
(2003) 04 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No's. 43 to 46 of 2003 and 534, 535, 536, 538 of 2002

Prithviraj Ambalal Patel

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 143(2)

Citation : (2003) 2 ALD(Cri) 9 : (2003) 3 BC 613 : (2003) BomCR(Cri) 1713

Hon'ble Judges : B.B. Vaganyi, J;A.S. Bagga, J

Bench : Division Bench

Advocate : P.F. Patni, for the Appellant; K.G. Patil, APP and P.M. Shah, for the Respondent

Judgement

B.B. Vaganyi, J.—Rule returnable forthwith. With consent of parties, taken up for final hearing forthwith.

2. In all the criminal writ petitions, common question is raised and, therefore, all these criminal writ petitions are disposed of by common order.

3. The petitioner in Criminal Writ Petition No. 43/2003 has filed a private criminal complaint (RCC No. 409 of 1989) on 1.9.1989 for offence punishable u/s 138 of the Negotiable Instruments Act. Now this case is renumbered as SCC No. 975 of 1996, which is pending before the Chief Judicial Magistrate, Aurangabad and practically ripe for recording oral evidence.

4. The petitioner in Criminal Writ Petition No. 44 of 2003 has filed a private criminal complaint (RCC No. 12 of 1990) on 3.1.1990 for offence punishable u/s 138 of the Negotiable Instruments Act. Now this case is renumbered as SCC No. 1976 of 1996, which is pending before the Chief Judicial Magistrate, Aurangabad and practically ripe for hearing.

5. The petitioner in Criminal Writ Petition No. 45 of 2003 has filed a private criminal complaint (RCC No. 5 of 1990) on 1.12.1989 for offence punishable u/s

138 of the Negotiable Instruments Act. Now this case is renumbered as SCC No. 8014 of 1996, which is pending before the Chief Judicial Magistrate, Aurangabad and practically ripe for hearing.

6. The petitioner in Criminal Writ Petition No. 46 of 2003 has filed a private criminal complaint (RCC No. 435 of 1989) on 29.10.1989 for offence punishable u/s 138 of the Negotiable Instruments Act. Now this case is renumbered as SCC No. 80155 of 1996, which is pending before the Chief Judicial Magistrate, Aurangabad and practically ripe for hearing.

7. The petitioner in Criminal Writ Petition No. 534 of 2003 has filed a private criminal complaint (SCC No. 100 of 1999) on 16.2.1999 for offence punishable u/s 138 of the Negotiable Instruments Act. The same is pending before the Chief Judicial Magistrate, Aurangabad and practically ripe for hearing.

8. The petitioner in Criminal Writ Petition No. 535 of 2002 has filed a private criminal complaint (SCC No. 8010 of 1999) on 15.2.1999 for offence punishable u/s 138 of the Negotiable Instruments Act and the same is pending before the Chief Judicial Magistrate, Aurangabad. The case is ready for evidence.

9. The petitioner in Criminal Writ Petition No. 536 of 2002 has filed a private criminal complaint (SCC No. 3365 of 1998) on 25.11.1998 for offence punishable u/s 138 of the Negotiable Instruments Act and the same is pending before the Chief Judicial Magistrate, Aurangabad and the case is ready for hearing.

10. The petitioner in Criminal Writ Petition No. 538 of 2002 has filed a private criminal complaint. (SCC No. 3364 of 1998) on 24.11.1998 for offence punishable u/s 138 of the Negotiable Instruments Act and the same is pending before the Chief Judicial Magistrate, Aurangabad. The case is ripe for hearing.

