

READING MATERIAL
ON
CONDONATION OF DELAY & COGNIZANCE IN CHEQUE BOUNCE CASES

Made Under Guidance of

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(For Reference and Training Purposes)

Prepared for internal circulation among judicial officers and staff

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Note:—Although utmost care has been taken, no one is infallible—this questionnaire may contain inadvertent errors.)

Question. 01 Whether a Magistrate can be said to have taken cognizance of a complaint filed beyond the period of limitation before deciding the application for condonation of delay under Section 5 of the Limitation Act, and whether notice to the accused is mandatory before condoning such delay?

Answer: Where a complaint is barred by limitation, the **Court must first decide the application for condonation of delay** before proceeding to take cognizance. Cognizance can only be said to have been taken after the delay is condoned and the Magistrate applies judicial mind to the allegations for the purpose of proceeding under Chapter XV of the Code of Criminal Procedure.

Relevant Case: *Vinod Chaurasiya v. R.S. Bhadoriya*, 2017 1 Bankmann 272

Relevant Paragraph: Paragraph 19

“19. The order sheets of the Trial Court have been placed on record. The order sheets reveal, that the Magistrate after receiving the complaint did not apply its judicial mind to the accusation made in the complaint, but merely issued notice on the application filed under Section 5 of Limitation Act. It is only after condoning the delay, the Trial Court fixed the case for consideration on the question of registration of complaint. Thus, it is clear that till the delay in filing the complaint was condoned, the Trial Court did not take cognizance of the complaint, therefore, it cannot be said that without condoning the delay, the Trial Court had taken

cognizance of the complaint. Further as the complaint was not filed within the period of limitation, therefore, before condoning the same, it was obligatory on the part of the Magistrate to decide the application only after giving an opportunity of hearing to the applicants. **Therefore, in the considered opinion of this Court, the Trial Court adopted the correct method by issuing notice on the application for condonation of delay before taking cognizance of the complaint."**

Explanation: The High Court has categorically held that:

1. Issuance of notice on an application under Section 5 of the Limitation Act does not amount to taking cognizance.
2. Until the delay is condoned, the Magistrate cannot be said to have applied judicial mind to the complaint in the manner required for taking cognizance.
3. When a complaint is filed beyond limitation, it is obligatory upon the Magistrate to decide the application for condonation of delay only after affording an opportunity of hearing to the proposed accused.
4. Therefore, issuing notice to the accused on the application for condonation of delay before taking cognizance is the correct and legally proper procedure.

Thus, cognizance of an offence cannot precede condonation of delay in a time-barred complaint, and the accused is entitled to be heard on the question of limitation before such delay is condoned.

Question 2– What is the proper procedure to be followed by a Magistrate when a complaint under Section 138 of the Negotiable Instruments Act is filed beyond the period of limitation along with an application for condonation of delay?

Answer: It was observed that prior to the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, there was no provision enabling the Magistrate to condone delay in filing such complaints. However, after the amendment, the Magistrate has been expressly empowered to condone delay upon being satisfied that sufficient cause is shown.

Relevant provision: Section 142. Cognizance of offences :– 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 Hence under Section 142(1)(b) of the N.I. Act, an application for condonation of delay is a condition precedent for the Court to take cognizance of a time-barred complaint

Relevant Case Law : (HIGH COURT OF DELHI) PRASHANT GOEL V/S STATE 2006 LawSuit(Del) 2097.

Relevant Paragraph: Paragraph 4

“4. It may be noted that when Section 138 was added, there was no provision for condonation of delay in filing the complaint under the said provisions. This power to the MM to condone the delay has been conferred by amendment made vide Negotiable instruments (Amendment and Miscellaneous Provisions) Act, 2002. Thus the Magistrate is now entrusted with the power to condone the delay. Therefore, when the complaint is filed, which is time-barred and along with the complaint an application for condonation of delay is preferred, appropriate procedure would be to first issue notice only in the application to the other side without taking cognizance of the complaint. On notice being issued and after hearing the parties, if the Court comes to the conclusion that there is no ground to condone the delay then application for condonation of delay is to be dismissed which will entail in dismissing of complaint as well as barred by limitation. On the other hand if the Court is of the opinion that there are sufficient grounds to condone the delay and delay is condoned then the MM can condone the delay which will have the effect of the complaint as initially filed and the learned MM can then deal with the complaint in accordance with procedure contained in Section 200, Cr.PC. In any case on an application for condonation of delay, it is necessary to issue notice to other side before condoning the delay.”

