



2026:AHC-LKO:71601

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 528 BNSS No. - 3914 of 2026

Sajid Husain

.....Applicant(s)

Versus

State Of U.P. Thru. Its Addl. Chief Secy. Home
Lko. And Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Abhinav Anand Verma, Jayant Pratap
Singh

Counsel for Opposite Party(s) : G.A., Mohd. Mansoor, Sabir Ali

AFR Reserved on 28.09.2026

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Court No. - 14

HON'BLE BRIJ RAJ SINGH, J.

1. The present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed seeking setting aside of the order dated 26.11.2025 passed by the Civil Judge (Senior Division) F.T.C./Additional Judicial Magistrate, Ambedkar Nagar (in short "Magistrate), whereby the application under Section 5 of the Limitation Act filed by opposite party no.2 has been allowed as well as the summoning order dated 01.06.2026 passed by the Magistrate whereby the applicant has been summoned to face trial in Complaint Case No. 2495 of 2024, under Section 138 of the Negotiable Instruments Act, 1881 (in short "NI Act"), Police Station Kotwali Akbarpur, District Ambedkar Nagar, (*Kamran v. Sajid Hussain*).
2. Briefly stated, the facts are that opposite party no.2 filed a complaint before the Magistrate on 04.06.2025 under Section 138 of NI Act, along with an application under Section 5 of the Limitation Act. The Magistrate passed an order on 04.06.2025 for registration of the case and took cognizance without disposal of the application for condonation of delay. Opposite party No. 2 had filed an application for condonation of delay under Section 5 of the Limitation Act read

with Section 142 of NI Act, which has been allowed vide impugned order dated 26.11.2025.

3. It has been submitted by learned counsel for the applicant that the provisions of the Limitation Act are not applicable and as such the application filed under Section 5 of the Limitation Act ought to have been rejected by the Magistrate.
4. It has been further submitted that the Magistrate did not issue notice to the applicant before allowing the application filed under Section 5 of the Limitation Act and without affording an opportunity of hearing to the applicant, passed the order on the application for condonation of delay vide order dated 26.11.2025.
5. It has been further submitted that opposite party No. 2 had not properly explained the delay and had not mentioned any specific reason or sufficient cause for condoning the delay. Thereafter, the applicant was summoned to face trial under Section 138 of the Negotiable Instruments Act vide order dated 01.06.2026.
6. The main ground taken by learned counsel for the applicant is that, without affording an opportunity of hearing to the applicant, the application for condonation of delay in filing the complaint under Section 138 of NI Act could not have been allowed. The applicant has a right to file objections and to be heard.
7. Learned counsel for the applicant, in support of his submissions, has placed reliance upon the following judgments:

(i) **Standard Chartered Bank v. Ministry of Home Affairs, 2026 SCC OnLine SC 1368;**

(ii) **Ratanlal Jain vs. Ram Awatar Agrawal, CRLMC No. 2514 of 2016** (Hon'ble High Court of Orissa, Cuttack);

(iii) **Sumit Deb v. Joy Deb, 2022 SCC OnLine Tri 373;**

(iv) **State of Maharashtra vs. Sharadchandra Vinayak Dongre, (1995) 1 SCC 42;**

(v) **S. Nagesh v. Shobha S. Aradhya, 2026 SCC OnLine SC 18;**

(vi) **Sankar Choudhury v. State of Tripura, (2019) 2 TLR 134;**

(vii) **Sarah Mathew vs. Institute of Cardio Vascular Diseases & Ors., (2014) 1 SCC 721;** and

(viii) **Sajjan Kumar Jhunjhunwala v. Eastern Roadways (P) Ltd., (2006) 134 Comp Cas 195 : 2006 SCC OnLine Kar 399.**

8. Shri Mohd. Mansoor,, On the other hand, learned counsel for the opposite party no.2 has submitted that in the proceedings under Section 138 of NI Act, delay is to be condoned by the Court and the same is a matter between the Court and the complainant. While considering the application, the Magistrate has committed no illegality or infirmity vide the impugned order dated 26.11.2025.
9. It has further been submitted that the proviso to Section 142(1)(b) of NI Act provides 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.
10. It has been further submitted that in view of the proviso to Section 142(1)(b) of NI Act, it is amply clear that the issue of condonation of delay is a matter between the complainant and the Court, and the accused has no right to be heard on the application for condonation of delay.
11. Learned counsel for the opposite party has placed reliance upon the following decisions:
 - (i) **Application U/s 482 No. 22685 of 2023 (Al Baith Enterprises Through Its Proprietor Shafat Husain Vs. State of U.P. and Another) Neutral Citation No. 2023:AHC:222096;** and
 - (ii) **S. Nagesh v. Shobha S. Aradhya, 2026 SCC OnLine SC 18.**
12. Shri Rao Narendra Singh, learned A.G.A. for the State has submitted that the proviso to Section 142(1)(b) of NI Act cannot be interpreted

by importing into it the procedural paradigm of Section 5 of the Limitation Act, particularly the concept of a participatory right of the proposed accused at the pre-cognizance stage. Section 142(1)(b) is a special statutory provision forming an integral part of the legislative scheme governing prosecution of dishonoured cheques. The proviso does not contemplate any adjudication inter partes; it merely requires the complainant to satisfy the Court that sufficient cause existed for not instituting the complaint within the prescribed period. The statutory decision contemplated at that stage is, therefore, one between the complainant and the Court.