11. In response to our notice, the learned APP Mr. K.G. Patil for the State and the learned Senior Counsel Mr. P.M. Shah for the Registrar, High Court of Judicature of Bombay appeared in the matter. No affidavit in reply is filed on behalf of the respondents. However, they made oral submissions. The learned Counsel Mr. P.P. Patni and Mr. A.S. Bajaj for the petitioners have made a serious grievance with regard to large number of cases filed under 138 of the Negotiable Instruments Act being kept unattended without there being any valid reason. By making special reference to some of the cases, they brought to our notice that some of the cases are pending since 1989. On the background of recent amendment, they submit that necessary direction is required to be issued to both the respondent. Because of dearth of hands, it is not possible to reduce the arrears of cases and to give effect to the recent amendment. Therefore, according to them, direction to the State is required to be given to appoint sufficient number of Judges and to provide requisite funds and infrastructure. Similarly, a direction is also required to be given to the Registrar, High Court to do what is necessary to achieve the mandate of law.

12. We do not think that the grievance of learned Counsel Mr. Bajaj and Mr. Patni

is in founded. They have brought to our notice the pangs of litigants whose matters are kept pending since long. In order to verify correctness of the grievance, we asked the Additional Registrar (Judicial) of this Bench to collect the figures of pending cases from all the districts in the State. In response to the direction, the Additional Registrar (Judicial) collected necessary information from all the districts in the State and submitted a consolidated statement showing the exact figure of the cases filed under 138 of the Negotiable Instruments Act. Similarly, the information regarding vacancies of Civil Judges (Junior Division), Judicial Magistrates (First Class) and Metropolitan Magistrates in the State of Maharashtra is called and also placed on record.

Statement showing pendency of cases filed under 138 of the Negotiable Instruments Act in the State of Maharashtra.

Sr. No. District Cases Pending

1. Ahmednagar 11.890
2. Akola 4,505
3. Amravati 3.224
4. Aurangabad 2,380
5. Bhandara 439
6. Beed 1,281
7. Buldana 1,542
8. Chandrapur 818
9. Dhule 4,654
10. Jalgaon 4,792
11. Jalna 1,611
12. Kolhapur 6,229
13. Latur 2,372
14. Nanded 1,680
15. Nagpur 19.947
16. Nashik 15.197
17. Osmanabad 1,155
18. Parbhani 3,278
19. Pune 47.716
26. Raigad-Alibag 1,177

21. Ralnagiri 589
22. Satara 4,996
23. Sangli 4,271
24. Solapur 6,526
25. Sindhudurg at Oras 177
26. Thane 11.379
27. Wardha 922
28. Yavalmal 1,378
29. Metropolitan Magistrates" Courts in Greater Mumbai 74.865

Statement showing vacancies of Judicial Magistrates (First Class), Metropolitan Magistrates and Additional Chief Metropolitan Magistrates in the State of Maharashtra.

Category Sanctioned strength Actual working strength

Judicial Magistrates (First Class) 726 605

Metropolitan Magistrates 34 31

Additional Chief Metropolitan Magistrates 4 7

13. From the face of record, it is seen that large number of cases instituted under 138 of the Negotiable Instruments Act are pending since long. If these cases would have been dealt with by moderate speed, number of cases would have been disposed of long back. But our legal system moves with snail's speed. In addition, our legal system has become finished product of great beauty which entails immense sacrifice of time, talent and money. If total number of Magistrates dealing with such cases is taken into consideration as compared to the pendency, early disposal of cases is not within reach. It is also noticed that large number of cases are pending since long and no proper attention is paid in the matter of disposal of these cases. The complainants in such cases want early disposal. At the same time, the accused persons facing criminal trials also want early disposal of the cases. It is not proper to keep the sword of prosecution hanging on the heads of the accused persons.

14. In the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , the Supreme Court has held that speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. It is further held by the Supreme Court in the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , that the State is under a Constitutional mandate to ensure speedy trial and whatever is necessary/or this purpose has to be done by the State.

15. In the case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., , the Supreme Court has held that right to speedy trial is the right of the accused.

16. The amended Act (Act No. 55 of 2002) came into force w.e.f. 6th February, 2003. Very drastic changes have been introduced in the Negotiable Instruments Act. The Negotiable Instruments Act was amended by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881 namely Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. The punishment provided in the Act has proved to be inadequate. The procedure prescribed for the Courts to deal with such matters is found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act, Keeping in view the large number of complaints instituted under 138 of the Negotiable Instruments Act pending in various Courts, a Working Group was constituted to review 138 of the Negotiable Instruments Act and make recommendations as to what changes needed to effectively achieve the purpose of that section.

