

Guracharan Singh and Another Vs Allied Motors Ltd. and Another

Court: Supreme Court of India

Date of Decision: Dec. 17, 2004

Acts Referred: Negotiable Instruments Act, 1881 (NI) â€” Section 138

Citation: (2005) 10 SCC 626

Hon'ble Judges: Y.K. Sabharwal, J; D.M. Dharmadhikari, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Leave granted.

2. The High Court, by the impugned order, has stayed the proceedings initiated by the Appellants against Respondents u/s 138 of the Negotiable

Instruments Act pertaining to eight cheques, till the completion of civil proceedings between the parties.

3. Respondents filed a petition under Arts.226 and 227 of the Constitution of India against the complainants/Appellants and the Presiding Officer

of the Court as Respondent No. 3 seeking a declaration that the proceedings in Criminal Complaint Nos. 168 of 2002, 113 of 2002, 114 of 2002

and 128 of 2002, initiated by the complainants against them pending in the Criminal Court, are not maintainable and the same cannot be continued

in view of the award having been made in civil Proceedings in favour of the accused. Further direction sought was against the Appellants to

withdraw those complaints and against Respondent No. 3, to close the proceedings in the criminal complaints.

4. The impugned order, directs that since the subject-matter of the post-dated cheques, on which the complaints are based, was subject matter of

adjudication before the Arbitrator and the Arbitrator has pronounced the award thereupon and civil proceedings, challenging the award are

pending, it is a fit case to stay the proceedings of the criminal complaints.

5. The complaints were filed before the award was made. It is also not in issue that objections to the award are pending. It is elementary that the

civil proceedings or arbitration proceedings for recovery and the criminal proceedings u/s 138 of the Negotiable instruments Act are based on

independent cause of action. The making of the award may be a defence to such a complaint but to what extent the defence would be valid, shall

depend upon the facts and circumstances of each case. Mere making of the award cannot be a ground to stall or stay the proceedings initiated u/s

138 of the Negotiable Instrument Act. That being the only ground to stay the criminal proceedings of complaint cases, we are unable to sustain the

impugned order of the High Court. We are, however, expressing no opinion one way or the other, either on the merits of complaints or that of

defence that may be taken or available to the accused in accordance with law.

6. For the aforesaid reasons, we set aside the impugned order of the High Court and direct that the complaint cases would proceed in accordance

with law.

7. The appeal is allowed in the above terms.