

(2001) 02 DEL CK 0143

In the Delhi High Court

Case No : Criminal Rev. No. 428 of 2000

Jindal Photo Films Limited

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29, 482, 511
Negotiable Instruments Act, 1881 (NI) — Section 130, 138, 142

Citation : (2001) CriLJ 2790 : (2001) 3 RCR(Criminal) 271

Hon'ble Judges : Dr. Arijit Pasayat, C.J.;D.K. Jain, J

Bench : Division Bench

Advocate : Ajay Jain and Jitendra Jain, for the Appellant; R.D. Jolly, amicus curiae, for the Respondent

Final Decision : Disposed Off

Judgement

Arijit Pasayat, C.J.—Doubting correctness of the view expressed by learned Single Judge in two decision in *Surender Sethi Vs. State*, and *Dutt Enterprises Ltd. Vs. State*, , reference has been made by another learned Single Judge to the Division Bench. Dispute relates to the desirability to stipulating time limit for recording preliminary evidence in a case involving Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act"). Hon"ble referring Judge felt that stipulation of time limit for recording of preliminary evidence as was directed in those two cases, is clearly beyond the legislative prescription. The observations in the aforesaid two cases, which the Hon"ble referring Judge felt not to be in order, are as follows : In *Surrender Sethi's* case (supra) reference was made to *Dutt Enterprises* case (supra) and it was inter alia held as follows:

"It is contended by learned Counsel for the petitioner that by an order passed on 16th August, 1996 this Court in *Dutt Enterprises Limited v. State* (supra), had given directions to the Metropolitan Magistrate to ensure that in cases u/s 138 of the Negotiable Instruments Act, preliminary evidence should be recorded by them as early as possible on receipt of a complaint under the Act but in no case

recording of such evidence shall be deferred beyond a period of two months from the date of receipt of the complaint by them".

In Dutt Enterprises case (supra) it was observed as follows:

"With a view to avoid giving long adjournments only for recording of preliminary evidence in cases which fall u/s 138 of the Negotiable Instruments Act and with a view to dispose of these complaints without undue delay, the Metropolitan Magistrates must ensure that the preliminary evidence is recorded by them as early as possible on receipt of a complaint u/s 138 of the Negotiable Instruments Act but in no case recording of such evidence will be deferred beyond a period of two months from the date of receipt of the complaint by them".

2. We have heard learned Counsel for petitioner and Mr. R.D. Jolly, who acted amices Curiae. Both of them submitted that the Act was introduced when it was felt expedient to define and amend the law relating to promissory note, bills of exchange and cheques. That being the position it was submitted that an early disposal of the dispute would be healthy for the commercial world. But the moot question is whether any time limit could be fixed as directed by learned Single Judge.

3. The Act was enacted and Section 130 thereof incorporated with a view and specific object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. As was observed by the Apex Court in M/s. Dalmia Cement (Bharat) Ltd. Vs. M/s. Galaxy Traders and Agencies Ltd., the law relating to negotiable instrument is the law of commercial world legislated to facilitate the activities in the trade and commerce making provision of giving sanctity to the instruments of credit which would be deemed to be convertible into money and easily passable from one person to another. To achieve the objectives of the Act, the Legislature in its wisdom has thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in case of the obligations under the instruments are not discharged. The laws relating to the Act are, Therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are required to be discouraged lest it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country. Above being the object of the enactment, as rightly contended by learned Counsel appearing in the case, an early disposal of the dispute would be appropriate. But fixing a time limit as done in the two cases may present practical difficulties and hurdles. Therefore, in the absence of any statutory prescription about the time limit, the Court cannot suo motu prescribe a time limit. Nevertheless, while dealing with such disputes the concerned Judicial Officers have to keep in view the legislative intent and take all possible steps to ensure expeditious disposal of the cases.

