
(2007) 05 OHC CK 0028

In the Orissa High Court

Managing Director, Woodburn Developers and Builders Pvt.
Ltd.

APPELLANT

Vs

Smt. Debamaya Panigrahi

RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 417, 468, 469

Limitation Act, 1963 — Section 5

Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 42

Citation : (2007) CLT 668 (Suppl CrI) : (2007) CriLJ 3699 : (2007) 1 OLR 792
Supp

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This is a petition challenging the judgment passed by learned 1st Additional District and Sessions Judge, Cuttack in Criminal Appeal No. 49 of 2003 confirming the judgment of learned S.D.J.M. (Sadar), Cuttack in I.C.C. No. 304 of 2001 (Trial No. 7167 of 2001) wherein the petitioner was sentenced to pay a fine of Rs. 3000/- in default to undergo S.I. for a period of three months and further to pay a sum of Rs. 15,000/- to the opposite party-complainant for the loss of the cheque amount and other ancillary expenses as a measure of compensation provided u/s 357(3) of the C.P.C.

2. A cheque bearing No. 578559 for Rs. 12,880/- issued by the petitioner in favour of the opposite party was dishonoured by the bank on the ground that the petitioner instructed not to honour the cheque. After the cheque bounced, the opposite party sent a notice by registered post to the petitioner asking him to make payment within the statutory period of 15 days. When the petitioner failed to pay the cheque amount within the stipulated time, the opposite party lodged the complaint case. Basing on the complaint learned S.D.J.M. took cognizance of the offence u/s 138 of the Negotiable Instruments Act (in short, the "N.I. Act") and conducted the trial. The opposite party examined two witnesses including

herself as P.W. 1. The petitioner examined himself only in support of his defence. After considering the evidence of the parties learned S.D.J.M., held the petitioner guilty for the offence alleged and awarded the sentence noted above. The petitioner carried the appeal noted above but the said appeal having been dismissed, he has filed the present revision.

3. Mr. N. C. Mohanty, learned Counsel for the petitioner challenged the legality of the impugned order solely on the ground that the complaint was barred by limitation. According to him, Section 142 of the Act as it stood before the amendment never contemplated any provision empowering the Magistrate to condone the delay and take cognizance of complaint filed beyond the period of 30 days from the date of cause of action i.e. on completion of 15 days from the date of receipt of the notice by the drawer of the cheque. He contended that when the L.A. Act which is a special statute clearly prohibits the Magistrate from taking cognizance of an offence filed beyond the statutory period of 30 days, the provision of the Limitation Act or Criminal Procedure Code will not come to the aid of the complainant or the Court in condoning the delay. In support of his stand Mr. Mohanty cited the cases in Collector of Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd., ; Kaushalya Rani Vs. Gopal Singh, ; State of Punjab v. Sarwari Singh 1981 SCC (Cri) 625; Dharanidhara Patra v. State 1994 (2) OLR 139; M/s. Sil Import, USA Vs. M/s. Exim Aides Silk Exporters, Bangalore, and Sadanandan Bhadrans Vs. Madhavan Sunil Kumar, .

4. Mr. P. K. Patnaik, learned Counsel for the opposite party contended per contra that even if no specific provision was there in the pre-amended N.I. Act regarding condonation of delay, the provision of Section 142 of the N.I. Act could be expanded in terms of the spirit and intent of the Act, which is basically for the purpose of punishing persons issuing fake or invalid cheques. He submits that in appropriate cases, delay in filing the complaint involving offence u/s 138 of the N.I. Act can be condoned by adopting the provision of the Limitation Act, so that a person with evil intent shall not get away with the aid of technicalities of law. He indicated that releasing the omission in the Act the law maker also brought amendment of Section 142 of the Act to enable the Court, in appropriate circumstances to condone the delay in presentation of the complaint u/s 138 of the N.I. Act. In support of his stand Mr. Patnaik cited the following cases:

- (i) K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, .
- (ii) (1993) 6 OCR 242, Janardhan Mohapatra v. Saroj Kumar Choudhary.
- (iii) (2001) 91 CLT 153, Satish Kumar Goenka v. S.R. K. Mohan.

5. In view of the above noted submissions of learned Counsel for the parties, the only point for consideration is whether the period of limitation prescribed u/s 142(b) of the Act could be extended by the Court in cases instituted before the amendment of Section 142 of the Act. In this regard, first of all it is necessary to recount the provision of Section 142 of the N.I. Act as it stood before the amendment.

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;

(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.