17. The Government with consultation with the Reserve Bank of India and legal experts, examined the recommendations of the Working Group along with other representatives from various institutions and organisations. The Government thereafter decided to bring out inter alia the following amendments in the Negotiable Instruments Act, 1881 namely :

- (i) To increase the punishment as prescribed under the Act from one year to two years;
- (ii) To increase the period for issue of notice by the payee to the drawer from 15 days to 30 days;
- (iii) To provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;
- (iv) To prescribe procedure for dispensing with preliminary evidence of the complainant;
- (v) To prescribe procedure for servicing of summons to the accused or witness by the Court through speed post or empanelled private couriers;
- (vi) To provide for summary trial of the cases under the Act with a view to speeding up disposal of cases;
- (vii) To make the offences under the Act compoundable;
- (viii) To exempt those directors from prosecution u/s 141 of the Act who are nominated as directors of a company by virtue of their holding any office or

employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government; as the case may be;

(ix) To provide that the Magistrate trying an offence shall have power to pass sentence of imprisonment for a term exceeding one year and amount of fine exceeding five thousand rupees;

(x) To make the Information Technology Act, 2000 applicable to the Negotiable Instruments Act, 1881 in relation to electronic cheques and truncated cheques subject to such modifications and amendments as the Central Government, in consultation with the Reserve Bank of India, considers necessary for carrying out the purposes of the Act, by notification in the Official Gazette; and

(xi) To amend definitions of "Bankers books" and "certified copy" given in the Bankers' Books Evidence Act, 1891.

18. It is stated in the Statement of Objects and Reasons that the amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques and are also aimed for enhancing punishments for the offenders and finally, it is said that the Bill seeks to achieve the above object.

19. After Section 142 of the principal Act, Section 143 has been inserted, which runs as under :

"Section 143 : Power of Court to try cases summarily

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under the Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees :

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed, or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day-to-day until its conclusion, unless the Court finds the adjournment of the trial beyond the following date to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months, from the date of filing of the complaint."

20. The Judicial Magistrates, First Class and the Metropolitan Magistrates are now empowered to try cases summarily. By Sub-section (2) of Section 143, the trial of the case is to be continued in the interests of justice, from day-to-day until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing. Sub-section (3) of Section 143 speaks further that every trial shall be concluded as expeditiously as possible and an endeavour shall be made to terminate the trial within six months from the date of filing of the complaint.

21. The amendment came into force w.e.f. 6.2.2003. Therefore, now it is incumbent on the judicial Magistrates (First Class) and the Metropolitan Magistrates to conduct trial of the cases from day-to-day until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing. It is also imperative on the part of the Judicial Magistrates (First Class) and the Metropolitan Magistrates to conduct every trial as expeditiously as possible and an endeavour shall have to be made to conclude the trial within six months from the date of filing of the complaint. This is the mandate of the law.

22. In the case of State of U.P. Vs. Shambhu Nath Singh and Others, , the Supreme Court has specially dealt with in elaborate manner the power of the Trial Court for granting adjournments in criminal proceeding. Section 309 of Criminal Procedure Code confers power on the Trial Court for granting adjournment in criminal proceeding. Section 309 of Criminal Procedure Code expects that in every trial, the proceeding shall have to be held as expeditiously as possible and when the examination of the witness has once begun, the same shall have to be continued from day-to-day until all witnesses in attendance have been examined unless the Court finds adjournment of the same beyond the following day to be necessary for the reasons to be recorded. There is a Proviso to Sub-section (2) of Section 309 of Criminal Procedure Code which says that when the witnesses are in attendance, no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing.

