
(2001) 08 RAJ CK 0103
In the Rajasthan High Court
Case No : Criminal Revision No. 203 of 2000

Gurcharan Singh	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
COMPANIES ACT, 1956 — Section 446
Constitution of India, 1950 — Article 246, 254
Criminal Procedure Code, 1973 (CrPC) — Section 4, 451, 457, 468, 5
Essential Commodities Act, 1955 — Section 6A, 6B
Evidence Act, 1872 — Section 114
LIFE INSURANCE CORPORATION ACT, 1956 — Section 41
Negotiable Instruments Act, 1881 (NI) — Section 118, 6E
Penal Code, 1860 (IPC) — Section 41, 42, 64

Citation : (2001) 3 WLC 575 : (2002) 1 WLN 338

Hon'ble Judges : AR. Lakshmanan, C.J.; Bhagwati Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

AR. Lakshmanan, C.J.—In view of the conflicting judgment of this Court in Bhimsen v. State of Rajasthan reported in 1991 RCC 421 and Kunj Bihari Lal and Jagdis v. State of Rajasthan reported in 1984 RCC 42, an order was passed on 3.12.1993 in S.B. Criminal Misc. Petition No. 114/93 by Hon''ble Mr. Justice A.K. Mathur (as he then was) referring the matter to the larger bench to resolve the controversy as to whether Section 67 of the Rajasthan Excise Act shall prevail as against Section 468 Cr.P.C. or not.

2. The above criminal misc. petition was listed before a Division Bench of this Court which dismissed the matter on 14.2.2001. Thus, the controversy referred by Hon''ble Mr. Justice A.K. Mathur could not be resolved.

3. A similar controversy is also involved in S.B. Criminal Revision No. 203/2001 which came up for hearing before Hon''ble Mr. Justice N.P. Gupta on 7.5.2001.

Adopting the reasoning in the reference order dated 3.12.1993 in S.B. Criminal Misc. Petition No. 114/93 the learned Judge has directed this matter to be placed before the Chief Justice for constituting a larger bench.

4. When the matter was placed before the Chief Justice, it was placed before regular D.B. and that is how this matter has come up before this bench for consideration of reference.

5. The point of law which arise in this case is as follows:

Whether Section 67 of the Rajasthan Excise Act, 1950 which prescribes the limitation of one year for initiating a prosecution will curtail the period of limitation of three years prescribed by Section 468 of the Code of Criminal Procedure ?

Before proceeding further, it is useful to refer to certain facts of this case so that the case can also be decided on merits instead of remitting the matter back to the learned Single Judge.

6. According to the petitioner Gurcharan Singh, a case was foisted against him on 12.9.1994. The challan of the same was filed in the Court at Sri Ganganagar on 11.9.1995 in absence of the petitioner. The papers were placed before the Additional Chief Judicial Magistrate, Sri Karanpur on 5.12.1995. The learned Magistrate heard the arguments for taking cognizance and he came to the conclusion that the challan has been filed beyond the limitation prescribed by law. He was of the opinion that no cognizance could be taken after one year of the offence and, therefore, on 5.12.1995, no cognizance could be taken in the matter as the same is beyond the period of limitation. The State Government preferred a revision petition which was heard by the Additional Sessions Judge, Sri Karanpur as Criminal Revision Petition No. 45/97. The revisional court by its order dated 23.3.2000 has set aside the order passed by the trial judge and has come to a conclusion that the period of limitation cannot be taken to be one year but it should be considered to be three years and in view of that, he accepted the revision petition and directed the lower court to take cognizance in the matter and proceed further for further proceedings in the matter. The present revision was filed by the petitioner herein.

7. It was submitted that the order passed by the revisional authority is absolutely incorrect, improper and illegal and that the limitation shall be considered to be which is given u/s 468 Cr.P.C. and shall not be considered to be a limitation prescribed u/s 67 of the Rajasthan Excise Act. It was further submitted that the limitation prescribed in the special law i.e. Rajasthan Excise Act, excludes the prevalence of the general law in such matters namely Code of Criminal Procedure which cannot prevail and the prosecution cannot take benefit of general provision and, therefore, the revisional court cannot direct the trial Magistrate to take cognizance as has been done by the revisional court.

