sikkim at Gangtok in *Private Complaint(PC) Case No.34 of 2018 Kiki Doma Bhutia, Complainant v. Bijendra Kumar Singh, Accused Person* whereby the Ld. Magistrate after hearing the Revisionist-complainant rejected her application filed under the *proviso to Section 142(1)(b) of the Negotiable Instruments Act, 1881 (In short, "the NI Act, 1881")* praying for condonation of delay of 78 days in filing her complaint under Section 138 of the said Act and dismissed the complaint.
2. *Briefly stated*, it is the case of the Revisionist that the Respondent had initially obtained a loan from her to the tune of ₹ 20,00,000/- (Rupees Twenty lakhs) only on 05.02.2015 which was given by her to him in cash. He duly executed a money receipt acknowledging the receipt of the said loan and

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Ses^tions Judge
East Sikkim at Gangtok

undertook to return the said amount after six months. He also undertook to pay the interest at the rate of 7% per annum on the said amount by the fifth of every month. He even issued a cheque bearing No.354719 for the said amount drawn on his account maintained with the State Bank of India(SBI), M.G.Marg, Gangtok branch as a security for the repayment of the above loan amount. Again sometime during April 2015 the Respondent (*again*) approached the Revisionist requesting for additional loan. On the request of the Respondent and his wife, the Revisionist again lent further amount of ₹ 20 Lakhs to him in cash on 04.05.2015. He undertook to return the said principal amount after three months and further undertook to pay interest on it at the rate of 8% by the fourth day of every month. This time he issued a blank cheque No.264576 to the Revisionist as security for the above loan amount apart from issuing a money receipt.

3. Although the Respondent repaid some amounts towards the interest, he however failed to repay the principal amount(s)



Session Judge
East Sikkim at Gangtok

above within the time undertaken by him. Although the Revisionist repeatedly requested him to repay it, it was to no avail. Instead, the Respondent sought extension of time to repay the above amounts. The Revisionist, accordingly, extended the time for the repayment on which the Respondent executed a fresh written acknowledgement dated 26.12.2017 acknowledging that he had borrowed the total amount of ₹ 40 Lakhs from the Revisionist. He also undertook to return ₹ 20 Lakhs by the end of February, 2018 and the remaining amount of ₹ 20 Lakhs by the end of March, 2018. On the same day, he also issued two post-dated cheques drawn on his above account maintained with the SBI being cheque No.264632 dated 28.02.2018 for ₹ 20 Lakhs and the other cheque bearing No.264633 dated 31.03.2018 for ₹ 20 Lakhs. Both the cheques were issued in favour of the Revisionist.

4. Unfortunately, despite having undertaken to return the above principal amounts by the end of February 2018 and March 2018 the Respondent failed to repay it. Instead, he once

[Signature]
 Sessions Judge
 East Sikkim at Gangtok

again approached the Revisionist sometime in February 2018 along with his wife seeking further extension for repayment of the above principal amounts. Accordingly, the Revisionist verbally extended the time for repayment. In fact, on the request of the Respondent they even entered into another written agreement in that regard on 07.03.2018 in the presence of two witnesses. Further, the wife of the Respondent stood surety for the repayment.

5. As per the terms of the above agreement dated 07.03.2018 and as the validity of the cheques was coming to an end the Revisionist presented the cheque bearing No.264632 dated 28.02.2018 for ₹ 20 Lakhs before her bank viz., HDFC bank, Gangtok branch. However, the said cheque was returned unpaid by the drawee bank to the Revisionist's bank vide cheque/bank return memo dated 20.04.2018 due to the reasons '*payment stopped by drawer*'. Although the other cheque bearing No.264633 dated 31.03.2018 for ₹ 20 Lakhs was also deposited by her with her above bank it too was returned unpaid by the



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3/1/2019
Sessions Judge
East Cikkin at Gangtok

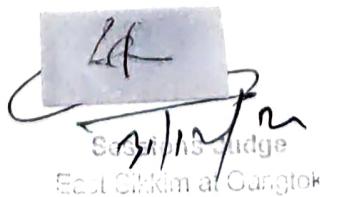
drawee bank to her bank vide return memo dated 05.06.2018 due to the same reasons above.