Explanation: The Court held that where a time-barred complaint is filed along with an application for condonation of delay, the Magistrate must:

1. **First issue notice only on the application for condonation of delay**, without taking cognizance of the complaint.
2. **Hear both parties on the question of limitation.**
3. If sufficient cause is not shown, dismiss the application for condonation of delay, which would consequently result in dismissal of the complaint as barred by limitation.
4. If sufficient cause is made out, condone the delay. Upon such condonation, the complaint shall be treated as properly instituted from its initial filing date.
5. Only thereafter may the Magistrate proceed to deal with the complaint in accordance with Section 200 Cr.P.C. and other applicable provisions.

The Court categorically held that **notice to the opposite party is necessary before condoning the delay**, and cognizance cannot precede the decision on the application for condonation. Thus, the correct procedural course mandates adjudication of the delay application with prior notice to the accused, and only upon condonation can cognizance of the complaint be validly taken.

Question 3—Whether it is mandatory to issue notice to the accused and afford an opportunity of hearing before deciding an application for condonation of delay in filing a complaint under Section 138 read with Section 142(1)(b) of the Negotiable Instruments Act?

Answer: Yes. When a complaint under Section 138 of the Negotiable Instruments Act is filed beyond the prescribed period of limitation, it is mandatory for the complainant to file an application for condonation of delay under the proviso to Section 142(1)(b) of the Act.

Relevant Case Law:

(i) Manish Maseih Versus Babulal Sen 2017 2 MPLJ 618

(ii) Sajjan Kumar Jhunjhunwala v. M/s Eastern Roadways Pvt. Ltd., 2007 Cr.L.J. 482

Relevant Paragraph— Paragraph 7 & 8 (Manish Maseih Versus Babulal Sen 2017 2 MPLJ 618)

“7. Section 138 NI Act would deal with bad cheques. Section 142 NI Act would deal with taking of cognizance of the offence. Section 142(1)(b) NI Act would specify the time limit within which a complaint is required to be filed for the offence under Section 138 NI Act. Under Section 142(1)(b) NI Act a complaint is required to be filed within one month from the date of which the cause of action has arisen as per clause (c) of the proviso to Section 138 NI Act. The proviso under sub-clause (b) of clause (1) of Section 142 was added by Act No. 55/2 with effect from 6.2.2013 enabling the complainant to file the complaint after the prescribed period of limitation if he satisfies the Court that he had sufficient cause in not making the complaint within time prescribed. On a bare reading of the said proviso, it becomes abundantly clear that a time-barred complaint could also be entertained if the complainant satisfies the trial court that he had a cause. Admittedly, in the case on hand, the learned JMFC has registered the complaint without deciding the condonation application. **Under the circumstances, a valuable right has accrued to the petitioner to defend his case on the ground of delay.** The provisions of Section 142(1)(b) NI Act will have to be read in tandem with Section 142(1)(a) NI Act which starts with a non-obstante clause that no court shall take cognizance of any offence punishable under Section 138 NI Act except upon a complaint in writing made by the payee or as the case may be the holder in due course of the cheque. Section 142(1)(b) specifies that such complaint shall be made within one month of the date on which cause of action arises under clause (c) of the proviso to Section 138 NI Act. For the afore stated reasons, when there is a delay in filing the complaint, it is mandatory for the complainant to file an application for condonation of delay. When such application is filed, a **notice will have to be issued to the**

accused before the order is passed either allowing the condonation application or declining the same.”

“8. In the light of above discussion, the learned JMFC ought to have decided the condonation application after hearing the petitioner and the respondent. However, the learned JMFC has registered the complaint without deciding the condonation application. His said act is certainly contrary to the principles of natural justice and provisions to sub–clause (b) of clause (1) of Section 142 NI Act. The aforesaid view of mine is fortified by a decision rendered by the Karnataka High Court in the case of Sajjan Kumar Jhunhunwala vs. M/s Eastern Roadways Pvt. Ltd. 2007 Cr. L.J. 482. In that case, the complaint under Section 138 NI Act was filed with a condonation application seeking condonation of delay of only three days. The learned JMFC allowed the condonation application without hearing the accused. It is held that it was mandatory for the learned JMFC to provide an opportunity to the accused to argue on the merits of the condonation application. Thereupon, the Karnataka High Court quashed the proceedings against the accused and directed the trial court to decide the condonation application affording an opportunity to the accused to oppose the same.

