
Surinder Singh and others Vs Punjab State Warehousing Corporation

C.R.M. No. 39208-M of 2007 (O/M) C.R.M. No. 65931-M of 2006 (O/M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 12, 2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 482

Citation: (2010) 2 RCR(Criminal) 416

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: Ashok Aggarwal, for the Appellant; N.D.S. Mann, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

By this order, I propose to decide two petitions, wherein the parties are same and the facts and questions of

law involved also are same except number of cheques and dates. The two petitions are C.R.M. 39208-M of 2007 titled Surinder Singh and

another v. Punjab State Warehousing Corporation, Chandigarh and C.R.M. 65931-M of 2006 titled Surinder Singh and another v. Punjab State

Warehousing Corporation, Chandigarh. For convenience, the facts have been taken from CRM 39208-M of 2007.

2. By way of petition u/s 482 Cr.P.C., it has been prayed by the petitioners for quashing of complaint dated 08.01.1997 (Annexure-P-1), order

dated 14.06.2001 (Annexure-P-2), passed by the learned Judicial Magistrate 1st, Class, Batala,, vide which application dated 13.03.2001

(Annexure-P-4), filed by respondent for adding the petitioners as accused in the complaint, has been allowed, and order dated 04.08.2006

(Annexure-P-6), passed by the learned Additional Sessions Judge, (Ad hoc) Fast Track Court, Gurdaspur, vide which the revision petition

preferred by the petitioners, challenging the order dated 14.06.2001 (Annexure-P-2), has been dismissed.

3. Briefly the facts of the case are that the petitioners are partners in the firm, namely, M/s. Ram Singh Ravel Singh, Sri Hargobindpur, Tehsil

Batala (hereinafter referred to as ""the Firm""). The petitioners, Surinder Singh son of Ravel Singh, Balbir Singh son of Ram Singh, and Balwinder

Singh son of Ram Singh are partners of the said Firm. Charanjit Singh was the fourth partner of the said Firm, who was looking after the day to

day functioning of the said Firm and was responsible for the said Firm, but unfortunately died. In the year 1995-96, the said Firm entered into an

agreement with Punjab Warehousing Corporation (hereinafter referred to as ""the Corporation"" to until the paddy supplied by the Corporation and

to deliver the rice to Food Corporation of India (hereinafter referred to as ""the F.C.I.""). Till the milling was complete, the stock of paddy was to

remain in the joint custody of the said Firm and the Corporation and the entire rice was to be delivered to the F.C.I. by 31.08.1996. Fine paddy

supplied by the Corporation was milled and rice supplied to the F.C.I. 22,599.20 quintals of common paddy, which was supplied by the

Corporation to the Firm when milled, the F.C.I. found the deficiency in the quality of rice and refused to accept the same from the Firm. The Firm

made a request to the Corporation to either accept the milled rice from the Firm or allow the Firm to sell the rice in the open market by paying in

advance the price of the paddy to be released from the joint custody. The Corporation agreed to release the paddy from joint custody on permits

in case the Firm paid the price of the rice in advance. In pursuance of the said decision of the Corporation, the Firm made advance payment to the

Corporation by way of cash and cheques and a cheque No. 948117 dated 15.11.1996 for a sum of Rs. 10 lakhs alongwith other cheques were

given by way of advance security. However, the Corporation thereafter changed the decision and refused to deliver the release order for selling

rice in the open market.

4. A dispute arose between the Firm and the Corporation. The Corporation presented the cheques, which were issued by the Firm as advance

security for release of rice from the joint custody on permits to the Firm. A cheque, bearing No. 948117 dated 15.11.1996 for a sum of Rs. 10

lakhs was also presented by the Corporation to the Punjab National Bank, Sri Hargobindpur Branch, for encashment of the same. The Bank

returned the cheque, vide Memo dated 17.12.1996 with remarks ""Payment Stopped by the Drawer"", which was received by the Corporation on

23.12.1996. The Corporation served the Firm with a notice on 07.01.1997 u/s 138 (c) of the Negotiable Instruments Act, 1881, (hereinafter

referred to as ""the Act""). As no response was received from the Firm, the Corporation (respondent herein) filed a complaint dated 08.01.1997

(Annexure-P-1) in the Court of learned Judicial Magistrate 1st Class, Batala.

5. This complaint was filed against the Firm, namely, M/s Ram Singh Ravel Singh, Sri Hargobindpur, Tehsil Batala, and Shri Charanjit Singh,

partner of the abovementioned Firm, wherein they were arrayed as accused Nos. 1 and 2 respectively. There were, thus, only two accused in the

complaint.