13. He has further submitted that it is a pre-cognizance stage where the question of condonation of delay is to be considered by the Court and at that stage, the applicant cannot be afforded an opportunity of hearing as the question of condonation of delay is between the Court and the complainant. Once satisfaction has been recorded by the Court and the delay has been condoned, the accused-applicant cannot question the said order.
14. In support of his submissions, he has also placed reliance upon the judgment passed by the High Court of Punjab and Haryana in **Manoj Kumar v. Bhanwar Lal, 2026 SCC OnLine P&H 18316**.
15. Heard Shri Jayant Pratap Singh, learned counsel for the applicant, Shri Rao Narendra Singh, learned AGA for the State/opposite party no.1 and Shri Mohd. Mansoor, learned counsel for opposite party no.2.
16. In the case of **Ratanlal Jain (Supra)**, the Orissa High Court has observed that *Audi Alteram Partem* is the cardinal principle which creates right upon the aggrieved person to be heard.
17. Paragraphs 5 and 6 of the judgment are quoted hereinafter.

“5. Admittedly, in this case the Petitioner has not been provided with an opportunity of being heard in the matter relating to condonation of delay in filing the complaint, no matter the learned trial Court after duly analyzing the grounds for condonation of delay has condoned the delay. The latin maxim "Audi Alteram Partem" is considered to be a principle of fundamental justice or equity and it means "listen to the other side" or "let the other side be heard as well". In other words, it

clearly lays down that the authority hearing the matter must be afforded hearing to the other party who is likely to be affected by its decision. The principle therefore, emerges that no one should be condemned unheard and there would be hardly any harm, if the accused in this case is being heard in the matter of condoning the delay in filing the complaint before taking cognizance of offence.

6. In view of the position of law and the Authority as laid down by Apex Court in P.K. Choudhury (Supra), the impugned order taking cognizance of offence is required to be set aside for not providing an opportunity to the Petitioner in the matter for condoning the delay in filing the complaint and, thereby, the matter may be remitted back to the learned trial Court to decide the application for condonation of delay afresh after hearing both the sides.”

18. Similarly, in the case of **Sumit Deb (Supra)**, Tripura High Court has held in view of the law declared in **Sankar Choudhary (Supra)** that an opportunity of hearing to the accused is also required before condoning the delay.

19. Paragraphs 17 and 18 of the report are extracted herein-below:

“17. On bare perusal of Section 138 of the NI Act, it becomes aptly clear that before asking the court to take cognizance of offence under the said provision, the complainant has to satisfy the Court that the complaint has been filed within the statutory period of 30 (thirty) days in terms of proviso to Section 142(b) appended thereto. It is settled proposition of law that the essential requirements as embodied in Section 138 of the NI Act are not mere procedural, but, substantive.

18. I am unable to agree with the submission of learned counsel appearing on behalf of the complainant that since cognizance of the complaint was taken by the learned trial Court, and culminated with trial, the matter of condonation of delay would be deemed to have been condoned, particularly, for the reason that the Court must have taken into consideration the statements made in the complaint itself regarding the delay caused in filing the complaint by the complainant.”

20. In the case of **Sankar Choudhary (Supra)**, Tripura High Court has held that the application for condonation of delay should be provided to the accused and, after affording an opportunity of

hearing to the accused, the application for condonation of delay should be decided.

21. Paragraphs 16 and 17 of the report are extracted herein-below:

“16. The final question which is required to be responded to, is whether before passing the order of condonation, the respondent No.2 had the right to be heard or not. In view of the decisions of the apex court in P.K. Choudhury (supra), K.S. Joseph (supra), Sarah Mathew (supra), this court is persuaded to hold that in such cases before condoning the delay, under proviso to Section 142 (b) of the NI Act, the accused shall be given a notice along with a copy of the petition for condonation of the delay. Upon hearing the parties (the complainant and the accused) the Magistrate shall decide whether the delay is to be condoned or not. After condonation of delay having satisfied with the cause as assigned, due cognizance may be taken or an appropriate order in the event of not condoning the delay may be passed by the magistrate. It is made abundantly clear that the accused shall accept the copy of the petition for condonation of delay with the copy of the affidavit submitted along with the petition from the court through the engaged counsel as no fresh notice will be issued separately.