Key Observations:

1. Section 142(1)(a) begins with a non–obstante clause prohibiting the Court from taking cognizance except upon a written complaint by the payee or holder in due course.
2. Section 142(1)(b) mandates that such complaint must be filed within one month from the date of accrual of cause of action under Section 138 proviso (c).
3. The proviso to Section 142(1)(b), introduced by amendment, empowers the Court to entertain a time–barred complaint if sufficient cause is shown.

However, where delay has occurred:

- The complainant must necessarily file an application seeking condonation.
- Before passing any order either allowing or rejecting the condonation application, notice must be issued to the accused.
- The accused acquires a valuable right to oppose the condonation application on the ground of limitation.

The High Court held that registration of the complaint without first deciding the condonation application, and without hearing the accused, is contrary to:

- The mandate of Section 142(1)(b) NI Act, and
- The principles of natural justice.

(ii)Sajjan Kumar Jhunjhunwala v. M/s Eastern Roadways Pvt. Ltd., 2007 Cr.L.J. 482

(Karnataka High Court), wherein proceedings were quashed because delay was condoned without affording an opportunity of hearing to the accused. Thus, it is a settled legal position that Before deciding an application for condonation of delay in a complaint under Section 138 NI Act, issuance of notice to the accused and grant of **opportunity of hearing is mandatory, and failure to do so vitiates the proceedings.**

Question 4: Whether a time–barred complaint can be considered on merits without first deciding the application for condonation of delay, and whether the accused is entitled to be heard before such delay is condoned?

Answer: Yes. When a complaint is filed beyond the prescribed period of limitation, a valuable right accrues in favour of the accused to have the complaint dismissed as barred by limitation.

Relevant Case Law: (UTTARAKHAND HIGH COURT) Deep Narain versus Sanjay Kumar Chauhan 2011 2 Crimes(HC) 386

Relevant Paragraph : Paragraph 6

“6. It is a settled principal of law that since it was a time–barred complaint the other side gets valuable right and, therefore, a time–barred complaint cannot be considered on merit unless the delay is first condoned. However, before condoning the delay the accused was liable to be heard. This has not been done by the learned Magistrate.”

Explanation: In the case law cited above Court held that A time–barred complaint cannot be examined or proceeded with on merits unless the delay in filing the complaint is first condoned by the Court. Before condoning the delay, it is mandatory to afford an opportunity of hearing to the accused. Failure to hear the accused before condoning delay amounts to denial of a valuable right and renders the order legally unsustainable. The High Court observed that since the Magistrate had condoned the delay without hearing the accused, such action was contrary to established legal principles Thus, the legal position that emerges is that in cases of time–barred complaints, delay must first be condoned after giving notice and opportunity of hearing to the accused; only thereafter can the complaint be considered on merits.

Question 5: Whether delay in filing a time-barred complaint can be condoned without issuing notice and affording a reasonable opportunity of hearing to the proposed accused?

Answer: No. When a complaint is filed beyond the prescribed period of limitation, delay cannot be condoned nor cognizance taken without first giving the party whose rights are likely to be adversely affected an opportunity of hearing.

Relevant Case Law: (HIGH COURT OF CALCUTTA) Amitava Roy Versus State Of West Bengal, 2010 4 CHN 635

Relevant Paragrap: Paragraph-3

It further appears there was no order of issuance of any notice as regards to the application for condonation of delay. When any application is barred by limitation as because such an application, here in this case the petition of complaint, has been filed beyond the prescribed period of limitation, before condonation of delay and taking of cognizance on such complaint, the party whose rights and interests are likely to be affected adversely by such order, if delay is condoned, must be given reasonable opportunity of hearing before such an order is passed, in other words notice of hearing must be sent to such a party. This is what principle of natural justice demands. However, in this case delay being condoned without hearing the present petitioner the accused persons and even without making any order of issuance of notice, there has been a complete violation of principle of natural justice and the order impugned cannot be sustained and is set aside. However, this order will not preclude the Learned Court below to consider the opposite party's prayer for condonation of delay in filing the complaint in question after giving both the parties the reasonable opportunity of hearing and then to proceed in accordance with law.

Explanation:

The Court observed that Where a complaint is barred by limitation, an order condoning delay directly affects the valuable rights of the accused. Before condoning delay and taking cognizance, the proposed accused must be given a reasonable opportunity of being heard. Issuance of notice on the application for condonation of delay is mandatory. Condonation of delay without issuing notice and without hearing the accused amounts to a complete violation of the principles of natural justice. The High Court further held that such an order is unsustainable in law and liable to be set aside. However, it clarified that the trial court is at liberty to reconsider the application for condonation of delay after giving reasonable opportunity of hearing to both sides and thereafter proceed in accordance with law.