6. In the said complaint, the Corporation in paras-3 to 12, pleaded as follows :-

3. That the accused Mill was allotted by Punjab State Warehousing Corporation (hereinafter called the P.S.W.C.) for custom milling of Paddy

crop for the year 1995-96 by the District Food and Supplies Controller, Gurdaspur.

4. That stocks of paddy fine and paddy IR-8 of crop for the year 1995-96 were stored by the complainant with the accused for custom milling.

5. That the accused No. 1 had executed an agreement through accused No. 2 with the complainant and agreed to do custom milling/shelling of the

paddy i.e. converting paddy into rice by milling process.

6. That the accused have not returned the requisite paddy which was lying with the accused and, therefore, the accused had rendered themselves

liable for payment of the shortage of paddy. Since the delivery of the total paddy was not made, the accused with a view to make part payment for

the same issued a cheque No. 948117 dated 15.11.1996 for Rs. 10,00,000/- drawn on Punjab and Sind Bank, Harchowal Extended Service

Counter, Srihargobindpur in favour of the complainant and as such the complainant is the holder of the cheque.

7. That the accused No. 1 through accused No. 2 were operating the said account and the account was functioning in the Bank in the name of the

accused No. 1 in capacity as partner in the firm.

8. That the complainant presented the said cheque for payment to the Bankers of the accused through their Bankers, Punjab National Bank,

Srihargobindpur Tehsil Batala, as the cheque was payable to a Bank only it being a crossed account payee only cheque.

9. That on presentation of the said cheque, the same has been returned by the Bankers of the accused through their Bankers, Punjab National

Bank, Srihargobindpur with the remarks ""Payment Stopped by Drawer"". The payment of the cheque has been stopped by the accused with an

ulterior motive on the part of the accused. In fact the accused had no amount on the date of presentation for the honouring of the cheque. The

objection has been raised by the Bankers of the accused only to avoid making payment to the complainant as the accused did not have sufficient

funds in the account maintained with the Punjab and Sind Bank to honour the aforesaid cheque.

10. That the accused have committed an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (as amended up to date).

11. That the said intimation regarding non-payment of cheque was received by the complainant by the memo of their Bankers dated 17.12.1996

which was received by the complainant through Registered A.D. cover only on 23.12.1996.

12. That the act of the accused clearly falls under the ambit of Section 138 of the Negotiable Instruments Act. The complainant also served the

accused with a notice on 07.01.1997 but to no effect.

7. As the Corporation proceeded to file various complaints under the Act against other Firms/Agencies also, with which the Corporation had

entered into agreement for milling/storage of paddy and rice, the millers including the Firms challenged the action of the Corporation by way of a

writ petition being C.W.P. No. 958 of 1998. In the said writ petition during the course of the proceedings, the parties, i.e., Corporation and the

Firms agreed to refer the matter for Arbitration, as per the agreement. With the consent of the parties, Mr. Justice D.V. Sehgal (Retd.) was

appointed as a sole Arbitrator. The learned Arbitrator gave his award dated 07.08.2000 (Annexure-P-3) in favour of the Firms. As per the said

award, the Firm, i.e., M/s Ram Singh Ravel Singh, Sri Hargobindpur, which is accused No. 1 in the complaint filed by the Corporation dated

08.01.1997 (Annexure-P-1), was to be paid an amount of Rs. 2,37,464/- by the Corporation.

8. During the pendency of the complaint dated 08.01.1997 u/s 138 of the Act, which was filed by the Corporation, Shri Charanjit Singh, accused

No. 2 in the complaint, referred to above, expired. An application dated 04.06.2001 was filed by the Corporation for addition of the petitioners as

accused the complaint after a period of more than five years from the date of filing the complaint. The said application was decided by the learned

Judicial Magistrate 1st Class, Batala, vide order dated 14.06.2001 (Annexure-P-2). The application of the Corporation was allowed. The

petitioners were added as accused in the complaint and were summoned for 14.08.2001. The order dated 14.06.2001 (Annexure-P-2) was

challenged by the petitioners in this Court by way of petition u/s 482 Cr.P.C. being CRM 51947-M of 2001, taking therein various grounds. The

said petition was disposed of by this Court, vide order dated 02.01.2002 with a direction that the petitioners, if so advised, may file a revision

petition before the Sessions Judge. If any delay is caused, the petitioner is at liberty to move an application for condonation of delay, which can be

considered by the learned Sessions Judge, according to law.