17. The complaint under reference has been pending since 2007 but for overcoming the bottlenecks, it cannot be stated that by not giving the opportunity of being heard to the accused person, the order taking the cognizance is maintainable. Hence, the impugned judgment and order of acquittal dated 06.04.2017 delivered in Criminal Appeal No. 14 of 2016 by the Sessions Judge, North Tripura, Dharmangar and the Judgment and order of conviction dated 08.08.2016 passed in C.R. 02 of 2008 (N.I. Act) are set aside. The matter is remanded to the court of the Chief Judicial Magistrate, North Tripura, Dharmanagar to recommence the proceeding on providing the opportunity of being heard to the respondent No.2 (Abani Mohan Das) on prayer for condonation of delay. It is observed that delay is not more than one day inasmuch as if the registered letter is served on the day of tendering i.e. 17.11.2007 that delay only would surface. Therefore, the trial court shall proceed after taking decision on delay. For this purpose, the respondent No.2 shall appear before the court of the Chief Judicial Magistrate, North Tripura, Dharmanagar on 06.09.2019. No fresh notice for appearance be issued from the said court. On that very day itself, the hearing would take place on condonation of the delay as aforesaid.”

22. In the case of **Sajjan Kumar Jhunhunwala (supra)**, a similar view has been taken by Karnataka High Court, and the Court has opined that an opportunity of hearing to the accused prior to condoning the delay is must and unless the accused is heard, passing an order on the application for condonation of delay is bad in the eyes of law.

23. Paragraph 6 of the report is extracted herein-below:

“6. Section 138 of the Act would deal with insufficiency of funds in a bank account. Section 142 would deal with taking of cognizance of the offence. Section 142(b) of the Act would specify the time limit within which a complaint is required to be filed for the offence under section 138. Under section 142(b), a complaint is required to be filed within one month from the date on which cause of action has arisen under clause (c) of the proviso to section 142 of the Act. The proviso was added by Act No. 55 of 2002 with effect from February 6, 2003, enabling the complainant to file the complaint after the prescribed period if he satisfied the court that he had sufficient cause in not making the complaint within the time prescribed. On a reading of the proviso which was inserted by Act No. 55 of 2002, it becomes abundantly clear that a time-barred complaint could also be entertained if the complainant satisfies the court that he had sufficient cause. Admittedly, in the case on hand, there is a delay of 3 days in filing the complaint. The learned Magistrate, before taking cognizance and recording the sworn statement, has straightaway condoned the delay in filing the complaint. Incidentally, that exercise is done without notice to the petitioners. Undoubtedly, a right has accrued in favour of the petitioners when there is a delay in lodging the complaint. The provisions of section 142(b) of the Act will have to be read in tandem with section 142(a) which starts with a non obstante clause that “no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque”. Clause (b) specifies that such complaint shall be made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 142. When there is a delay in filing the complaint, necessarily the complainant will file an application for condonation of delay. When such application is filed, notice obviously will have to be issued to the other side before the order is passed either allowing the application or declining the same.”

24. In the case of **Al Baith Enterprises (Supra)**, this Court had observed that even assuming that no notice has been given to the a

applicant (accused) before condoning the delay, it would not adversely affect the legality and validity of the order dated 10.04.2023 by which delay has been condoned and simultaneously, summons have been ordered to be issued against the present applicant under Section 138 NI Act.

25. Paragraphs 9 and 10 of the report are extracted herein-below:

“9. In given circumstances of the present case, having considered the contents of the complaint and the statement of witnesses, learned Magistrate has condoned the delay in positive exercises of jurisdiction being satisfied with the reasons assigned by the complainant for the condonation of the delay and, accordingly, treated it to be filed within the prescribed period of limitation. Negotiable Instrument Act is a special enactment for a limited purpose to provide the legal protection to different mercantile instruments and provides for the procedure in case of obligation which have to be discharged under the instrument. Intending to secure the legally enforceable debt or other liability legislation has given provisions for the condonation of delay in case complaint is filed under the provisions of the act beyond prescribed period of limitation. The procedure for taking the cognisance of offence is enunciated under Section 142 of the NI Act. The proceedings under the NI Act is in the nature of summary proceedings for which provisions as enunciated under Section 262 to 265 (both inclusive) of Cr.P.C. are made applicable by virtue of provision as enunciated under the provisions of Section 143 Cr.P.C.

10. In this conspectus as above, even assuming that no notice has been given to the present applicant (accused) before condoning the delay, in my considered opinion it would not adversely affect the legality and validity of the order dated 10.04.2023 by which delay has been condoned and simultaneously, summons have been ordered to be issued against the present applicant under Section 138 NI Act.”