8. As noticed earlier, when the matter was listed before Hon"ble Mr. Justice A.K.

Mathur (as he then was) in S.B. Criminal Misc. Petition No. 114/93, the learned Judge after referring to the decision given in the case of Kunj Bihari Lal and Jagdish v. State of Rajasthan reported in 1984 RCC 42 (decision rendered by Hon"ble Mr. Justice S.C. Agrawal) and the decision given in the case of Bhimsen v. State of Rajasthan reported in 1991 RCC 421 (decision rendered by Hon"ble Mr. Justice B.R. Arora), came to the conclusion that if there is a special enactment on the subject, then that enactment shall prevail as against the general principals. Agrawal J. held that Section 67(c) will be applicable and if any prosecution under the Rajasthan Excise Act has been launched after the period of one year, then such prosecution will stand abated on account of expiry of period of limitation. This judgment, however, was not brought to the notice of Hon"ble Arora J., who has taken the view that the limitation period prescribed in Cr.P.C. will prevail over limitation prescribed u/s 67 of the Rajasthan Excise Act because latter law prevails over earlier law and State Law yield to Central Law. As these two decisions were conflicting with each other, Justice Mathur thought that the conflict can be resolved by referring the matter to a larger bench. It is useful to refer to the opinion expressed by Justice Mathur:

However, before parting with this case I may also refer to the couple of decisions which has a direct bearing of this question. In the case of The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, their lordships has held a view that if there is a special enactment on subject then that enactment shall prevail as against general principles. It was observed by their lordships as under:

Conflict between specific provision and general provision--Specific provision prevails over general provision--General provision applied only to such cases which are not covered by special provision--Rule applies to resolve conflict between different provisions in different statute as well as in same statute.

While dealing with this aspect their lordships has further observed as under:

In *Pretty v. Solly* (1859 ER 1032) quoted in *Craies on Statute Law* at P. 206, 6th Edition) Romally, M.R., mentioned the rule thus:--"the rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

Similar view has also been reiterated by the Division Bench of this Court in the case of *Surajmal Roopchand and Co., Kota v. State of Rajasthan* 1965 RLW 429 there also it was observed as under:

The maxim *Generalia Speciaibus Nenderogant* is therefore attracted and when a special law is found inconsistent with or repugnant to the subsequent law of general nature which is not confined to the subject matter of the special Act, and where there is no express indication of the legislature that the special law will give way to the general law the provisions of the special law will hold the field.

Similarly in the case of Pannalal v. Balbir Singh and Ors. 1969 WLN 284, it has been held as under:

Where there is a conflict between a special provision and a general provision, the special provision prevails over the general provisions and the latter applies only to such cases which are not covered by the special provision.

In the case of Paradip Port Trust, Paradip Vs. Their Workmen, it was question regarding permitting the advocates whether to permit the advocates before the Industrial Tribunals or not because Section 30 of the Advocates Act authorises a lawyer to appear in any court. While dealing with this aspect, their lordships has observed as under:

First the Industrial Disputes Act is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. This special Act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject matter of appearance of lawyers before all courts, tribunals and other authorities. The Industrial Disputes Act is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. *Generalia Specialibus non Derogant*. As Maxwell puts it.

Therefore, in this view of the conflicts of the two SB decisions it will be proper let these papers may be placed before the Chief Justice for constituting a larger bench so as to resolve this controversy viz. that whether the Section 67 of the Rajasthan Excise Act shall prevail as against Section 468 Cr.P.C. or not.

9. Before proceeding further to deal with the matter on merits, it is beneficial to reproduce Section 67 of the Rajasthan Excise Act, 1950 and Section 468 of the Code of Criminal Procedure which are as follows:

67. Cognizance of offences.--(1) No Magistrate shall take cognizance of an offence punishable--

(a) u/s 54 or Section 57 or Section 59 or Section 63 except on his own knowledge or suspicion or on a complaint or the report of an Excise Officer; or

(b) u/s 55 or Section 56 or Section 58 or Section 60 or Section 61 or Section 62 except on a complaint or the report of an officer not below the rank of the Excise Commissioner or an Excise Officer duly empowered in that behalf.

Explanation - The report of an Excise Officer under this Sub-Section shall be treated for all purposes of trial to be a report made by a police officer within the meaning of Clause (b) of Sub-Section (1) of Section 190 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974).

(2) Except with the special sanction of the State Government no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

468. Bar to taking cognizance after lapse of the period of limitation.--(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-Sect. (2), after the expiry of the period of limitation. (2) The period of limitation shall be--

(a) six months, if the offence is punishable with fine only:

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

We have already referred to the judgment rendered by two learned Single Judges reported in 1991 RCC 421 and 1984 RCC 42 (supra).