It was observed in this order that revision petition u/s 397 Cr.P.C. was maintainable against the order under challenge. Although, this Court had

concurrent jurisdiction with the Court of Session, but still the petitioners were relegated to avail the remedy of revision petition before the learned

Sessions Judge. Accordingly, the petitioners preferred a revision petition, which come up for hearing before the learned Additional Sessions Judge

(Adhoc), Fast Track Court, Gurdaspur, which was decided on 04.08.2006 (Annexure-P-6). The revision petition preferred by the petitioners was

dismissed by this order. This led to the filing of the present petition by the petitioners u/s 482 Cr.P.C., challenging the complaint dated 08.01.1997

(Annexure-P-1), order dated 14.06.2001 (Annexure-P-2), passed by the learned Judicial Magistrate 1st Class, Batala, and order dated

04.08.2006 (Annexure-P-6), passed by the learned Additional Sessions Judge (Adhoc), Gurdaspur.

9. Counsel for the petitioners contends that complaint u/s 138 of the Act was filed on 08.01.1997. In the said complaint, the petitioners were not

arrayed as accused. There is no averment in the complaint, which would bring them within the ambit of Section 141 of the Act, holding them being

responsible for conduct of day to day conduct of business of the Firm and having thus committed offence u/s 138 of the Act. What has been

pleaded in the complaint is that accused No. 2, namely, Shri Charanjit Singh (deceased) was the person, who had entered into an agreement with

the Corporation on behalf of accused No. 1 Firm. The cheque, which was issued, was signed by accused No. 2, Shri Charanjit Singh (deceased)

and the accounts of the accused No. 1 Firm, were being operated by him. All the allegations were against accused No. 2, Charanjit Singh (since

dead). There is no allegation, with regard to the role of the petitioners either in the execution of the agreement or in the issuance of cheques or in

the day to day functioning of the Firm or that the petitioners were responsible for the conduct of the business of the Firm.

10. Counsel for the petitioners relies upon the judgment of Delhi High Court in the case of Mahendra Pratap Singh Ratra v. M/s. N.K. Metals,

1999 (1) R.C.R. (Cri) 329, Andhra Pradesh High Court in the case of P. Sivanandam v. Sri Srinivasa Marketing Co. and another, 2006 (2)

R.C.R. (Cri) 927, judgments of this Court in the cases of Anil Puri v. M/s. Makhan Lal Vinod Kumar and others, 2006 (3) R.C.R. (Cri) 939 and

Luxmi Devi v. Puran Chand, 2006(4) R.C.R. (Cri) 893.

11. His further contention is that limitation under the Act for taking cognizance of an offence punishable u/s 138 of the Act, has been provided u/s

142 of the Act itself. As per clause (b) of Section 142 of the Act, a complaint is to be made within one month from the date on which cause of

action arises under clause (c) to the proviso of Section 138 of the Act. The cause of action, if any, arose to the Corporation in the year 1997. The

said period of one month as prescribed under the Act having been expired, the application preferred by the Corporation for addition of the

petitioners as accused in the complaint dated 04.06.2001, could not have been entertained by the Magistrate. He contends that there is no

provision under the Code of Criminal Procedure for amendment of the criminal complaint, which allows deletion of name of an accused and

substitution in its place by another, therefore, order dated 14.06.2001 (Annexure-P-2), deserves to be set aside. For the same reason, order

dated 04.08.2006 (Annexure-P-6), passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur, also cannot be

sustained. In support of this contention, counsel relies upon the judgment of Bombay High Court in the case of Behram S. Doctor v. State of

Maharashtra, 2004(1) RCR(Cri) 525.

12. His further contention is that the award dated 07.08.2000, passed by the learned Arbitrator, which is a finding returned by a Civil Court, is

binding on the criminal proceedings and the Arbitrator having found the cheque in question to have been issued as security by the Firm, the

provisions of Section 138 of the Act would not be attracted. Reliance has been placed on the judgment of Andhra Pradesh High Court in the case

of M. Chandrashekar Rao v. V. Kutamba Rao and another, 2006(2) R.C.R. (Cri) 439.

