238 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-258-2013(O&M)
Date of Decision: 06.03.2024

RAJIV KUMAR

...Petitioner

Versus

PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parvez Chugh, Advocate, for
Mr. Aftab Singh Khara, Advocate for the petitioner.

Mr. Maloo Chahal, Advocate
for the respondent (PUNSUP).

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HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 03.12.2012 passed by learned Additional Sessions Judge, Sri Muktsar Sahib, in CRA-27/16.07.11, whereby the appeal filed by the petitioner was dismissed and the judgement of conviction as well as order of sentence dated 07.07.2011 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib in complaint No. 29-2/25.03.2003 filed under Section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as NI Act) was upheld.The petitioner was sentenced as under: -

Offence	Sentence
S. 138 NI Act	***R.I for 2 years with fine of Rs.5000/-.*** In default of payment of fine, further R.I. for 1 month.

FACTUAL BACKGROUND

2. Briefly, the facts are that Punjab State Civil Supplies Corporation (PUNSUP) which is a public corporation, through its duly authorized representative, instituted the complaint (supra) against the petitioner-accused Rajiv Kumar. It was alleged by the respondent-complainant that the petitioner being the sole proprietor of a firm namely 'M/s. Simran Rice Mills' issued three duly signed cheques in favour of the respondent in order to discharge his legal liability:

- No. SBT-666515 dated 31.10.2002 for Rs.25,00,000/-
- No. SBT-666516 dated 30.11.2002 for Rs.25,00,000/-
- No. SBT-666517 dated 31.12.2002 for Rs.21,00,000/-

The above-mentioned cheques were presented for encashment on 06.01.2003 but were dishonoured by the concerned bank vide memo dated 06.01.2003 with reason 'Funds Insufficient'. Thereafter, a demand notice dated 04.02.2003 was served through registered post on the residential address of the petitioner but he failed to make any payment qua the total cheque amount of Rs.71,00,000/-. Thereupon, the complaint (supra) was filed against the petitioner in which he was convicted and sentenced by the learned trial Court as mentioned above. The appeal filed by the petitioner against the said conviction and sentence was also dismissed by the lower Appellate Court. Aggrieved by the same, the petitioner approached this Court by filing the present revision petition. During the pendency of the present petition, the sentence of the petitioner was suspended and he was released on bail vide the order dated 14.05.2013 by this Court.

CONTENTIONS

3. Learned counsel for the petitioner vociferously contends that the respective judgements and orders passed by the learned Courts below are patently illegal as the concerned demand notice was served by the respondent-complainant after the expiry of the statutory period of 15 days as provided for by the unamended provision of Section 138 of the NI Act, i.e., before the amendment of 2002 which came into force w.e.f. 06.02.2003, as applicable to the present case. In the present case, it is manifestly clear from the perusal of the copy of the complaint (Annexure P-2) filed by the respondent as well as the copy of the legal notice dated 04.02.2003 (Annexure P-2A) that the cheques in question were returned by the concerned bank vide memo dated 06.01.2003 and the legal notice was served by the respondent on 04.02.2003, i.e., after the gap of 28 days. He further submits that the aforementioned fact is in itself sufficient to set-aside the above-mentioned impugned judgements and orders on the point of law and further places reliance on the judgement rendered by the Karnataka High Court in **Dr. Geetha vs. Vasanthi S. Shetty, 2011(6) R.C.R(Crl.) 282** to support his contention.

4. Learned counsel for the petitioner further submits that the learned Courts below have not only erred on the point of law but also ignored material facts qua the petitioner. Pertinently, the respondent also filed a criminal complaint under Sections 420, 406, 409 of IPC against the petitioner, wherein, the concerned police filed cancellation report (Annexure P-3) after duly investigating the matter and it was recorded that the petitioner was merely a salaried employee of one Fateh Singh Tikka who was actually running ‘M/s Simran Rice Mills’. Further, an amount of Rs.1,02,000/- was withdrawn by

Fateh Singh from the account of his firm 'Fateh Rice Mills' and deposited in favour of PUNSUP on behalf of 'Simran Rice Mills' vide document Ex.DW1/C. Even the fact that Punjab State Human Rights Commission, Chandigarh, which is a statutory body, inquired into the matter and recorded in its report (Annexure P-6) that Fateh Singh Tikka had taken 'Simran Rice Mills' on lease in the name of the petitioner, was ignored. Therefore, no legally enforceable liability can be fastened upon the petitioner due to which the impugned judgements deserve to be set aside.

5. Learned counsel for the respondent corporation contends that the learned Courts below have already discussed the pleas taken by the petitioner in great detail and found them to be devoid of any merit and therefore, the petitioner has been rightly held guilty under Section 138 of the NI Act. He further submits that the judgements under challenge in the present petition have been passed after correct appreciation of the complete material on record and thus, do no warrant any interference by this Court.

ANALYSIS AND OBSERVATIONS

6. I have heard learned counsel for the parties and after perusing the paper-book with his able assistance, it transpires that the statutory and mandatory notice under the NI Act was served by the respondent-complainant upon the petitioner-accused after 28 days from the date of return of the cheques in question. As admitted by the respondent-complainant corporation in its complaint, the cheques in question were returned vide memo dated 06.01.2003 and the mandatory legal notice was served on 04.02.2003. Therefore, without going into the merits of the case, the plea taken by the learned counsel for the petitioner that the said notice was required to be served within 15 days from the

date of receipt of information from the Bank about return of the cheques in question as per the unamended provision of the Section 138 of the NI Act deserves further discussion.

