SUPREME COURT OF INDIA

D. Purushotama Reddy

Vs.

K. Sateesh

C.A.No.4751of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

01.08.2008

JUDGMENT

S.B.Sinha, J.

1. Leave granted.

2. Whether in a suit for recovery of money on a cheque issued by the defendant but dishonoured, the amount received by the plaintiff-creditor in a criminal proceeding should be adjusted, is the core question involved herein.

3. Plaintiff - Respondent filed a suit against the appellants, which was marked as O.S. No. 1844 of 2004, for recovery of a sum of Rs. 3, 09,000/- with interest. In the plaint, it was averred that Shri K. Balasubramanyam (father of the respondent) and Defendant No. 1 (Appellant No. 1 herein) were good friends. Defendant Nos. 1 and 2 had been carrying on business. They approached the plaintiff through Shri K. Balasubramanyam for financial assistance and obtained a loan of Rs. 2, 00,000/- (Rs. 1, 00,000/- on 15.03.2001 and Rs. 1, 00,000/- on 25.03.2001). Two promissory notes were also executed therefor.

4. Defendants - Appellants purported to be in discharge of the said debt issued two cheques bearing Nos. 3960 dated 15.03.2003 and 3959 dated 31.05.2003 drawn on Bank of India, which on presentation, were returned dishonoured. Indisputably, a complaint under Section 200 of the Code of Criminal Procedure, 1973 read with Sections 138 and 142 of the *Negotiable Instruments Act, 1881* (for short "the Act"), marked as C.C. No. 19337 of 2003 was filed.

> "A judgment of conviction and sentence against the appellant was passed therein by an order dated 15.12.2005 sentencing him to pay a sum of Rs. 2,10,000 by way of fine and in default thereof to undergo simple imprisonment for a period of three months. It was also directed that out of the said amount of fine, a sum of Rs. 2,00,000/- would be paid to the complainant by way of compensation in terms of Section 357 of the *Code of Criminal Procedure* (for short "the Code") and the

remaining amount was to be payable to the State. In the said criminal proceedings, the appellants deposited a sum of Rs. 31,500/- on 7.02.2006, Rs. 68,500/- on 21.07.2006 and Rs. 1, 10,000/- on 13.12.2006."

5. O.S. No. 1844 of 2004 was decreed by the Trial Court by a judgment and order dated 23.01.2006, ordering:

> "This suit is hereby decreed for a sum of Rs. 3,09,000/- (Rupees three lakhs nine thousand only) with court costs and current interest at 6% p.a. on the principal amount of Rs. 2,00,000/- from the date of suit till realization. The defendants are jointly and severally liable to pay the decrial amount."

6. In the civil proceedings also, the appellants admittedly have deposited a sum of Rs. 1,90,000/-. An appeal was preferred thereagainst before the High Court of Karnataka at Bangalore marked as R.F.A. No. 1171 of 2006, which by reason of the impugned judgment has been dismissed.

7. The principal contention raised herein is that the Trial Court and consequently the High Court committed a serious error in decreeing the suit in its entirety, i.e., for a sum of Rs. 3,09,000/- with interest without taking into consideration the fact that an amount of Rs. 2,10,000/- had already been deposited by the appellants in the said criminal proceedings.

8. Contention of the respondent, however, is that as the said question was not and could not have been raised before the Trial Court, the impugned judgment is sustainable. It was furthermore urged that in view of the well-settled principle of law that pendency of a criminal matter would not be an impediment in proceeding with a civil suit, the impugned judgment should not be interfered with.

9. A suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint petition under terms of Section 138 of the Act would also be maintainable.

10. The question, however, is as to whether the courts in one proceeding can issue directions to deposit amount in favour of the plaintiff without taking into consideration the amount deposited by the defendant in the other.

11. We have noticed hereinbefore that whereas the judgment of conviction and sentence was passed on 15.12.2005, the suit was decreed by the civil court on 23.01.2006. Deposit of a sum of Rs. 2, 00,000/- by the appellants in favour of the respondent herein, was directed by the Criminal Court. Such an order should have been taken into consideration by the Trial Court.