13. On the other hand, counsel for respondent vehemently argues that as per para-5 of the partnership deed dated 01.04.1992, the petitioners

alongwith Charanjit Singh, were the partners of the Firm and were actively engaged in the affairs of the firm. They were drawing salaries as

working partners at the rates mentioned therein. He on this basis submits that the petitioners cannot shun their liabilities being working partners of

the Firm, merely because they were not arrayed as accused in the complaint. However, it is agreed that the agreement with the Corporation on

behalf of the Firms was pen down by Charanjit Singh accused No. 2 and the cheque in question was also issued by him, but still the petitioners

being active partners of the Firm, would be covered by the provisions of Section 141 Act and, therefore, cannot be absolved of the liability. He

further submits that the act and conduct of the petitioners and their roles in the Firm, is a matter of evidence, which is yet to be led before the

Court. He contends that the limitation would not be applicable to the proceedings and the application dated 04.06.2001 (Annexure-P-4),

preferred by the Corporation, had rightly been allowed by the learned Judicial Magistrate 1st Class, Batala, vide order dated 14.06.2001

(Annexure-P-2). He contends that the complaint was filed against the Firm and one of the partners Charanjit Singh, within the stipulated time. Due

to unfortunate death of Charanjit Singh, the petitioners were arrayed as additional accused. The question of limitation does not arise as the

complaint was already pending against the Firm, of which the petitioners are active partners. He submits that the award of the Arbitrator is under

challenge and has not as yet attained finality. The Corporation, at no stage, has accepted the award dated 07.08.2000 (Annexure P-3), passed by

the Arbitrator. The findings, therefore, given by the learned Arbitrator, cannot be said to be binding on the Corporation and cannot be relied upon

by the petitioners. The judgments relied upon by counsel for the petitioners would not be applicable to the facts of the present case. He on this

basis prays for dismissal of the present petition.

14. I have heard counsel for the parties and have gone through the records of the case.

15. The contention of counsel for the petitioners that the award of the learned Arbitrator would be a binding on the criminal court as it is a finding

returned by the Civil Court, cannot be accepted in the present case as the award passed by the learned Arbitrator has not been accepted by the

Corporation and the same is under challenge in accordance with law. The award having not attained finality, cannot at this stage, be made the basis

for holding that the findings given by the learned Arbitrator would be a binding upon the criminal court.

16. Sections 138 and 141 of the Act require to be taken note of, which read as follows :-

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 provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], 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 thirty 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 purpose of this section, ""debt or other liability"" means a legally enforceable debt or other liability].

141. offences by companies.

(1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was

responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence

and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without

his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central

Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case

may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved

that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager,

secretary, or other office of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and

shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section.

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relating to a firm, means a partner in the firm.

17. Hon'ble the Supreme Court in N.K. Wahi Vs. Shekhar Singh and Others, , after discussing the provisions with regard to Sections 138 and

141 of the Act, has culled out the following proposition of law, as has been stated in para-19 of the judgment which reads as follows :-

19. In view of the above discussion, our answers to the questions posed in the reference are as under :-

(a) It is necessary to specifically aver in a complaint u/s 141 that at the time the offence was committed, the person accused was incharge of and

responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a

complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the

person liable u/s 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of

its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of

the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be

admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a

company become liable u/s 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in

charge of and responsible for the conduct of business of the company. Therefore, they get covered u/s 141. So far as the signatory of a cheque

which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

18. The basic facts are not in dispute. A perusal of the complaint dated 08.01.1997 (Annexure-P-1), paras 3 to 12, which have been reproduced

hereinabove, clearly indicate that as per the Corporation, the agreement was entered into with the Firm/accused No. 1 through Charanjit Singh

(deceased)/accused No. 2. The cheque in question was issued and signed by Charanjit Singh (deceased)/accused No. 2 for Firm/accused No. 1.

The accounts of the Firm was operated by Charanjit Singh (deceased)/accused No. 2. The instructions for stopping payment of cheque in question

was issued by Charanjit Singh (deceased)/accused No. 2. All this goes to show that Charanjit Singh (deceased)/accused No. 2 was looking after

the day to day affairs of the accused No. 1/Firm as he was Incharge and responsible to the Firm for conduct of business of the Firm. The

petitioners are not named in the complaint nor is it mentioned that they are the partners of the Firm. There is nothing in the complaint against the

petitioners that they were in any manner involved in the functioning of affairs of the Firm, what to say with the Corporation. The complaint is totally

silent in this regard. Nothing has been placed on record, which would show actual participation of the petitioners in the day to day working of the

accused No. 1/Firm or that they were Incharge of the Firm. In para 10 of the complaint, it is stated that the accused, i.e., the Firm and deceased

Charanjit Singh had committed an offence u/s 138 of the Act and in Para 12, it is stated that accused were served with a notice on 07.01.1997.

