Pawan Kumar Ralli Vs Maninder Singh Narula

Court: Supreme Court Of India

Date of Decision: Aug. 11, 2014

Acts Referred: Constitution of India, 1950 â€" Article 136, 142
Criminal Procedure Code, 1973 (CrPC) â€" Section 245, 410, 473, 482, 91
Negotiable Instruments Act, 1881 (NI) â€" Section 138, 141, 142
Penal Code, 1860 (IPC) â€" Section 420

Citation: (2014) 3 ACR 3259 : AIR 2014 SC 3512 : (2014) 87 ALLCC 316 : (2014) ALLMR(Cri) 3745 : (2014) 5 ALT 1 : (2014) 3 ALT(Cri) 1 : (2014) 4 BC 1 : (2014) 6 BomCR 8 : (2014) 4 BomCR(Cri) 299 : (2014) 4 CHN 156 : (2014) 122 CLA 216 : (2015) 119 CLT 108 : (2014) 4

Hon'ble Judges: Ranjana Prakash Desai, J; N.V. Ramana, J

Bench: Division Bench

Final Decision: Allowed

Judgement

JUDGMENT

N.V. Ramana, J.
Leave granted.

2. This appeal arises out of the judgment and order dated 15th January, 2013 of the High Court of Delhi passed in Criminal Miscellaneous Case

No. 2961 of 2012 filed by the Respondent herein u/s 482 of the Code of Criminal Procedure. By the said judgment, the High Court quashed the

criminal proceedings initiated by the Appellant u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") against the

Respondent.

3. The brief history of the case, according to the Appellant, is that he had given a loan of Rs. 60 lakhs to the Respondent in the month of

November, 2011. In discharge of his obligation to the Appellant, on 25th April, 2012, the Respondent issued (i) Cheque No. 889953, drawn on

Allahabad Bank, for Rs. 30 lakhs; (ii) Cheque No. 545420, drawn on ICICI Bank, for Rs. 20 lakhs; and (iii) Cheque No. 545409, drawn on

ICICI Bank, for Rs. 10 lakhs. When the Appellant presented the said cheques in his Bank for realization, they were dishonoured by the

Respondent"s banker with remarks "Stop Payment".

4. The Appellant, after receiving the communication from his banker about the dishonour of Cheques, issued a handwritten notice (Annexure P4)

to the Respondent on 27th April, 2012 calling upon him to make the payment. Upon non-compliance by the Respondent, a formal legal notice

dated 24th May, 2012 (Annexure P5) was issued u/s 138/142 of the Act requiring the Respondent to pay the cheques amount along with interest

and costs. In his reply to the legal notice, the Respondent totally disagreed with the allegation of taking loan from the Appellant. Subsequently, the

Appellant filed a Complaint Case against the Respondent invoking Sections 138, 141 and 142 of the Act and Section 420, of the Indian Penal

Code. The Metropolitan Magistrate took cognizance and summoned the Respondent who pleaded not guilty and claimed to be tried.

5. During the pendency of trial, the Respondent filed Criminal Miscellaneous Case before the High Court u/s 482, Code of Criminal Procedure for

quashing of criminal proceedings pending before the Trial Court. The High Court expressed the view that the complaint was not filed within a

period of one month after the expiry of 15 days of receipt of the notice dated 27th April, 2012 and hence it was barred by limitation u/s 142(b) of

the Act and by the impugned judgment quashed the criminal proceedings against the Respondent. Aggrieved by the order of the High Court, the

Appellant-complainant approached this Court by way of Special Leave Petition.

6. Before us, the case of the Appellant is that the High Court was not justified in exercising extra ordinary jurisdiction u/s 482, Code of Criminal

Procedure The High Court incorrectly considered the handwritten note as legal notice and calculated the limitation period accordingly. Whereas,

the handwritten note was only an intimation to the accused and according to the provisions of law, the actual notice within 30 days from the date of

dishonour of the cheques, was issued on 24th May, 2012 and accordingly criminal proceedings were initiated well within the limitation period. But,

the High Court failed to take into consideration this material fact and merely on the ground of 25 days delay from the date of service of handwritten

note, quashed the criminal proceedings. The High Court ignored the fact that the Act clearly enables the Court to condone the delay, if any,

beyond 30 days of limitation period under proviso to Section 142(b) of the Act.