4. We may point out here that in *Pankajbhai Nagjibhai Patel Vs. The State of Gujarat and Another*, the Apex Court considered the effect of the non-obstante clause in Section 142 of the Act and held that the aforesaid non-obstante expression is intended to operate only in respect of three aspects, and nothing more. First is this : under the Code of Criminal Procedure, 1973 (in short the "Code"). Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But Section 142 of the Act says that insofar as the offence u/s 138 is concerned, no Court shall take cognizance except upon a complaint made by the payee or the holder in due course of the cheque. The second is that under the Code a complaint could be made at any time subject to the provisions of Chapter xxxvI. But so far as the offence u/s 138 of the Act is concerned such complaint shall be made within one month of the cause of action. The third is that under Article 511 of the First Schedule of the Code if the offence is punishable with imprisonment for less than three years or with fine only under any enactment other than Indian Penal Code, 1860 (in short "IPC"), such offence can be tried by an Magistrate. Normally Section 138 of the Act which is punishable with a maximum sentence of imprisonment for one year would have fallen within the scope of the said Article. But Section 142 of the Act says that for the offence u/s 138, no Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of First Class shall try the said offence.

5. On a consideration of the provisions it is clear that the non-obstante limb provided in Section 142 of the Act is not intended to expand the power of a Magistrate of First Class beyond what is fixed in Chapter III of the Code. Section 29 which falls within Chapter III of the Code lays down the powers of magistrate First Class in the matter of imposing of sentence as noticed above i.e. if the sentence is of imprisonment it shall not exceed three years and if, as a part of sentence, fine is imposed, it shall not exceed five thousand rupees.

6. Learned Counsel appearing for the parties brought to our notice a decision of this Court in *United Ink and Varnish Co. Ltd. Vs. State of Ors.*, where after noticing objects of the enactment, the learned Judge had directed, in paragraph 30(f), as follows:

"Looking to the fact that a larger number of complaints are pending in Delhi Courts, particularly in Patiala House Courts and Tis Hazari Courts, it has become imperative to direct the concerned District and Sessions Judge and the Judge in charge, Patiala House to assign the work pertaining to Sections 138 to 142, Negotiable Instruments Act exclusively to the six judicial officers in Patiala House Courts and four officers in Tis Hazari Courts at least for a period of two years. This arrangement worked out within four weeks. Ordinarily, this Court would have assigned exclusive work to the larger number of officers particularly in Patiala House Courts but looking to the available number of officers and infrastructure, it would be difficult to assign the work of these complaints to a

larger number of officers for the time being to exclusively handle the complaints. Since the number of complaints pending in Karkardooma Courts are only 2169, no specific directions are required."

7. So far as the applicability of the direction is concerned the scope for such a direction while dealing with a petition u/s 482 of the Code is clearly non-resistant. We have reservations about the permissibility of such a direction. But we need not go into that aspect in the present dispute. The working out of the direction has to be considered at the appropriate level.

8. In ultimate, we are of the view that fixing a time limit for recording preliminary evidence is impermissible. But Courts dealing with the matter have to keep in view the objective behind enactment of the Act, and desirability of early disposal, take necessary steps in that regard. At this juncture it is apposite to quote the apt observation of Lord Templeman in *Mungroo v. R.*, (1992) LRC (Const.) 591 : (1991) 1 WIR 1351 :

"Problems which are considered to be complex in one administration may be dealt with more expeditiously and with greater certainty and understanding in another. At the same time the constitutional rights of the individual must not be placed at the mercy of insufficiency. The expressed constitutional right contained in Section 10 to a hearing of a criminal case within a reasonable time injects the need for urgency and efficiency into the prosecution of offenders and demands the provision of adequate resources for administration of justice. But, in determining whether the constitutional rights of an individual have been infringed, the Courts must have regard to the constraints imposed by harsh economic reality and local conditions."

Justice cannot be made to move at snail's pace for reasons unconnected with the process of dispensation of justice.

The matter shall be now placed before the learned Single Judge for disposal on merits on 12th March, 2001.

9. Matter placed before Single Judge for disposal.