7. The NI Act was amended vide Act No. 55 of 2002 and it came into force with effect from 06.02.2003. Vide the said amendment, Clause (b) of the Proviso to Section 138 of NI Act was substituted to the effect that the period within which the demand notice could be served was changed to 30 days from the earlier period of 15 days. In the case at hand, the cause of action arose on 06.01.2003 and the demand notice was served on 04.02.2003, i.e., before the aforesaid amendment came into force and but the said notice was served by the respondent-complainant after the expiry of 15 days statutory period provided by the law that existed on the purported date of dishonour of the cheque and date of knowledge of the respondent-complainant about such dishonour.

8. A similar issue was discussed by the Karnataka High Court in **Dr. Geetha (supra)**, wherein, speaking through Justice K.N. Keshavanarayana, following observations were made: -

> *"18. Article 20(1) of the Constitution directs that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence.*
> *19. In **Shiv Bahadur Singh v. State of Vindhya Pradesh, (AIR 1953 Supreme Court 394)** the Constitution Bench of the Supreme Court while dealing with an expression Deemed to be in force on account of the amendment in para 10 has observed thus :*
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> > *"(10) In this contention our attention has been drawn to the fact that the Vindhya Pradesh Ordinance 48 of 1949 though enacted on 11-9-1949, i.e. after the alleged offences were committed, was in terms made retrospective by Section 2 of the said Ordinance which says that the Act shall be deemed to have been in force in Vindhya Pradesh from 9th day of*

the August 1948, a date long prior to the date of the commission of the offences. It was accordingly suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9-8-1949 it cannot be said that the convictions are not in respect of a law in force at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase law in force as used in Article 20. Law in force referred to therein must be taken to relate not to a law deemed to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of Article 20 would be completely defeated in its application even to ex post facto-laws passed after the Constitution. Every such ex post facto- law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies Article 20 cannot possibly be adopted. It cannot, therefore, be doubted that the phrase law in force as used in Article 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law deemed to have become operative by virtue of the power of legislature to pass retrospective laws. It follows that if the appellants are able to substantiate their contention that the acts charged as offence in this case have become such only by virtue of Ordinance No. 48 of 1949 which has admittedly been passed subsequent to the commission thereof, then they would be entitled to the benefit of Article 20 of the Constitution and to have their convictions set aside. This leads to an examination of the relevant pre-existing law."

20. Again in ***AIR 2008 Supreme Court 899:(2008 (2) AIR Kar R 144) (Anil Kumar Goel v. Krishna Chand Kaura)****, the Hon'ble Supreme Court at para 8, has held thus :*

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 in 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, AIR 1984 Supreme Court 87).*

*21. The law laid down by the Supreme Court in the cases of **Shiv Bahadur Singh** and **Anil Kumar Goel**, referred to supra aptly applies to the case on hand. There is nothing to indicate that the amendment brought to Clause (b) of proviso to Section 138 of the Act has retrospective effect. Merely because the said amendment was in the nature of substitution, it cannot have a retrospective effect more so, when it relates to initiation of penal action. Therefore this Court is of the opinion that the amendment brought to Clause (b) of the proviso to Section 138 cannot be deemed to be in force from the inception and the amendment brought into effect subsequently cannot create a fresh cause of action for the complainant to issue notice and lodge a complaint based on such notice."*

9. Similarly, a two-Judge bench of the Hon'ble Supreme Court in **Anil Kumar Goel vs. Kishan Chand Kaura, 2008(1) R.C.R.(Crl.) 290** speaking through Justice Dr. Arijit Pasayat has made the following observation: -

"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 in 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., 1984(1) RCR(Rent) 168)"

10. Section 138 of the NI Act was added to streamline the escalating trade disputes and foster trust and credibility when conducting business using negotiable instruments. The goal was to deter the payee or holder from acting upon the negotiable instrument in due course by preventing dishonesty on the part of the drawer by not drawing a cheque without enough money in his bank account. The dishonouring of cheques issued to settle debt or discharge liability was made illegal in this context. To protect sincere and truthful cheque drawers, however, the legislatures have also imposed certain safeguards before any criminal action is taken against them. Furthermore, it is a well settled principle that where any statutory provision provides a particular manner for doing a certain act then that thing or act must be done in accordance with the manner prescribed in the statute. (See : ***Hukam Chand Shyam Lal vs. Union of India and others AIR 1976 SC 789; Anuradha Bhasin vs. Union of India (2020) 3 SCC 637; Rajesh Kumar Sharma and Ors. Vs. State of Punjab and Others, 2024(1) R.C.R.(Civil) 126).***

11. In this instance, on January 6, 2003, the concerned bank provided information to the respondent-complainant. In accordance with the legislation in effect at the time, the respondent had to provide notice within 15 days, which ended on January 21, 2003, even though the notice was sent out on February 4, 2003. The respondent-complainant corporation had forfeited its right to file a complaint under Section 138 of the NI Act due to their inaction. Since the respondent-complainant did not make a written demand on the

petitioner-accused within the statutory period that was stipulated for, complaint filed by the respondent under Section 138 of NI Act was defective from its very inception and the learned trial Court could not have taken cognizance of the offence alleged against the petitioner. Hence, this Court, without delving into the facts and circumstances considered by the learned trial Court as well as the lower Appellate Court while passing the abovesaid impugned judgements, is inclined to opine that the present revision petition is entitled to be allowed on the point of law.

CONCLUSION

12. In view of the above discussion, the present petition is allowed. The impugned judgement of conviction and order of sentence dated 07.07.2011 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib as well as the impugned judgement dated 03.12.2012 passed by learned Additional Sessions Judge, Sri Muktsar Sahib are set aside. The petitioner is hereby acquitted of all charges framed against him in the present case and his bail bonds and surety bonds stand discharged.

13. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

06.03.2024
Ajay Goswami

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*