26. The judgment cited by learned counsel for the applicant, **S. Nagesh (Supra)**, does not indicate that the present issue was the subject matter of consideration in the said case. In the said case, there was no issue as to whether the accused should be afforded an opportunity of hearing prior to taking cognizance. Therefore, the said judgment is not applicable in the present case.

27. In the case of **Manoj Kumar (Supra)**, Punjab and Haryana High Court has observed that Section 138 of the Negotiable Instruments Act is a special provision enacted with the object of ensuring the credibility and sanctity of monetary and commercial transactions. The primary object of Section 138 proceedings is not punitive in the strict sense, but rather to secure the honouring of negotiable instruments and instill confidence in commercial dealings. In case an opportunity of hearing is provided to the accused on the application for condonation of delay, the very purpose of the Act could be frustrated. Paragraphs 13 and 14 are quoted hereinbelow.

“13. However, this Court is unable to subscribe to the said view. Every statute has to be interpreted in the backdrop of its object and legislative intent. The Negotiable Instruments Act is a special statute enacted with the object of ensuring the credibility and sanctity of commercial transactions. The primary object of Section 138 proceedings is not punitive in the strict sense, but rather to secure the honouring of negotiable instruments and instill confidence in commercial dealings. It is for this reason that the Act contemplates a summary procedure. If, at the threshold stage of considering an application for condonation of delay, notice is required to be issued and an opportunity of hearing afforded to the accused, the very object of expeditious and summary adjudication contemplated under the statute would stand diluted.

Further, the observation that a “valuable right” accrues in favour of the accused upon expiry of the prescribed period of limitation for filing a complaint under Section 138 of the NI Act cannot be accepted. The proviso to Section 142(1)(b) of the NI Act itself authorises the Court to take cognizance of a complaint even after expiry of the prescribed limitation period, provided sufficient cause is shown. Once the statute expressly preserves the jurisdiction of the Court to entertain a complaint beyond limitation, no indefeasible right can be said to accrue merely because the complaint was not instituted within the original prescribed period. Such an interpretation would not only run contrary to the summary nature of proceedings contemplated under the NI Act, but would also amount to reading into the statute a requirement which the legislature has consciously omitted.

14. Furthermore, the order condoning delay does not by itself determine the guilt or liability of the accused. The accused retains

full opportunity, after appearance before the trial Court, to raise all permissible legal and factual pleas available to him in accordance with law, including objections regarding maintainability, limitation, and the merits of the complaint. Therefore, no irreversible prejudice can be said to have been caused merely because the application for condonation of delay was considered without issuing notice to the accused.”

28. Section 142 of NI Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing.

29. Section 142 of NI Act is extracted herein-under:-

“142. Cognizance of offences.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

***(a)** no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque*

***(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.*

***(c)** no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.*

***(2)** The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—*

***(a)** if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or*

***(b)** if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.*

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

30. Section 142 of the Negotiable Instruments Act deals with taking

cognizance of the offence, and Section 142(1)(b) clearly postulates the time limit within which the complaint is required to be filed for the offence under Section 138 of the Negotiable Instruments Act. Thus, Section 142(1)(b) of the Negotiable Instruments Act postulates that the complaint is to be made within one month from the date on which the cause of action arises.

31. The proviso to Section 142(1)(b) of the Negotiable Instruments Act further indicates that cognizance of a complaint may be taken by the Court after the prescribed period if the Court is satisfied that there was sufficient cause for not making the complaint within such period.
32. Section 142(1)(a) of the NI Act, which has an overriding effect, clearly postulates the conditions under which cognizance can be taken. Proviso to Section 142(1)(b) of the NI Act cannot be read in isolation. The provisions of Sections 142(1)(a) and 142(1)(b) are interlinked, and in case there is any violation, the accused and the complainant, both, have right to be heard before taking a decision on the application for condonation of delay.
33. The accused has a right to be heard in view of the provisions of Section 142A read with Section 142(1)(b) of the Negotiable Instruments Act. *Audi alteram partem* is a cardinal principle which provides a right of hearing to a party in the proceedings of a case. This cardinal principle cannot be taken away from the applicant.
34. Admittedly, in the present case, the applicant was not afforded an opportunity to file objections to the application for condonation of delay.
35. Accordingly, the application is **allowed**. Consequently, the impugned orders are set aside, and the matter is remanded back to the learned Magistrate, who shall afford an opportunity of hearing to the parties on the application for condonation of delay and decide the same independently, without being influenced by any of the observations made by this Court.

36. It is made clear that the present case has been decided only on the issue of condonation of delay.

(Brij Raj Singh,J.)

October 7, 2026

Mohit Singh/-