6. With regard to the first cheque bearing No.264632 above, the Revisionist issued a legal notice dated 07.05.2018 to the Respondent intimating him about its dishonour and demanding the payment of the cheque amount within 15 days from the date of the receipt of the legal notice. The said notice was sent through registered post and was delivered to the Respondent on 14.05.2018. After receiving the above legal notice the Respondent again approached the Revisionist along with his wife and requested her not to pursue the matter before the Court. They, accordingly, prayed for further time for arranging the money and paying the cheque amount above along with the other cheque amount. In fact, the Respondent verbally agreed and undertook to pay the amounts of the above two cheques on or before 31.08.2018. The Revisionist considering that she once had good relations with the Respondent and also keeping in view that she had even on earlier occasion granted him some

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time to repay the concerned amounts once again agreed not to pursue the matter by filing the complaint before the Court. She, accordingly, did not file the concerned complaint within the statutory period. However, even this time the Respondent failed to pay the amounts of the two cheques above by 31.08.2018 as undertaken by him. Left with no option, the Revisionist approached the Ld. Magistrate with two separate complaints under Section 138 of the NI Act, 1881 in respect of each of the cheques above. The *Private Complaint Case No.34 of 2018* pertains to the cheque bearing No.264632. Since there was a delay of about 78 days in filing the said complaint which was owing to the afore-stated reasons as well as due to the fact that the Revisionist also had to gather some documents from her another bank(*SISCO bank*) relating to the case(*in order to prove her financial capacity*), she also filed the concerned application under the proviso to Section 142(1)(b) of the NI Act, 1881 before the Ld. Magistrate seeking condonation of delay in filing the complaint.



Session Judge
East Sikkim at Gangtok

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7. The Ld. Magistrate, however, after hearing the Revisionist through her Counsel was not inclined to condone the delay and accordingly rejected the above application followed by dismissal of the complaint vide the *impugned* order dated 26.02.2019.

8. Aggrieved by the above order the present Revision has been preferred by the Revisionist.

9. The records would reveal that the Revisionist had earlier approached the Hon'ble High Court of Sikkim against the impugned order by filing *Cri.L.P.No.05 of 2019 Kiki Doma Bhutia, Petitioner v. Bijendra Kumar Singh, Respondent*. However, vide a common order dated 04.03.2020 passed in the said matter and the connected matter *viz., Crl.L.P. No.04/2019 Kiki Doma Bhutia, Petitioner v. Bijendra Kumar Singh, Respondent* (in respect of the other cheque bearing No.264633 above) the Hon'ble High Court was pleased to dismiss the said petitions being not maintainable however reserving the liberty



lf
3/12/20
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to the Revisionist to pursue her remedy in accordance with law.

She has, accordingly, approached this Court by filing the present Revision petition.



10. Ld. Counsel Shri Jorgay Namka, appearing for the Revisionist, contended, *amongst other things*, that the Ld. Magistrate fell into error in rejecting the above application and dismissing the complaint. The Ld. Magistrate failed to appreciate that the Revisionist-complainant had put forward *sufficient and good reasons* for the delay in approaching the Court with the concerned complaint.



11. According to Shri Namka, the Ld. Magistrate has failed to objectively consider the grounds put forward by the Revisionist-complainant and has thus misdirected himself in coming to the conclusion that no *sufficient cause* had been shown by the Revisionist-complainant for the delay in filing the complaint. It was, accordingly, prayed that the *impugned* order be set aside and the concerned complaint be restored.

Lef *3/11/2020*
 Sessions Judge
 East Sikkim at Gangtok

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12. While contending that when the Revisionist has put forward sufficient and good grounds for the delay in filing the concerned complaint the Ld. Magistrate ought to have condoned the delay Shri Namka would place reliance on the cases of *Birendra Prasad Sah, Appellant v. State of Bihar & Anr., Respondents (2019) 7 SCC 273; Pawan Kumar Ralli, Appellant v. Maninder Singh Narula, Respondent (2014) 15 SCC 245; Ram Kumar Goyel & Ors. v. Bhuwan Singh Pradhan AIR 2007 SK 39; Skyline Constructions and Housing Pvt. Ltd., Appellant v. T.D.Kumaravell & Ors., Respondents 2017 SCC OnLine Kar 6257; and Ashokan, Petitioner v. J. Prem Anand, Respondent 2019 SCC OnLine Mad 2194.*



13. Ld. Counsel Shri Karma Pintsho Wangdi, while appearing for the Respondent, *on the other hand*, supported the impugned order. It was submitted that since no sufficient ground was made out by the Revisionist the Ld. Magistrate has rightly exercised the discretion in rejecting the above

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East Bengal at Gangtok

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application and dismissing the complaint on the ground of delay. According to Shri Wangdi, the provisions of the NI Act, 1881 are technical in nature and as such the wide parameters and discretion as are available to the Court while condoning delay under the provisions of Section 5 of the Limitation Act, 1963 would not be applicable in matters governed by and falling under the NI Act, 1881. As such the impugned order brooks no interference. Reliance was also placed on the case of *Subodh S.Salaskar, Appellant v. Jayprakash M.Shah & Anr.*, Respondents (2008) 13 SCC 689 in support of the above submissions.

