

(2012) 12 DEL CK 0162

In the Delhi High Court

Case No : Writ Petition (C) No. 7724 of 2012

J.P. Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2013) 4 AD 868 : (2013) 196 DLT 738

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : A.N. Tiwari, for the Appellant; Neeraj Chauhan and Mr. Ravjyot Singh for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition seeks a declaration that Sections 138 and 142 of the Negotiable Instruments Act, 1881 (NIA) are

ultra vires the Constitution of India. The petitioner claims to be an exporter of readymade garments who had purchased material therefor viz. cloth,

thread, buttons etc. on credit ranging from 60 to 90 days and had issued cheques with the understanding that the same will be presented as and

when export sale proceeds are received. It is further the case of the petitioner, that owing to a fire in his factory premises, the finished goods and

material of the value of over Rs. 2/- crores were destroyed; that the insurers of the said goods have failed to compensate the said loss and which

has led the petitioner to file a complaint before the Consumer Fora; that owing to his business having come to a standstill, his bankers also declared

his account as an Non-Performing Asset (NPA) and have initiated proceedings before the Debt Recovery Tribunal against him; on the other hand

suppliers aforesaid of material, to whom undated cheques aforesaid had been given by the petitioner, filled up the dates thereon and presented the cheques for payment and which were dishonoured; that now several complaints of offence u/s 138 supra have been filed against him.

2. The petitioner contends that though Section 138 supra was enacted to punish unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so, the provisions thereof are being used against an honest person like the petitioner who owing to the circumstances beyond his control is unable to pay. The counsel for the petitioner has argued that the suppliers of material refuse to deliver goods on credit without such undated cheques by way of security being given; that though the petitioner at the time of issuance of the said cheques intended the same to be honoured, as had been happening in the past, but was unable to do so owing to the unforeseen fire in his factory.

3. On the basis of the aforesaid facts, the challenge to the vires of the aforesaid legislative provisions is made on the ground that the same do not take into consideration situations as aforesaid when the drawer of the cheque due to circumstances beyond his control is unable to have the cheques honoured. It is contended that Sections 138 and 142 of the NIA do not at all make it obligatory on the part of the competent Courts of law to look into the circumstances of the drawer of the cheque and entail punishment, the moment the cheque is dishonoured, irrespective of the honesty of the drawer thereof. It is further argued that it ought to be incumbent on the Magistrate to ascertain as to why and under what circumstances the cheque is dishonoured and the provisions making dishonor of the cheque an offence irrespective of the reasons thereof is bad in law.

4. We are afraid, the grounds aforesaid do not constitute grounds for declaring a legislative provision as bad. The Supreme Court in *Goa Glass Fibre Ltd. Vs. State of Goa and Another*, has held that a statute can be invalidated or held unconstitutional on limited grounds viz. on the ground of incompetence of the Legislature which enacts it or on the ground that it breaches or violates any of the fundamental rights or other constitutional rights and on no other grounds. No challenge to Sections 138 and 142 supra is made on either of the two permissible grounds. Further, as held in

M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., , Sushil Kumar Sharma Vs. Union of India (UOI) and Others, and Nagar

Palika Nigam Vs. Krishi Upaj Mandi Samiti and Others, , if a provision of law is misused and subjected to abuse of process of law, it is for the

legislature to amend, modify or repeal it, if deemed necessary and the legislative casus omissus cannot be supplied by judicial interpretative process

or justify invalidation or declaration of such law as ultra vires or unconstitutional. Such abuse if any makes the "action" and not the "section"

vulnerable.

5. We are therefore not returning any finding on the petitioner's interpretation of the aforesaid legislative provisions though we find certain

observations in Pankaj Mehra and Another Vs. State of Maharashtra and Others, to the effect that the legislature, in Section 138 having used the

words ""the drawer of such cheque fails to make the payment"" as distinct from ""the drawer refuses to make payment"", no such explanation would

be sufficient to extricate the drawer of the cheque from the tentacles of the offence contemplated in the Section.

6. We may also notice that a challenge to constitutionality of Chapter XVII of the NIA, including Sections 138 and 142, on similar grounds as

raised in this petition has already been dismissed by the Division Bench of this Court in Rajinder Steels Ltd. and Others Vs. Union of India and

Another, . We are thus unable to find even a prima facie case for a challenge to the legal provision being made out.

There is no merit in the petition. The same is dismissed.

No costs.