> "An appeal from a decree, furthermore, is a continuation of suit. The limitation of power on a civil court should also be borne in mind by the appellate court. Was any

duty cast upon the civil court to consider the amount of compensation deposited in terms of Section 357 of the Code is the question? In terms of sub-section (1) of Section 357 of the Code, a criminal court is empowered to direct that out of the amount recovered from an accused by way of fine, compensation of a specified amount may be directed to be paid for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by a person in a Civil Court. It is, therefore, evident that the amount of compensation could have been directed to be paid by the criminal court as the same was recoverable by the respondent as against the appellants in a civil court also. Such an order can also be passed by the Appellate Court or by the High Court or by the Court of Sessions when exercising its power of revision."

12. Sub-section (5) of Section 357 of the Code, which is relevant for our purpose, reads as under:

"357. Order to pay compensation -

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(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

13. Evidently, a duty has been cast upon the civil courts to take into account the sum paid or recovered as compensation in terms of Section 357 of the Code. It is futile to urge that on the date on which the civil court passed the decree the appellants were not convicted. As noticed hereinbefore, the appeal is a continuation of the suit and in that view of the matter as the appellants had in total deposited a sum of Rs. 4,00,000/-, i.e., Rs. 2,10,000/- in the criminal proceeding and Rs. 1,90,000/- in the civil proceedings, out of which a sum of Rs. 3,09,000/- has been withdrawn by the respondent, the High Court was obligated to take the same into consideration. In other words, having regard to the provisions of Sub-section (5) of Section 357 of the Code, a duty was cast upon the High Court to take into account the fact that a sum of Rs. 2,00,000/- had already been paid by the appellants to the respondent. Concededly, both the proceedings were maintainable. Law recognizes the same. The Parliament must have the situation of this nature in mind while enacting Clause (b) of Sub-section (1) of Section 357 of the Code and Sub-section (5) thereof.

14. In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Another*[1], while considering a question as to what should be the reasonable amount in the matter of grant of compensation vis-`-vis the power of the appellate court to issue an interim direction in relation thereto, this Court held:

"38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought

to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-section (3) of Section 357 doe not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.

39. If a fine is to be imposed under the Act, the amount of which in the opinion of Parliament would be more than sufficient to compensate the complainant; can it be said, that an unreasonable amount should be directed to be paid by the court while exercising its power under sub-section (3) of Section 357? The answer thereto must be rendered in the negative. Sub-section (5) of Section 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a civil court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the civil court, in this behalf, for realisation of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less execution of a decree which may be passed.

40. Prosecution under the Act may be contemplated as a measure of deterrence, but the same is never meant to be a persecution.

41. Even in a case where violation of fundamental right guaranteed under Article 21 is alleged, the amount of compensation cannot be arbitrary or unreasonable even under public law."

[See also *Manish Jalan v. State of Karnataka*[2]]

This Court therein adopted the doctrine of purposive construction.It was opined that compensation directed to be paid should be areasonable one.

15. In *New India Assurance Co. v. Nusli Neville Wadia and Anr.*[3], it was held:

"50. Except in the first category of cases, as has been noticed by us hereinbefore, Sections 4 and 5 of the Act, in our opinion, may have to be construed differently in view of the decisions rendered by this Court. If the landlord being a State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India. For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that

literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd (supra).

51. Barak in his exhaustive work on `Purposive Construction' explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words: "Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

16. Submission of the learned counsel for the respondent that the said question was not raised before the learned Trial Judge or before the High Court is of no moment. Sub-section (5) of Section 357 of the Code casts a duty upon the court. It was for the Trial Court/High Court to take the same into consideration. Such consideration was required to be bestowed despite the fact that the said provision was not brought to its notice.

17. Actus curiae neminem gravabit (no person shall be prejudiced by an act of court) is a well-known maxim. In any event, this Court in exercise of its jurisdiction under Article 136 as also under Article 142 of the Constitution of India can direct rectification of a mistake committed by the courts below.

18. We, therefore, are of the opinion that the impugned judgment should be modified and is directed to be modified accordingly. The matter is remitted to the learned Trial Judge. The learned Trial Judge is directed to take into consideration the amount of compensation deposited by the appellants in the criminal case and for the said purpose, the learned Trial Judge should draw up a fresh decree while correcting the decree in terms of the order of this Court. The learned Trial Judge shall, while preparing a fresh decree, take into consideration the various dates on which the diverse amounts had been deposited by the appellants and calculate the interest payable thereupon.

19. The appeal is allowed to the aforementioned extent. In the facts and circumstances of the case, there shall be no order as to costs.

[1](2007) 6 SCC 528 *[2]JT 2008 (7) SC 643* *[3]2007 (14) SCALE 556*