14. This Court has given its anxious and thoughtful consideration to the rival submissions made at the Bar and has carefully gone through the Revision Petition, objections to it, the impugned order and the case records. The decisions cited at Bar have also been carefully perused.

15. As seen above, the Revisionist would claim that it was

Ld
S. T. J. M.
Sessions Judge
East C. K. M. at Gangtok



mainly owing to the fact that the Respondent had approached her after receiving the concerned legal notice on 14.05.2018 requesting her not to pursue the matter and had prayed for further time in order to arrange the money to pay the cheque amount that there was delay in filing the concerned complaint before the Ld. Magistrate. According to her, the Respondent had verbally undertaken to pay the cheque amount on or before 31.08.2018. As they once had a good relationship she agreed not to pursue the matter by filing the complaint and as such refrained from filing it at that point of time. However, despite such undertaking the Respondent failed to pay the cheque amount. It is worthwhile to mention here that the above *bald* claims of the Revisionist have been denied by the Respondent at paragraph 11.c) of his reply. In any event, apart from the *bald* claims the Revisionist has not placed forth any substantial material or evidence to cogently establish the same. In a case as technical as the present it was incumbent upon the Revisionist to atleast put forward some material in support of her claims

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3/1/2020
Sessions Judge
Post Office at Gangtok

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that the Respondent had approached her after receiving the legal notice and had verbally undertaken to repay the cheque amount on or before 31.08.2018. It is also not a case where such verbal undertaking was given in the presence of any other person including her husband. In the given facts and circumstances it would not be appropriate to simply accept the *bald* and unsubstantiated claims of the Revisionist in that regard. We may also refer to the case of *Anil Kumar v. State of UP & Anr.*, [2012 ACD 1400 (All)] in this context wherein the Hon'ble Allahabad High Court while considering a somewhat similar case was pleased to observe that except for the oral statement of the concerned complainant therein about the assurance made by the accused/revisionist there was nothing in writing to support the said fact. The Hon'ble High Court was accordingly pleased to hold that in such a case the Ld. Magistrate could not have taken the cognizance of the case when the complaint was barred by time. Apart from the above decision it would also be beneficial to refer to the case of

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31/12/2011
Session Judge
Tat Chikha at Gangtok

Narendra Kumar v. Chandra Prakash [2012 ACD 554 (Raj)]

wherein while considering a case where instead of filing the complaint after serving the first notice the complainant had chosen to wait and later after sometime re-presented the cheque before the drawee bank which however was again dishonoured pursuant to which another notice was issued followed by the belated filing of the concerned complaint, was pleased to observe that such a complaint was obviously barred by limitation.

16. The Revisionist would even claim that the delay was also on account of the fact that she had to obtain certain documents from her another bank(*SISCO Bank*) which were relevant to the matter(*in proving her financial capacity*). The Ld. Magistrate has duly considered the submissions of the Revisionist in that regard and has held, *rightly so*, that the said documents could have always been filed after presenting the complaint after seeking leave in that regard. This Court is in complete agreement with the said observations of the Ld. Magistrate.

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Session Judge
Post Office Gangtok

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17. Insofar as the various cases relied upon on behalf of the Revisionist, it is noted that the same turn on their own facts. The facts under consideration before the Hon'ble Supreme Court and the various High Courts in those cases are seen to be clearly distinguishable from the facts in the case on hand.

18. Resultantly, the Revision Petition stands dismissed being sans merit.

Certified copy of this order be forwarded to the Ld. Magistrate for information.

PRONOUNCED IN OPEN COURT

C. K. J. M.

(Prajwal Khatiwada)

Sessions Judge

East Sikkim at Gangtok

Sessions Judge

Session And/Or (E) *A. N. Shrestha*

Date of Application..... 01/02/2022

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