7. During the course of hearing, we felt it justifiable to have assistance of a senior counsel and we accordingly appointed Mr. Huzefa Ahmadi,

learned senior Counsel as Amicus Curiae.

8. Learned Amicus submitted that the handwritten note dated 27th April, 2012 whereby the Appellant called upon the Respondent to make

payment, would fall within the four corners of "notice" u/s 138(b) of the Act and there was a delay of 25 days in filing the Complaint under the

provisions of the Act. He further submitted that the proviso to Section 142(b) of the Act confers power on the Court to condone the delay, if the

complainant satisfies the Court on the part of delay. As it was believed by the Trial Court that since the legal notice was issued on 24th May, 2012

the limitation period would come into force from that date only, there was no occasion for the Appellant to plead for sufficient cause for condo

nation of delay as the question of delay did not arise before the Trial Court. While issuing process, the Trial Court was clearly of the view that the

Complaint was within limitation on the basis of averments made in the Complaint. Therefore, the occasion did not arise for the Appellant to raise

the plea of "sufficient cause" for the delay. Moreover, the Respondent had also not raised the question of limitation before the Trial Court and the

issue of limitation was raised for the first time before the High Court.

9. Even otherwise, before quashing the criminal proceedings on the ground of limitation, the High Court could have decided whether sufficient

cause was made out by the Appellant under the proviso to Section 142(b) of the Act, and if satisfied, it could have condoned the delay.

Alternatively, the High Court could have remanded the matter to the Trial Court to determine the issue. In support of his submissions, he placed

reliance on a judgment of this Court in 259849 in which while considering the provisions of Section 473, Code of Criminal Procedure and deciding

the question whether on the ground of limitation, the accused is entitled to seek his discharge, this Court held:

The mere fact that the complaint was filed 25 days after the expiry of the period of limitation did not entitle the accused to seek his discharge u/s

245, Code of Criminal Procedure because the complainant has, under law, a right to seek for extension of time u/s 473 Code of Criminal

Procedure The complainant could satisfy the Magistrate on the facts and circumstances of the case that the delay was explainable which was

occasioned on account of their bona fide belief to obtain the sanction for the purpose of filing the complaint"".

10. Learned Amicus finally submitted that the legislative intent in inserting the proviso to Clause (b) of Section 142 of the Act was only to protect

the Cheque holders from the defaulters who issued the Cheques and the Court should act reasonably in providing an opportunity to the Cheque

holder to present his version on the issue of delay if any. After taking into consideration the reasons advanced by the Cheque holder, the Court

should consider the question of delay and then only it should pass an order. But in the present case, the High Court adopted an unhealthy approach

by passing the impugned order quashing the criminal proceedings on the ground of limitation, that too for a delay of only 25 days, without

considering the Appellant''s reasons for the delay. He further submitted that the observation of the High Court in the impugned order that ""allowing

the Appellant to pursue the Complaint against the Respondent would be an abuse of process"" is also not in the interest of justice.

11. Learned Counsel for the Respondent, on the other hand, contended that there is no apparent error in the judgment of the High Court in

quashing the criminal proceedings on the ground of limitation. The High Court has correctly treated the handwritten notice sent by the Appellant on

27th April, 2012 as a valid notice in terms of Section 138 of the Act as the Appellant had given the notice in writing within fifteen days of

information of dishonour of the Cheques from his banker. In support of this contention learned Counsel has cited the judgment of this Court in

294878 wherein this Court held that though no form of notice is prescribed in Clause (b) of Section 138 of the Act, the requirement is that notice

shall be given in writing within fifteen days of receipt of information from the bank regarding return of the Cheque as unpaid and in the notice a

demand for payment of the amount of the Cheque has to be made. So, learned Counsel argued that looking at this settled legal position, the first

notice issued by the Appellant on 27th April, 2012 had since fulfilled the criteria laid down by this Court, the same has to be treated as ''notice''

within the meaning of Section 138(b) of the Act. Therefore, he submitted that the High Court was right in considering the handwritten note as

''notice'' for the purpose of calculating delay in filing the Complaint and it rightly declared that the Complaint was barred by limitation.