23. In the case of Raj Deo Sharma Vs. The State of Bihar, , the Supreme Court has categorically observed that the Trial Court cannot flout the mandate of Parliament to adjourn examination of witnesses who are in attendance beyond the next working day. The Supreme Court requested every High Court to remind the Trial Judge through a Circular to comply with Section 309 of Criminal Procedure Code in letter and spirit. The High Courts are further requested to take note of the conduct of any particular Trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as the law permits. In para No. 39 of the same

judgment, the Supreme Court has said that for remedying the causes for delay in disposal of criminal cases, it is time for (a) the judiciary, (b) the Legislature, and (c) the State Governments to take effective steps. The conjoint efforts of three branches are very much necessary.

24. In the case of P. Ramachandra Rao Vs. State of Karnataka, , the Supreme Court has said that:

"The root cause for delay in dispensation of justice in our country is poor Judge population ratio. Apart from inadequate Judge strength, other factors contribute to the delay at the trial. Generally speaking, these are: (i) absence of or delay in appointment of Public Prosecutors proportionate with the number of Courts/cases; (ii) absence of or belated service of summons and warrants on the accused/witnesses; (iii) non-production of under trial prisoners in the Court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of the Bar; and (vi) Counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience."

The Supreme Court has further observed that :

"All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result oriented collective thinking and action on the part of the Legislature, the judiciary, the executive and representative bodies of members of the Bar.

This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary quantitatively and qualitatively, by providing requisite funds, man power and infrastructure."

25. It is further observed that both the Governments must do something concrete in the direction of strengthening the justice delivery system.

26. Drastic and effective solution in the form of amendment is no doubt brought into existence, But whether this is an end of the matter? In the absence of sufficient number of Judges, whether the aim and object of the amendment can be achieved? Large number of cases cannot be disposed of within short time, at least within reasonable time, unless there is sufficient strength of Judicial Magistrates (First Class) and Metropolitan Magistrates. The sanctioned strength of Civil Judges (Junior Divisions) and Judicial Magistrates (First Class) is 726 while actual working strength is 605. Thus there are 121 vacancies. The sanctioned strength of Metropolitan Magistrates is 34 while actual working strength is 31. Thus there are three vacancies. The sanctioned strength of Additional Chief Metropolitan Magistrates is 14 while actual working strength is only 7. Thus, there are seven vacancies.

27. Full strength of Judges is the prime need of the day. Time has come to innovate new methods and tools to tackle the monster of arrears. At the same

time, Judge population ratio is required to be increased. The State of Maharashtra is under constitutional mandate to discharge its obligation by providing funds, man power and infrastructure. The vacancies of Civil Judges (Junior Division) and Judicial Magistrates (First Class), Metropolitan Magistrates and Additional Chief Metropolitan Magistrates are required to be filled in within short time. The paucity of funds is no excuse. When the law expects something, to be done within prescribed time-limit, at least genuine efforts are required to be done to obey the mandate of law. We reiterate that unless sufficient number of Judicial hands are provided, the arrears of cases cannot be reduced.

28. We, therefore, direct all the Sessions Judges throughout the State to bring the recent amendment referred above to the notice of all Judicial Magistrates (First Class) and Metropolitan Magistrates and to see that the cases filed under 138 of the Negotiable Instruments Act are disposed of as early as possible, taking into consideration the intention of the Legislature in introducing amendment in the Negotiable Instruments Act. The copy of this judgment be also sent to the Registrar of High Court of Judicature of Bombay for necessary action in the matter of disposal of cases. Reallocation of judicial hands at the places of congestion is also required to be kept in view to honour the recent legislative intent. The Additional Registrar (Judicial) of this Bench is hereby directed to circulate copy of this judgment to all the Sessions Judges in the State. The State being under constitutional mandate to discharge its obligation, we direct the State of Maharashtra to fill up all the vacancies of Civil Judge (Junior Division) and Judicial Magistrate (First Class), Metropolitan Magistrates and Additional Chief Metropolitan Magistrate within short time. The copy of this judgment be sent to the Chief Secretary to the State of Maharashtra for compliance.

29. With these directions, all the Criminal Writ Petitions are disposed of. Rule made absolute accordingly.