10. It is seen from the above Section 67 that limitation for taking cognizance of an offence is one year u/s 67(2) of the Excise Act. Section 468 Cr.P.C. deals with the bar to take cognizance after lapse of period of limitation.

11. The Supreme Court in case *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, held that the general provisions yield to special provisions. The Supreme Court has also opined that this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act. Para 10 of the said judgment is reproduced hereunder:

(10) Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that Clause 5(a) has no application in a case where the special provisions of Clause 23 are applicable.

12. The Supreme Court in case *Official Receiver, Kanpur and Another Vs. Abdul Shakur and Others*, held that Section 114 of the Evidence Act is a general provision which enables the Court to presume, though not obliged to do so, that a bill of exchange or a promissory note was founded on a good consideration. Section 118 of the Negotiable Instruments Act, however, enacts a special rule of evidence which operates between parties to the instrument or persons claiming under them in a suit or proceeding relating to the bill of exchange and does not affect the rule contained in Section 114 of the Evidence Act, in cases not falling within Section 118 of the Negotiable Instruments Act.

13. The Supreme Court in case (1) *Damji Valji Shah and Anr. and (2) Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others*, was

considering the scope of Section 41 of Life Insurance Corporation Act and Section 446 of the Companies Act and held that the Life Insurance Corporation Act being special provisions will prevail upon the provisions of Section 446 of the Companies Act and that the provisions of the special act namely, Life Insurance Corporation Act, will override the provisions of general act namely, Companies Act, which is an Act relating to companies in general.

14. The Supreme Court in case *Jogendra Lal Saha Vs. The State of Bihar and others*, was considering a case of sale of forest produce and held that the recovery of unpaid forest contract money can be made Under Sections 82 and 83 of the Forest Act and there is no need to fall back upon the provisions of the Sale of Goods Act. The court held that if the scheme Under Sections 82 and 83 of the Act are put together and kept in view, it clearly follows that the entire situation has been provided for by special legislation and there is no need to fall back upon the provisions of the sale of Goods Act to deal with the claim for recovery of unpaid forest contract money. The Supreme Court has further observed that when Parliament provides a special statute to cover a given situation, there is an obligation on the State while entering into contracts with citizens in regard to matters so covered, to follow the special procedure and obtain the protection which the law intends to confer in regard to such transactions instead of allowing its activities to run in a different direction.

15. The Supreme Court in case *State of Rajasthan Vs. Gopi Kishan Sen*, was dealing with the case of trained and untrained teachers performing identical duties. A Rule was made making distinction in their pay scales on basis of their educational qualifications. The Court held that it is not discriminatory. While reversing the decision of the Rajasthan High Court, the Supreme Court held that while considering disparity in pay scales in persons employed in same service, the prescription of different pay scales can be made and higher educational qualifications can be considered. The Supreme Court held that special provisions providing for fixed rate of pay to untrained teachers prevail over the general provisions--*Maxim generalibus specialia derogant* applies.

16. The Supreme Court in case *Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another*, held that the matters relating to which the Electricity Act has directed that the same would be determined by arbitration are only referable to arbitration. These matters are contained in Section 13(2), 16(3), 19(2), 21(4) and 22A(2).

17. Article 246 of the Constitution, deals with the subject- matter of laws, made by Parliament and by the State Legislatures of the States. This Article deals with distribution of legislative powers as between the Union and State legislatures, with reference to the different lists in the Seventh Schedule. The list of the Article, in short is that Union Parliament has full and exclusion power to legislate with respect to matters in List-I and has also power to legislate with respect to matter in List-III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List-II, minus falling in Lists-I and III and

has concurrent power in respect to matters, included in List-III. Where a statutory enactment is made, by a competent legislature and such Law does not contravene any provision of the Constitution, it cannot be struck down on the mere ground that it is vague or its provisions are mutually inconsistent. In such a case, the Court has to interpret it, on the application of relevant canons of interpretation. It is in view of this expression that the doctrine of pith and substance has been applied in the interpretation of legislative powers of the Legislatures, under the Constitution.