The complaint does not disclose the commission of any offence by the petitioners, which would fall u/s 138 of the Act and, therefore, would not be

sustainable, qua the petitioners.

19. For the first time, vide application dated 04.06.2001 (Annexure-P-4), preferred by the Corporation/complainant on the death of accused No.

2/Charanjit Singh, it is alleged that the petitioners were active partners of the accused No. 1/Firm and were responsible for day to day business of

the Firm and were drawing salaries for that. The names of the petitioners as accused for the first time figured in the complaint proceedings in the

Trial Court on 04.06.2001. The cause of action arose to the Corporation/complainant in December, 1997, when notice u/s 138 (b) of the Act was

served upon the accused No. 1/Firm and accused No. 2/Charanjit Singh (deceased). The period of limitation for taking cognizance of offences

under the Negotiable Instruments Act is provided u/s 142 of the Act, which reads as follows :-

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 u/s 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 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 u/s 138.

20. It would not be out of way to mention here that the proviso to sub- Section (b) of Section 142 of the Act, has been incorporated, vide Section

9 of Act 55 of 2002, which has come into effect on 06.02.2003. The objects and reasons of amending Act of 2002 reads as follows :-

Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia,

the following amendments in the Negotiable Instruments Act, 1881, namely :

(iii) to provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the

Act (Para 4).

21. Meaning thereby, that on the date, when the application was moved by the Corporation/complainant for adding petitioners as accused, i.e.,

04.06.2001 (Annexure-P-4), the period for taking cognizance by the Court of any offence punishable u/s 138 of the Act on a written complaint,

which is made within one month from the day on which cause of action arose under clause (c) of proviso to Section 138 of the Act stood expired.

Section 138 (c) of the Act requires that upon receipt of notice under clause (b) of proviso to Section 138 of the Act. the drawee has to make the

payment within a period of fifteen days thereof, failing which the cause of action would arise. As per the complaint dated 08.01.1997 (Annexure-

P-1), notice under clause (b) of proviso to Section 138 was served on the accused on 07.12.1997 and, thus, cause of action arose in December,

1997. That being so, the application dated 04.06.2001 (Annexure-P-4), preferred by the Corporation/complainant was barred and no cognizance

could be taken by the Trial Court as the limitation stood exhausted for taking such cognizance.

22. Hon"ble the Supreme Court in the case of Subodh S. Salaskar v. Jayprakash M. Shah and another, 2008(3) R.C.R.(Civil) 904 : 2008(4)

R.A.J. 654 : 2008 (3) R.C.R. (Cri) 875, in para-24 held as follows :-

24. Ex facie, it was barred by limitation. No application for condonation of delay was filed. No application for condonation of delay was otherwise

maintainable. The provisions of the Act being special in nature, in terms thereof the jurisdiction of the court to take cognizance of an offence u/s

138 of the Act was limited to the period of thirty days in terms of the proviso appended thereto. The Parliament only with a view to obviate the

aforementioned difficulties on the part of the complainant inserted proviso to Clause (b) of Section 142 of the Act in 2002. It confers a jurisdiction

upon the court to condone the delay. It is, therefore, a substantive provision and not a procedural one. The matter might have been different if the

Magistrate could have exercised its jurisdiction either u/s 5 of the Limitation Act, 1963 or Section 473 of the Code of Criminal Procedure, 1976.

The provisions of the said Acts are not applicable. In any event, no such application for condonation of delay was filed. If the proviso appended to

Clause (b) of Section 142 of the Act contained a substantive provision and not a procedural one, it could not have been given a retrospective

effect. A substantive law, as it is well-settled, in absence of an express provision, cannot be given a retrospective effect or retroactive operation.

23. In the light of the above, the order dated 14.06.2001 (Annexure-P-2), passed by the learned judicial Magistrate 1st Class, Batala, on an

application dated 04.06.2001 (Annexure-P-4), wherein for the first time the names of the petitioners figured as accused, cannot be sustained for

the reasons that the Court could not have taken cognizance against the petitioners in the light of Section 142 of the Act, Which was prevalent at

that time.

24. In view of the above, the present petition is allowed. Order dated 14.06.2001 (Annexure-P-2), passed by the learned Judicial Magistrate 1st

Class, Batala, order dated 04.08.2006 (Annexure-P-6), passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur,

are hereby set aside, and the application dated 04.06.2001 (Annexure-P-4), preferred by the Corporation, before the learned Judicial Magistrate,

Batala, is hereby dismissed.