Question 6: Whether a Magistrate can condone delay in filing a complaint after expiry of the limitation period without affording an opportunity of hearing to the proposed accused, even in the absence of an express statutory mandate to issue notice?

Answer: No.

Relevant Case Law: (HIGH COURT OF CALCUTTA, Amitava Roy Versus State Of West Bengal, 2010 4 CHN 635

Relevant Paragrap: 7, 8 & 9

“[7] This decision has surveyed a decision of the Privy Council in Krishnasamy v. Ramasamy and the decision in Krishna v. State of Madhya Pradesh. In Bharat Hybrid Seeds and Agro Enterprise v. The State, it has been: When the Court extends the time, it means if it interfering with the rights of the accused which have vested in him by virtue of the expiry of period of limitation. Therefore, even though there is no rule of law requiring the Court to issue notice to the proposed accused and to give him an opportunity for meeting the case of the complainant in regard to the extension of time interest of justice and principles of natural justice require that the condonation of the delay and extension of time can be done only after giving a reasonable opportunity to the proposed accused. It would be violating the very principles of natural justice and, in fact, the very spirit for administration of justice, if a party prosecuted in a Court, of law after the period prescribed for launching of the prosecution has been over and without giving him an opportunity to explain his case as to why the delay should not be condoned. Absence of a rule of law shall not be enable the Court to extend time for final prosecution without hearing the proposed accused.”

“[8] The decisions of Allahabad High Court in Prakash Chandra Sharma v. Kaushal Kishore of the Rajasthan High Court in Panney Singh and Ors. v. State of Rajasthan and Delhi High Court in Jaganmohan v. State, in support of the proposition that proposed accused should be heard have been noted in the Division Bench decision of this Court.”

“[9] In view of the Division Bench decision of this Court as above, it has to be held that the learned Magistrate was not justified in condoning the delay without giving the present Petitioners an opportunity of being heard.”

Explanation:

The Court observed that:

1. When the prescribed period of limitation expires, a valuable right accrues in favour of the accused not to be prosecuted.

2. Extension of time or condonation of delay amounts to interference with such vested right.
3. Even though there may not be an express statutory provision mandating issuance of notice to the proposed accused before condoning delay, the principles of natural justice require that a reasonable opportunity of hearing must be afforded.
4. Absence of an express rule does not authorize the Court to extend time for prosecution without hearing the proposed accused.

Question 7 Whether, under Section 142 of the Negotiable Instruments Act, it is mandatory for the Magistrate to issue notice to the accused and afford an opportunity of hearing before condoning delay in filing a complaint under Section 138 NI Act?

Answer: Not Mandatory.Exceptional View: Notice to the Accused Not Required (Exceptional View in Conflict with Others Courts)

Relevant Case Law: (HIGH COURT OF RAJASTHAN (JAIPUR BENCH)) MAHADEV GURJAR V/S STATE OF RAJASTHAN THROUGH P P 2019 LawSuit(Raj) 507

Relevant Paragraph: 5 & 6

5. Section 142, begins with a non-obstante clause meaning thereby that Cr.P.C. would not be applicable in a matter pertaining to condonation of the delay in filing of the complaint. Judgment of the Apex Court in State of Maharashtra v. Sharadchandra Vinayak Dongre (supra), on facts do not have applicability to the present case. However, Gautam Kumar De and Anr. v. M/s Prime Movers Auto Associates (p) Ltd. & Anr. (supra), was a case under the Negotiable Instruments Act and the court observed that when the court is extending the time it means, it is interfering with the rights of the accused which have vested with him by virtue of expiry of period of limitation. Therefore, even though there is no rule requiring the court to issue notices to the proposed accused and to give him an opportunity in regard to the extension of time interest of justice and principles of natural justice require that the condonation of delay and extension of time can be done only after giving reasonable opportunity to the proposed accused. I beg to differ as proceedings under the Negotiable Instruments Act cannot be equated with the proceedings under the Penal Code and when the act specifically bars the applicability of Code of Criminal Procedure with regard to the provision pertaining to condonation of delay, the provision of Cr.P.C. cannot be looked into by the court.

Proceedings under the Negotiable Instruments Act are quasi criminal in nature and the amendment by which courts have been empowered to take cognizance after the prescribed period has been inserted with effect from 06.02.2003 Calcutta High Court has not dealt with the provisions of Section 142 of the Negotiable Instruments Act and was swayed by the decisions of courts passed with regard to condonation of delay. Taking into account the provisions of Cr.P.C.

