SUPREME COURT OF INDIA

Anil Kumar Goel

Vs.

Kishan Chand Kaura

(Dr. Arijit Pasayat and Aftab Alam JJ.)

12.12.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court dismissing the application filed in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short the Cr.P.C.). Appellant had filed a petition for quashing the complaint filed by the respondent in terms of Section 138 of the Negotiable Instruments Act, 1881 (in short the Act) In the complaint it was averred that a cheque was issued by the appellant on 31.3.1998 which was dishonoured by the bank when presented on 11.4.1998. Notice dated 27.4.1998 was duly served on the appellant. Since the accused appellant assured that the cheque will be honoured if it is presented again, the cheque was presented but was again dishonoured on 30.9.1998 for which notice dated 13.10.1998 was again served on the appellant. But no payment was made. Appellant filed an application in terms of Section 245 of the Code of Criminal Procedure, 1973 (in short the Cr.P.C.) before the trial court for discharge. It was averred that the application was clearly barred by time and therefore the said application ought to be dismissed at the outset. The motion was opposed by the respondent. The learned Judicial Magistrate dismissed the application stating that in view of the judgment in Adalat Prasad v. Rooplal Jindal and Others [2004 (7) SCC 338], the trial court cannot review or reconsider the order issuing process; once process has been issued pursuant to an order passed in a complaint case. Appellant filed a petition in terms of Section 482 Cr.P.C. which as noticed above was dismissed. It is to be noted that the only stand of the appellant before the High Court was that even if the position as stated by the respondent is accepted to be correct, in view of Section 142 B of the Act, a complaint was not to be entertained. High Court dismissed the application on the ground that proviso of Section 142 (b) of the Act was inserted vide Act 55 of 2002 which empowered the court to extend the period of limitation on sufficient cause being shown. Therefore, the petition was to be dismissed.

3. In support of the appeal, learned counsel for the appellant submitted that the amendment inserted by Act 55 of 2002 had no application to the facts of the case as the various events took place much prior to 2002 and in fact the complaint was filed on 28.11.1998. It was further pointed out that the case of respondent was not that case in hand was covered by the amendment. There is no such plea taken. The High Court could not have made out a new case.

4. There is no appearance on behalf of the respondent.

5. For resolution of the controversy Sections 138 and 142 of the Act are relevant. They read as follows:

"Section 138:

Dishonour of cheque for insufficiency, etc. of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless –

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation - For the purposes of this section, debt or other liability means a legally enforceable debt or other liability. Section 142:

Cognizance of offences - 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.

6. Before the amendment, the proviso, as quoted above, was not there. Clause (a) of the proviso to Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transactions it is not

uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after sometime, on his own volition or at the request of the drawer, in expectation that it would be encashed. The primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. On each presentation of the cheque and its dishonour, a fresh right- and not a cause of action - accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque.

7. Section 5 of the General Clauses Act, 1897 (in short the General Clauses Act) also throws considerable light on the controversy. Section 5 reads as follows: 5. Coming into operation of enactments (1) Where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent,-

(a) In the case of a Central Act made before the commencement of the Constitution of the Governor-General and

(b) In the case of an Act of Parliament of the President.

(c) Unless the contrary is expressed a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

8. All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision is question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not. (See: M/s Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government and Ors. AIR 1984 SC 87).

9. There is nothing in the amendment made to Section 142(b) by the Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28.11.1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted.

10. That being so the High Courts view is clearly unacceptable. The impugned order of the High Court is set aside. The proceeding pursuant to respondents complaint i.e. Complaint No.120 of 1998 in the Court of JMIC, Chandigarh, is quashed.

11. The appeal is allowed.