

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

**CrIa(AS) No.42/2024, CrIM No.1726/2024 and
CrIM No.1727/2024 c/w
CrIa(AS) No.43/2024, CrIM No.1742/2024 and
CrIM No.1743/2024**

WAHEED SHAFI SHEIKH

.....Petitioner(s)

Through: Mr.Aasif Wani, Advocate.

V/s

NASEER AHMAD GANIE

... ..Respondent(s)

Through : Mr. Aftab Ahmad, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

23.07.2025

1. By this common order applications for condonation of delay in filing the afore titled two appeals and applications for leave to file the appeals alongwith the afore titled two appeals are being disposed of.
2. It appears that the petitioner/appellant filed two separate complaints against the respondent for offence under Section 138 of Negotiable Instruments Act before the Court of learned Chief Judicial Magistrate, Sopore (hereafter referred to as "the trial Magistrate"). One complaint which is subject matter of

CrIa (AS) No.42/2024 was with respect to cheque dated 31.08.2022 for an amount of Rs.2,00,000/-issued by the respondent in favour of the petitioner/appellant, whereas the other complaint which is subject matter of CrIa (AS) No.43/2024 was in respect of cheque dated 05.08.2022 for an amount of Rs.2,00,000/- issued by the respondent in favour of the petitioner/appellant. It seems that both the complaints came to be presented before the learned trial Magistrate on 28.11.2022 and on 08.02.2023 two separate orders came to be passed by learned Chief Judicial Magistrate, Sopore, whereby cognizance of the offence was taken and process was issued against the respondent.

3. It also appears that on 14.09.2023 both the complaints filed by the petitioner against the respondent came to be dismissed for non-prosecution by the learned trial Magistrate on the ground of continuous absence of the complainant (petitioner/appellant). In this regard, two separate orders in the two complaints came to be passed by the learned trial Magistrate and these orders are subject matter of challenge in the afore titled two appeals.

4. CrIa(AS) No. 42 of 2024 has been filed on 04.09.2023 and CrIa(AS) No.43 of 2024 has been filed on 10.12.2024. Thus, there is a delay of 357 days in filing CrIa (AS) No.42 of

2024 and there is delay of 363 days in filing CrIa(AS) No.43 of 2024. The explanation tendered by the appellant for delay in filing the two appeals is that the appellant came to be arrested on 20.04.23 in connection with FIR No.125 of 2023 of Police Station Bahu Fort, Jammu for offences under Sections 8, 21, 22, 25 of NDPS Act read with 3/25 Arms Act. It has been submitted that the appellant was released on interim bail on 02.08.2024 which came to be extended on 27.09.2024 and was made absolute on 15.10.2024 on medical grounds. A copy of the bail order has been placed on record by the appellant. It has also been pleaded that during the period of his incarceration the appellant was taken seriously ill and, therefore, after his release from custody he had to undergo treatment which prevented him from filing the appeals immediately upon his release from the custody.

5. The respondent has contested the applications for condonation of delay by contending that the appellant was being represented before the learned trial Magistrate by his attorney holder and it is on the basis of preliminary statement of his attorney holder that cognizance of offence was taken by the learned trial Magistrate and process was issued against the respondent. The respondent further has not disputed the fact that the petitioner was taken into custody in connection with a

case arising out of FIR No.125 of 2023 of Police Station, Bahu Fort, Jammu. The main thrust of the contention raised by the respondent is that the appellant was represented by special power of attorney holder, as such, in spite of being in custody he was in a position to represent himself before the learned trial Magistrate through his attorney.

6. I have heard learned counsel for the parties and perused record of the case.

7. The ground urged by the appellant for condoning the delay in filing the appeals, as also for setting aside the orders of dismissal passed by the learned trial Magistrate, is that he remained in custody w.e.f 20.04.2023 up to 02.08.2024 and was granted absolute bail only on 15.10.2024, that too on the medical grounds. Therefore, it was not possible for the appellant to either appear before the learned trial Magistrate or to file appeals against the orders of dismissal of his complaints within the prescribed period of limitation.

8. So far as incarceration of the appellant with effect from 20.04.2023 to 02.08.2024 is concerned, the same is not in dispute. A copy of the bail order, which is on record, upon its perusal would reveal, that during the incarceration of the appellant/petitioner he had developed certain medical complications, as a result whereof, he was granted temporary

bail by the concerned Court, which was extended from time to time and finally made absolute on 15.10.2024. Thus, the material on record shows that besides the petitioner being in custody w.e.f 20.04.2023 up to 02.08.2024, he was also suffering from medical complications which needed immediate treatment upon his release from the custody. Thus, appellant has been able to show that he was prevented by a sufficient cause from filing the appeals within the prescribed period of limitation. He has also succeeded in showing that on account of this very reason he was prevented from appearing before the learned trial Magistrate when the impugned orders dated 14.09.2023 dismissing his complaints for non-prosecution were passed.

9. So far as the contention of the respondent that because the appellant had appointed a special attorney to contest the complaints on his behalf, therefore, his incarceration in jail would not offer him a ground to either seek setting aside of impugned orders dated 14.09.2023 or to seek condonation of delay in filing the appeals is concerned, I am afraid the same cannot be accepted, because once it has been established that the appellant was in incarceration for a pretty long time, it would not have been possible for him to manage and supervise the performance and functions of his attorney.

10. For what has been discussed hereinabove, the applications for condonation of delay in filing the two appeals are allowed and the applications for leave to file the appeals against the impugned orders dated 14.09.2023 passed by learned Chief Judicial Magistrate, Sopore are also allowed. The appeals upon being taken up for consideration are also allowed in view of the reasons discussed hereinabove and impugned orders dated 14.09.2023 passed by learned trial Magistrate in the two complaints, which are subject matter of present appeals, are set aside. Learned trial Magistrate is directed to proceed further in the two complaints which are subject matter of these two appeals, in accordance with law.

11. The applications for condonation of delay alongwith leave to file the appeals and the appeals shall stand disposed of in the above terms.

12. Copy of this order be sent to the learned Chief Judicial Magistrate, Sopore for information and compliance.

(SANJAY DHAR)
JUDGE

SRINAGAR
23.07.2025
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No