The section, therefore, clearly says that irrespective of the provisions of Cr. P.C. no Court shall take cognizance of an offence punishable u/s 138 of the Act unless such complaint in writing is made within one month of the date on which the cause of action arises under Clause (c) to the proviso of Section 138 which reads as follows:

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

xx xx xx xx xx

Provided that nothing contained in this section shall apply unless-

xx xx xx xx xx

(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.

Thus, a cumulative reading of the provisions of Section 142(b) and Clause (c) of the proviso to Section 138 would show that the payee or the holder of the cheque as the case may be, must issue a notice to the drawer of such cheque within 15 days of the receipt of the information by him from the bank regarding return of the cheque as unpaid, demanding payment of the amount of the money noted on the cheque. If the drawer of the cheque fails to make payment of the said amount within 15 days from the date of receipt of the notice then a complaint can be filed for the offence u/s 138 of the Act within a period of one month from the date of service of the notice on the drawer of such cheque. Neither in Section 138 nor in Section 142 there was any specific provision for extension of this period of one month or for condonation of delay in presentation of the complaint petition. According to learned Counsel for the petitioner, the absence of any specific provision in the special statute itself suggests that the period of limitation for filing the complaint could not be extended with the aid of the provisions of the Limitation Act or Cr. P.C. Learned Counsel for opp. party, on the other hand, maintains that provision of a benevolent law has to be liberally interpreted so as to give effect to the object and legislative intent of such enactment. According to him, Negotiable Instrument (Amendment) Act, 1988 were inserted in the Act for the purpose of enhancing acceptability of the

cheques in settlement of dues and liabilities by making the drawer alive to penalties in case of dishonoring or bouncing of cheque while simultaneously providing safe guard to honest drawers and so for giving effect to such object and legislative intent, it would be legal and prudent to allow the general provisions of the Limitation Act to fill up the void so that a trickster or dishonest drawer would not escape liability with the help of the technicalities of law. To decide the controversy raised by the learned Counsel for the parties, it would be helpful to examine the case laws cited.

6. In the case of Collector, Central Excise, Ahmedabad (supra) question for consideration was whether it is permissible for the authorities under the Central Excise Act to resort to penalty proceedings or forfeiture of goods for non-payment of additional duty in terms of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 by taking recourse to the provisions of the Central Excise Act and Rules framed hereunder. The apex Court said that an expropriatory legislation must be strictly construed and a penal statute must receive strict construction and consequently held that confiscation proceedings and the penalty imposed by the authority under the Central Excise Act and Rules was without the authority of law. In the case of Kaushalya Rani v. Gopal Singh AIR 2004 SC 956 (supra) while considering the applicability of Section 5 of the Limitation Act to an application for leave to appeal against acquittal by private complainant, the Court observed that in view of the specific provision in Section 417, Cr. P.C. that an appeal should be made within 60 days from the date of order of acquittal and this provision being in the nature of special law, the general provisions of Section 5 of the Limitation Act would not apply. In the case of State of Punjab v. Sarwan Singh (supra) interpreting the provisions of Section 468 (2)(c) and 469(1)(b) of the Cr. P.C. the apex Court observed that the object of putting bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as result of which material evidence may disappear and also to prevent the abuse of the process of the Court by filing vexatious and belated prosecution and therefore, it is of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. In the case of Dharanidhara Patra v. State (supra) this Court explained the meaning of "law in force" as that law which was in existence when the offence was committed. It was also said that no statute will have retrospective effect unless it is specifically provided that it would be retrospective. Petitioner relied on these decisions to indicate that whenever any specific period of limitation is prescribed in a special statute, the said provision has to be strictly construed and the period of limitation would not be extended with the help of general provisions of the Limitation Act or Cr. P.C. The other purpose is to emphasize that an Act would not be retrospective unless it is specifically provided that it would be retrospective thereby meaning that when the N. I. Act does not specifically say that the amendment to Section 142 would be retrospective, the amended provision would simply be prospective. None of these decisions directly

answer the question involved in the present case as in none of these decisions the issue of extension of the period of limitation containing Sec. 142 of the Act was discussed.

7. In the case of *M/s. Sil Import, USA Vs. M/s. Exim Aides Silk Exporters, Bangalore*, the real point in controversy was when did the cause of action arise. While analyzing the issue, the Court observed that in view of the clear interdict noted in Section 142 of the Act, no Court shall take cognizance of an offence unless a complaint is made within one month of the date of which the cause of action arises as a different interpretation would negate the interdict incorporated in Section 142. In that case also the Court did not analyze whether the delay can be condoned with the aid of general provisions of Limitation Act. In the case of *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, the apex Court made the following observations:

If a strict interpretation is given that the drawer should have actually received the notice of the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the Court should not adopt an interpretation, which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

In the case of *Kanwar Singh v. Delhi Administration* (1995) 1 SCR 7 the apex Court observed as follows:

It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If therefore giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of a legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning or even the popular meaning of word and instead giving a meaning which will advance the remedy and suppress the mischief.