12. Learned Counsel for the Respondent further contended that even though the proviso to Section 142(b) of the Act facilitates condo nation of

delay if the complainant satisfies the Court that he had cogent reasons for not making the complaint within the limitation period, in the present case

the complainant had made no request before the High Court for availing such benefit of condo nation of delay. To substantiate his argument,

learned Counsel relied upon the counter affidavit filed by the Appellant before the High Court and submitted that there also the Appellant, instead

of pleading for condo nation of delay, took the stand that the communication dated 27th April, 2012 shall not be treated as notice, whereas it

fulfilled all ingredients of a ''notice'' u/s 138 of the Act. In support of his claim that the matter is barred by limitation and requires to be dismissed at

the threshold itself, he relied on this Court''s judgment in 295094 and submitted that in that case also despite the objection of limitation raised by

the Appellants, the first Respondent did not file any application for condo nation of delay and this Court had dismissed the O.A. filed by the first

Respondent, on the ground of limitation.

13. Learned Counsel for the Respondent therefore firmly opposed the plea of the learned Amicus that the matter has to be remanded back to the

Trial Court for hearing the issue of limitation by providing an opportunity to the Appellant to avail the remedy envisaged under the proviso to

Section 142(b) of the Act. He finally submitted that the High Court was right in quashing the criminal proceedings and the impugned order does not

call for interference of this Court Under Article 136 of the Constitution.

14. We have heard learned Counsel at length. In view of the conflicting approach adopted by the High Court in determining the issue of limitation

which subsequently led to the quashing of criminal proceedings pending before the Trial Court, the following issues emerge for our consideration

for the disposal of this matter:

(a) Whether the handwritten note sent by the Appellant on 27th April, 2012 to the Respondent could be treated as ''notice'' or the notice issued by

the advocate on 24th May, 2012 could only be treated as ''notice'' within the meaning of Section 138 of the Act?

(b) If there was any delay in filing the Complaint in the present case, whether such delay could have been condoned by the High Court in

accordance with the provisions of the Act?

(c) Whether the High Court was right in quashing the criminal proceedings on the ground of limitation or instead of quashing the criminal

proceedings it ought to have remitted the matter back to the Trial Court for deciding the issue of limitation?

15. Before embarking on the above issues, we may notice that the proviso appended to Section 138 of the Act limits the applicability of the main

provision stating:

138. Dishonour of cheque for insufficiency, etc. of funds in the account.-

.....

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.

16. Section 142 of the Act also puts a limitation on the power of the Court to take cognizance of the offences, which reads as under:

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 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 u/s 138.

17. Admittedly, in the case on hand, the Cheques in question were issued by the Respondent and the same were dishonoured by the Bank on his

instructions of ''stop payment''. Two communications, one a handwritten note dated 27th April, 2012 by the Appellant himself and the other a

formal legal notice dated 24th May, 2012 issued by the advocate, were served on the Respondent calling upon him to pay the Cheque amounts.

The Respondent did not respond to the handwritten communication, but has replied to the legal notice issued through advocate on 24th May, 2012

denying the allegation. Upon failure of the Respondent to obey the handwritten communication as well as the legal notice, the Appellant initiated

criminal proceedings by filing Complaint Case on 5th July, 2012. It appears that the Respondent contested the matter before the Trial Court and

also filed an application u/s 91, Code of Criminal Procedure warranting the Appellant to produce various documents. He has also moved an

application u/s 410, Code of Criminal Procedure seeking transfer of the Complaint to a different Court. It is noteworthy that all through out the

pendency of proceedings before the Trial Court, the Respondent did not raise the issue of ''limitation''. The issue was raised for the first time before

the High Court in Section 482, Code of Criminal Procedure proceedings. The High Court, considering the handwritten note sent by the Appellant

on 27th April, 2012 as ''notice'' u/s 138 of the Act, came to the conclusion that the complaint is barred by limitation.

18. This Court has already clarified in Central Bank of India and Anr. (supra) that Section 138 of the Act does not prescribe any specific form of

notice, but mandates that it should be issued in writing within thirty days (w.e.f. 6-2-2003) of receipt of information from the banker about the

dishonour of Cheque, with a demand to the drawer for making payment of the said amount.