18. In the case of *Modern Syntax (I) Ltd. Vs. Debts Recovery Tribunal Jaipur and Others*, it was held as under:

The repugnancy referred to Under Article 254 of the Constitution is of a specific kind, i.e. a repugnancy between the Union and State Law must have reference only to the Concurrent Lists. As observed in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, by the Supreme Court there can be no question of repugnancy Under Article of the Constitution of India, where the Parliament and the State Legislatures occupy different fields or deal with different matters and where there is no direct inconsistency in actual terms of such Acts.

19. In the above case of *Modern Syntax (I) Ltd.*, it was further held as under:

So far as the provisions of Recovery of Debts to Banks and Financial Institutions Act, 1993 and Rajasthan Relief Undertakings Act are concerned, both the legislations are valid laws made by different legislatures exercising power under different lists. The RDP Act and RRU Act deal with different subjects. The fields occupied by the two statutes in their pith and substance are separate and there is no direct inconsistency between RDB Act and RRU Act. The Central legislation occupies the field of Banking under List-I and provides for the incidental issue of adjudication of banking disputes, while the State Legislation occupies the field of social security and providing unemployment relief falling under the Concurrent List. Between two validly passed enactments pertaining to the same list, conflict is permissible, if there is no direct inconsistency between the two. Then, a duty casts on the Courts to harmoniously construe the two provisions. Thus, the principle of harmonious interpretation has been evolved. Further since List-I and List-II relate to exclusive domain of the Centre and the State respectively, no inconsistency between the two can arise. Repugnancy can arise only in respect of laws and Concurrent List, List-III. Thus, once a relief undertaking notification is issued, the State is competent to suspend legal proceedings of all kinds, including the proceedings, instituted under the Central Legislation such as recovery of debts under Central Act.

20. The Division Bench in the judgment given in *D.B. Civil Writ Petition No. 3267/2000 (Sawai Madhopur oil and Pulse Industries v. State of Rajasthan and Ors.)* and bunch of cases, held as under:

The law is well settled that power to legislate on a particular topic includes the

power to legislate on subjects, which are ancillary or incidental thereto or necessary for the purposes of giving full effect to the power, conferred by the entry in the Constitution. For interpretation of validity of impugned provision with respect to a given power, the pith and substance of the provision is required to be considered. If the statute relates in pith and substance to a topic assigned to a particular legislature, the provision would not be invalidated even if it incidentally trenches on topics coming within another legislative list. Incidental encroachment does not affect the vires of the law even in regard to the area of encroachment. The provisions inserted by Amendment Act are precisely within the integral scheme of the Excise Act and the intended to achieve more effectively the purpose of the principal Act. The argument, advanced by the learned Counsel for the petitioners, in our view, is fundamentally baseless, as is apparent from the law, declared and explained by the Supreme Court, in the judgments, referred to above.

21. It is useful in this context to refer to Section 5 Cr.P.C. which deals with saving clause and runs as follows:

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

22. The above section enacts that nothing contained in the Code shall, in the absence of a special provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The anatomy of this section is simple, yet subtle. Broadly speaking, there are three components to be separated. Firstly, the Code generally governs matters covered by it. Secondly, if a special or local law exists, covering the same area, this latter law will be saved and will prevail. The short- sentencing measures and remission schemes promulgated by the various States are special and local laws and must override. Now comes the third component, which may be clinching. If there is a specific provision to the contrary in the Cr.P.C., then it will override the special or local law. Reading Section 4 and 5 together, the conclusion is irresistible that if there exists any special law or if any special jurisdiction or power is conferred upon the court or if any form of procedure is prescribed in the special law then the provisions of the special law would override the provisions of the general law of procedure. This section, in our view, vehemently provides that nothing contained in the Cr.P.C., in the absence of specific provision to the contrary affect any special or local law for the time being in force.

23. Section 4 of the Code of Civil Procedure, reads as follows:

Section 4 Savings,--(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or

local now in force of any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in Sub-Section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a land holder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

24. The meaning of the saving clause is that if anything in the Code is in conflict with anything in a special or local law, the Code shall not prevail to override the inconsistent provisions.

25. Section 9 of the CPC deals with the Courts to try all civil suits unless barred. The said section is reproduced hereunder:

Section 9. Courts to try all civil suits unless barred,--The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation-I--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation-II--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation-I or whether or not such office is attached to a particular place.