The same principle was reiterated in the case of *NEPC Micon Limited and Others Vs. Magma Leasing Limited*. These observations of the apex Court clarified that the provisions of law are to be interpreted in such a manner so as to further the object and legislative intent behind the incorporation of the Act. It further clarified that the words of law should be interpreted in a manner so as to discourage mischief and encourage honest acts. Keeping this principle in mind, it has been said by the apex Court as well as this Court on various occasions that the provisions of Section 138 of the Act invites liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislation.

8. Section 142(b) of the Act before the amendment simply said that a Magistrate would not take cognizance of an offence unless a complaint in writing is filed within 30 days from the date of cause of action. Although it is a provision under

a special statute, yet considering the legislative intent it would not be illegal to condone the delay by use of Section 5 of the Limitation Act, if sufficient cause is shown for the delay. As otherwise the purpose and legislative intent behind the Act would be defeated leading to total injustice. For example, the holder of the bounced cheque after serving the statutory notice on the drawer demanding payment of the cheque amount may become critically ill or may meet with accident or become a victim of natural calamity or is kidnapped or suffers bereavement in the family or may be required to go abroad to attend an urgent business, which may make him unable to present the complaint petition within the statutory period of one month. If in such event the complaint petition is thrown out on the ground of limitation then a trickster cheque drawer would get premium and mischief will be encouraged. So, to discourage unscrupulous cheque drawers and protect honest payee delay should be condoned by use of general provision of law if sufficient cause is shown for the delay. The logic behind this protection is that substantial justice is not to be sacrificed for upholding the technicalities of procedural law. This view finds support from the judgment of this Court in the case of Janardhan Mohapatra Vs. Saroj Kumar Choudhury, as well as the case of Smt. Satya Vs. Shri Teja Singh, . In view of the above noted principles the observation of the learned Appellate Court that in appropriate cases delay in presentation of the complaint petition could be condoned by use of general principle of Limitation Act, cannot be said to be illegal.

9. The next point of controversy is whether the complaint was filed within 30 days from the date of cause of action. According to the petitioner, he received the notice on 14-9-2001, but the complaint was filed on 6-11-2001 which was beyond the period of one month from the date of cause of action. As against this, the claim of the opp. party is that she issued the notice through her lawyer by Regd. Post with A. D., but did not receive the A. D. Card or the unserved postal packet for which reason she waited for 30 days to avail the presumption of due service and thereafter she filed the complaint within one month from the completion of the above noted 30 days. In view of this rival contentions, the legal controversy was whether the cause of action arose on 14-9-2001, the date mentioned in Ext. D or from the date on which 30 days from the date of issue of registered notice was over. Law is settled that giving of the notice is not relevant, but receipt of the same by the drawer and then his failure to make payment within 15 days thereafter gives rise to cause of action to file the complaint within the statutory period. If the acknowledgment of the registered notice is received back then as per the date of receipt on acknowledgment the cause of action would begin. Similarly, if the notice is returned unserved by refusal then from the date of refusal the cause of action would start. But if no acknowledgment or unserved letter is received, then the person giving notice has to wait for a reasonable period to take the benefit of deemed service. That is because the provision of the N. I. Act has to be interpreted liberally in favour of the person giving the notice as he being a bona fide payee is to ultimately lose his right to

recover the amount if rigid and impracticable interpretation is given. It is worthwhile to note that initially the petitioner denied issue of any notice regarding bouncing of cheque, but later on relied on Ext. D to show that notice was served on him on 14-9-2001. It is also to be noted that the petitioner had from the beginning instructed the; Bank to stop payment to the opp. party, which exposed his anxiety to defeat the encashment. In such situation, a liberal interpretation would be that when no acknowledgment or unserved registered notice was received by the opp. party, the cause of action started on completion of 30 days from the date of issue of the notice. Once this interpretation is made, there was no delay in presentation of the complaint petition. Learned trial Court, therefore, rightly rejected the plea of the petitioner and held that the complaint was not barred by limitation.

10. The impugned order is in no way illegal, arbitrary or perverse and therefore, the same does not call for any interference. Consequently, the revision is dismissed.