19. We have perused the handwritten note dated 27th April, 2012 (Annexure P4) and found that it was issued within the mandatory period of

thirty days of dishonour of cheques and contained (a) the subject amount of Rs. 60,00,000/- given by the Appellant as loan to the Respondent

under promissory notes; (b) the details of Cheque numbers and dates of issue with amounts and particulars of Bank; (c) Returning of Cheques by

the banker dishonouring them on the ground of ''Stop Payment'' by the Respondent; (d) a demand for immediate repayment of the amount; and (d)

a caution to the Respondent that in case of failure on the part of Respondent, the Appellant would initiate legal proceedings. Thus, in our opinion,

the handwritten note dated 27th April, 2012 fulfilled the mandatory requirements under Clause (b) of proviso to Section 138 and could be said to

be a valid ''notice'' in the light of this Court''s judgment in Central Bank of India and Anr. (supra). Moreover, this document (Annexure P4) stands

admitted by the Appellant in his cross examination also. Therefore, in our opinion, the High Court has committed no error in considering the

handwritten note dated 27th April, 2012 as ''notice'' u/s 138 of the Act.

20. However, when the issue of limitation has come up for the first time before the High Court, it ought to have dealt with the same on merits as

per proviso to Section 142(b) of the Act. The said proviso appended to Clause (b) of Section 142 of the Act was inserted by the Negotiable

Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the legislative intent was, no doubt, in order to overcome the technicality

of limitation period. The Statement of Objects and Reasons appended to the Amendment Bill, 2002 suggests that the introduction of this proviso

was to provide discretion to the Court to take cognizance of offence even after expiry of the period of limitation [See 295656 Only with a view to

obviate the difficulties on the part of the Complainant, Parliament inserted the proviso to Clause (b) of Section 142 of the Act in the year 2002. It

confers a jurisdiction upon the Court to condone the delay [See 301580

21. It is no doubt true that at the time of filing the complaint, the Magistrate has to take cognizance of the complaint when it is within limitation and

in case of delay in filing the complaint, the complaint has to come up with the application seeking condonation of delay. But, the peculiar fact of the

present case is that in the complaint, the complainant had only averred that he has sent the legal notice dated 24th May, 2012 but not mentioned

about the handwritten note dated 27th April, 2012. Basing on the said averment, the learned Trial Judge was satisfied that the complaint is within

the prescribed period of limitation. Hence, in this case, raising the plea of limitation and Court exercising the discretion to condone the delay did not

arise at all.

22. In the peculiar facts and circumstances of the case, while keeping in mind the legislative intent and the specific plea of the Appellant raised in

the grounds for the SLP that he should have been allowed to move an application for condonation of delay before the Trial Court as the

Respondent has not suffered any prejudice by reason of 25 days delay, we strongly feel that the Appellant should not have been deprived of the

remedy provided by the Legislature. In fact, the remedy so provided was to enable a genuine litigant to pursue his case against a defaulter by

overcoming the technical difficulty of limitation. Hence, the High Court has committed an error by not considering the issue of limitation on merits.

23. In view of the settled principles of law in Rakesh Kumar Jain, MSR Leathers. Subodh S. Salaskar (supra) and in the peculiar facts and

circumstances of the case, we are of the considered opinion that the High Court was not right in quashing the complaint merely on the ground that

complaint is barred by limitation, that too a plea which was taken for the first time before the High Court. On the other hand, the High Court ought

to have remanded the matter to the Trial Court for deciding the issue of limitation.

24. At the same time, we want to make it very clear that by this observation we are not laying down a legal proposition that without even filing an

application seeking condonation of delay at an initial stage, complainant can be given opportunity at any stage of the proceeding. As already

discussed by us in the foregoing paragraphs, we have come to the irresistible conclusion, to afford an opportunity for the complainant to move an

application seeking condonation of delay, under the peculiar facts and circumstances of the case.

25. For all the aforesaid reasons, in order to meet the ends of justice, we exercise our discretion Under Article 142 of the Constitution and set

aside the impugned judgment of the High Court quashing the criminal proceedings and restore the criminal proceedings before the Trial Court. The

Appellant is permitted to file an application for condonation of delay before the Trial Court and if such an application is filed, the Trial Court shall

be at liberty to consider the same on its own merits, without being impressed upon by any of the observations by this Court, and pass appropriate

orders.

26. We are thankful to Mr. Huzefa Ahmadi, learned amicus curiae, for his able assistance.

27. The appeal stands allowed with the aforesaid observations.