Section 9 gives jurisdiction to try all suits of a civil nature excepting those which are expressly or impliedly barred by any other law. The jurisdiction of the civil court is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. This is the purpose of Section 9. As a corollary, it follows that a court cannot entertain a suit which is not of a civil nature. If a court has no jurisdiction to try the case, it goes to the very root of jurisdiction and it is a case of inherent lack of jurisdiction. Consent or failure to object cannot give jurisdiction where there is inherent want of jurisdiction.

26. Section 41 of the Indian Penal Code deals with special law. The special law is defined as a law applicable to a particular subject. In other words, the word "special law" refer to a law which is not applicable generally but which only applies to a particular or specified subject or class of subjects. The Rajasthan Municipalities Act (1959) is a special law, as well as local law within the definition of Sections 41 and 42, Penal Code and as such the application of Section 64, IPC, cannot ordinarily be ruled out to the offences under the Rajasthan Municipalities Act, but in view of the special provision in Section 265(2) of that Act which provides a special mode for the recovery of fine imposed under the Act, Section 64 IPC, which deals with the power of the Criminal Court, for awarding sentence of imprisonment in lieu of the fine, cannot apply to the cases where fine is

imposed under the Rajasthan Municipalities Act (1959).

27. Section 42 of the Indian Penal Code deals with local law as a law, applicable only to a particular part of India. As already noticed the Rajasthan Municipalities Act (1959) is a special law as well as a local law, within the definitions of Sections 41 and 42 of the Penal Code.

28. In case, *Vinayak Gururao Inamdar and Ors. v. Bhaskar Vasudeo Shirsat and Ors.* reported in 1993 Cri. L.J. 3594, a Division Bench of the Bombay High Court held that a Magistrate cannot in exercise of jurisdiction under the provisions of Cr.P.C., release property seized by the Customs Officers, under the Customs Act and also that Section 451 Cr.P.C. would also not apply since the property was not produced before Court, during any "inquiry or trial" as envisaged under that provision. An order directing delivery of property by a Magistrate, when no criminal proceeding is pending before him, is plainly illegal.

29. We shall now consider certain provisions of the Essential Commodities Act, 1955. In this context, Section 6A deals with confiscation of food-grains, edible oil-seeds and edible oils. Section 6-B deals with issue of show cause notice before confiscation of food grains etc. Section 6-E deals with bar of jurisdiction in certain cases. Section 6-E has been substituted to provide that except Collector or State Government, all other authorities, judicial or otherwise, would be debarred from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity, seized in pursuance of an order made u/s 3. Thus, a Magistrate will have no jurisdiction to grant relief against seizure u/s 457 Cr.P.C. Section 6A makes necessary provision for confiscation of essential commodities seized in pursuance of an order made u/s 3 in relation thereto the Collector of the district of the Presidency-Town in which such commodity is seized, may order confiscation, if he is satisfied that there has been a contravention of such an order. But, no order of confiscation shall be made under this Section, if the seized essential commodity has been produced by the producer, without prejudice to any action, which may be taken under any other provisions of this Act. Section 6-B of the Act provides the procedure to be adopted by the Collector, before passing order for confiscation, which enacts that after issuing of notice, an opportunity has to be given to the aggrieved party, for contesting the same. The Collector, after giving him a hearing has to decide the objection and pass an order either confiscating the property or refusing to confiscate the property.

30. In case *Shambhu Dayal Agarwala Vs. State of West Bengal and Another*, the Supreme Court held that whenever any essential commodity is seized, pending confiscation u/s 6-A, the Collector has no power to order release of the commodity in favour of the owner. Having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard, the Supreme Court held that the word "release" in Section 6-E is used in the limited sense of release for sale etc., so that the same becomes available to the consumer public.

31. For the foregoing reasons, we are of the opinion that the provisions of special law, namely Rajasthan Excise Act, prescribing the period of limitation will prevail and it excludes the provisions of general law, namely Section 468 of Code of Criminal Procedure. Therefore, in our opinion, Section 468 Cr.P.C. being of general law, the prosecution cannot take benefit of general provisions. We have already noticed that even at the time of presentation of the challan papers, limitation has expired, therefore, the Court was not authorised to take any cognizance or to accept the papers. The cognizance taken in this case is thus, clearly beyond the period of limitation, therefore, the revisional court cannot direct and should not have directed the trial Magistrate to take cognizance as has been done by the revisional court.

32. The question of law referred above is answered accordingly.

33. In the result, this criminal revision is allowed. Impugned order is set aside.