[6] This court is of the considered view that under the Negotiable Instruments Act at the stage of taking of cognizance it is not necessary for the court to issue notices to the accused and hear the accused before condoning the delay in filing the complaint.

Question 8: Whether a Court can take cognizance of an offence under Section 138 of the Negotiable Instruments Act before condoning delay in filing the complaint under the proviso to Section 142(1)(b) of the Act?

Answer: No.

Relevant Case Law: SUPREME COURT OF INDIA S NAGESH V/S SHOBHA S ARADHYA 2026
LawSuit(SC) 18 : 2026 INSC 27

Relevant Paragraph: 13, 14 &15

“[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: 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.”

Explanation: The satisfaction of the Court regarding sufficient cause and the resulting condonation of delay must precede the act of taking cognizance. A complaint filed with delay cannot be treated as a regular proceeding before the Court unless the delay is first condoned. Treating condonation of delay and taking cognizance as interchangeable steps is contrary to the statutory mandate of Section 142(1)(b) NI Act.

Question 9: Whether an application for condonation of delay under the proviso to Section 142(1)(b) of the Negotiable Instruments Act can be filed and entertained after the Magistrate has already taken cognizance of a complaint under Section 138 NI Act?

Answer : No. (Impermissible)

Relevant Case Law: (HIGH COURT OF MADHYA PRADESH) (GWALIOR BENCH) MANAV SHARMA V/S UMASHANKAR TIWARI 2015 LawSuit(MP) 855: 2016 ILR(MP) 3154

Relevant Paragraph: 6 & 7

“6. Admittedly, when the court below took cognizance on the complaint and issued notices to the other side, the application for condonation of delay under Section 142 was not filed. It was filed almost at the stage of final hearing. A simple reading of proviso to Section 142 (b) shows that the court can take cognizance of a complaint provided the complainant satisfies the court that he had sufficient cause for not making a complaint within such period. Thus, the complainant needs to satisfy the court by explaining the delay before cognizance is taken. Showing of sufficient cause for not making a complaint within prescribed period is pre-condition of taking cognizance of a complaint. I find support in my view from the judgment of Madras High Court in the case of S.Janaki vs. R.Thiagarajan (Cri.OP No.12167/2005 and

Cr.MP. No.4089/2005, decided on 20.7.2009). In the said case, it is held that Section 142 is a substantive provision and complaint being filed beyond the period of limitation, cannot be entertained by allowing the respondent to file an application after cognizance has been taken by the Magistrate. That being the position, cognizance taken by Judicial Magistrate is without any sanction of law and, therefore, same must be quashed and set aside.”

“7 I respectfully agree with the said judgment of Madras High Court to the extent it is held that the application under Section 142 of NI Act cannot be entertained after taking cognizance of the complaint.”

Explanation: the Madhya Pradesh High Court (Gwalior Bench) held that filing and entertaining an application for condonation of delay after taking cognizance of the complaint is impermissible in law. The Court observed that the proviso to Section 142(1)(b) of the NI Act clearly stipulates that the Court may take cognizance of a complaint filed beyond limitation only if the complainant satisfies the Court that he had sufficient cause for not filing the complaint within the prescribed period. Therefore, showing sufficient cause for delay is a pre-condition for taking cognizance. The complainant must satisfy the Court regarding the delay before cognizance is taken. An application for condonation of delay cannot be permitted to be filed or entertained at a later stage, such as during final hearing, after cognizance has already been taken. Section 142 is a substantive provision, and non-compliance with its mandate renders the cognizance without sanction of law.

Question: 10 Whether a Magistrate can condone delay in filing a complaint under Section 138 of the Negotiable Instruments Act after conclusion of trial, and what is the effect if cognizance is taken without first deciding the issue of limitation and condonation of delay?

Answer: No. Impermissible

Relevant Case Law: HIGH COURT OF KARNATAKA S MURALIDHAR V/S H NARAYANA SINGH PROPRIETOR H N ENTERPRISES S/O LATE HIRA SINGH 2010 LawSuit(Kar) 211

Relevant Paragraph: 15

“15. The learned Magistrate had no jurisdiction to condone the delay in lodging the complaint after the trial was over and when the case was posted for arguments on merits. The learned Magistrate was under an obligation to consider before taking cognizance as to whether the complaint was within the time and if not, as to whether the complainant has made out sufficient cause for condoning the delay. Since the learned Magistrate has not condoned the delay, he had no jurisdiction to take cognizance of the offence. Upon taking of cognizance

criminal prosecution get commenced. Since the taking of cognizance by the learned Magistrate in this case was without any jurisdiction, the entire trial held against the accused is vitiated and therefore, the learned Sessions Judge has rightly held that the learned Magistrate was not justified in convicting the accused and therefore the judgment of the learned Sessions Judge acquitting the accused is in accordance with law.”

Explanation: In *T.S. Muralidhar v. H. Narayana Singh*, the Karnataka High Court held that condonation of delay under Section 142(1)(b) of the Negotiable Instruments Act is a condition precedent to taking cognizance, and such power cannot be exercised after the trial has concluded or when the matter is posted for final arguments. The Court observed The Magistrate is under a statutory obligation, before taking cognizance, to examine whether the complaint has been filed within the prescribed period of limitation. If the complaint is time-barred, the Magistrate must determine whether sufficient cause has been shown for condonation of delay. Unless delay is condoned, the Magistrate has no jurisdiction to take cognizance of the offence. Taking cognizance without condoning delay amounts to lack of jurisdiction. Once cognizance is taken without jurisdiction, the entire criminal prosecution stands vitiated.

Question: 11.What is the proper course to be adopted when a Magistrate proceeds with trial and passes judgment without deciding the application for condonation of delay under Section 142 of the Negotiable Instruments Act?

Answer: Appellate Court Can Remand back the case.

Relevant Case Law: (HIGH COURT OF KARNATAKA) T C CHANDRAIAH V/S D R LINGAIAH, 2021 LawSuit(Kar) 418

Relevant Paragraph: 22

“22. For the foregoing reasons, this Court is of the view that the proceedings initiated against the petitioner–accused without considering the application for condonation of delay is not in accordance with law. ii. The judgment and order dated 16.02.2015 passed in C.C.No.433/2013 on the file of Senior Civil Judge and JMFC, Channapatna, and the judgment and order dated 02.01.2019 passed in CrI.A.No.5/2011 on the file of Principal District and Sessions Judge, Ramanagara, are set–aside.

iii. The matter is remanded to the trial Court to pass appropriate orders on the application under Section 142B of N.I.Act read with Section 5 of Limitation Act for condonation of delay, which is already on record, at the earliest and dispose **of the matter on merits preferably within four months from the date of appearance of parties.**”

Explanation: The Court observed that condonation of delay under Section 142 (read with Section 5 of the Limitation Act, where applicable) is a condition precedent for valid cognizance of a time-barred complaint under Section 138 NI Act. If the Magistrate proceeds with the case, conducts trial, and even passes judgment without adjudicating the condonation application, such proceedings suffer from a fundamental legal infirmity. In such circumstances, both the trial court judgment and the appellate judgment affirming it are liable to be set aside.

Question: 12 Whether a separate formal application for condonation of delay is always necessary, or can delay be condoned if sufficient cause is disclosed in the complaint itself?

Answer: Delay in filing a complaint may be condoned if sufficient cause is shown in the complaint itself; a separate formal application is not always mandatory.

Relevant Case Law: (SUPREME COURT OF INDIA (FROM PATNA) (D.B.) BIRENDRA PRASAD SAH V/S STATE OF BIHAR & ANR 2019 (7) SCC 273

Relevant Paragraph: 11

[11] The complaint was instituted on 11 May 2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The proviso however stipulates that cognizance of the 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. Both in paragraphs 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6 April 2018. However, if paragraphs 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint.

Explanation: If the complaint itself contains averments explaining the delay and satisfying the Court that sufficient cause exists, the Court may treat the same as substantial compliance with the proviso to Section 142(1)(b) and record its satisfaction accordingly. The essential requirement is not the form of the application but the **judicial satisfaction of the Court regarding sufficient cause before taking cognizance**

Question: 13 Whether delay can be condoned even in the absence of a formal application under Section 5 of the Limitation Act, if sufficient materials are available on record disclosing sufficient cause for such delay?

Answer: Yes.

Relevant Case Law: SUPREME COURT OF INDIA SESH NATH SINGH & ANR V/SBAIDYABATI SHEORAPHULI CO-OPERATIVE BANK LTD AND ANR 2021 7 SCC 313, 2021 AIR(SC) 2637

Relevant Paragraph– 102

[102] In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

Explanation: In the case of *Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.*, the Supreme Court authoritatively held that delay can be condoned even in the absence of a formal application, provided sufficient materials are available on record to disclose sufficient cause for the delay
