G. J. Raja vs Tejraj Surana on 30 July, 2019

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Bench: Vineet Saran, Uday Umesh Lalit

Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019
G.J. Raja vs. Tejraj Surana

Rep

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1160 OF 2019
(Arising out of Special Leave Petition (Criminal)No.3342 of 2

G.J. RAJA …Appella

VERSUS

TEJRAJ SURANA …Respond

J U D G M E N T[

Uday Umesh Lalit, J.

1. Leave granted.

2. This Appeal challenges the Final Order dated 08.02.2019 passed by the High Court of Judicature at Madras in Criminal O.P.No.3406 of 2019 preferred by the Appellant herein.

3. Complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') being C.C.No.7171 of 2018 is presently pending against the Appellant before the IInd Fast

Track Court

-Metropolitan Magistrate, Egmore, Chennai. According to the complaint, two cheques issued by the Appellant in the sums of Rs.20,00,000/- and Rs.15,00,000/- in favour of the Respondent-Complainant were dishonoured Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana on account of insufficiency of funds. The Complaint was lodged on 04.11.2016.

4. With effect from 01.09.2018, Section 143A was inserted in the Act by Amendment Act 20 of 2018. Said Section is to the following effect:-

> "143A. Power to direct interim compensation. – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant –
>
> (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
>
> (b) in any other case, upon framing of charge.
>
> (2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.
>
> (3) The interim compensation shall be paid within sixty days from the date of the order under sub-

section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial years, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana (5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

5. Soon thereafter, the Trial Court ordered that 20% of the cheque amount be made over by the Appellant to the Respondent as interim compensation in accordance with the provisions of Section 143A of the Act. Thus, the Appellant was directed to pay to the Respondent a sum of Rs.7,00,000/-.

6. The Appellant being aggrieved, filed Criminal O.P.No.3406 of 2019 in the High Court. By its order dated 08.02.2019, the High Court found no illegality or infirmity in the order awarding interim compensation under Section 143A of the Act but reduced the percentage from 20% of the cheque amount to 15% of the cheque amount.

7. The order of the High Court is presently under challenge. While issuing notice the Appellant was directed to deposit the sum so ordered by the High Court in the Trial Court. It was further directed that upon deposit, Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana the Trial Court should invest the money in Fixed Deposit and that the money would not be made over to the Respondent till further orders. Since the Respondent, despite having been served with the notice, had not entered appearance, this Court by its Order dated 01.07.2019 requested Mr. Vinay Navare, learned Senior Advocate to assist this Court as Amicus Curiae.

8. We heard Mr. G. Ananda Selvam, learned Advocate for the Appellant and the learned Amicus Curiae.

9. A reading of Section 143A shows (i) interim compensation must not exceed 20% of the amount of the cheque; (ii) it must be paid within the time stipulated under Sub-Section (3); (iii) if the accused is acquitted, the complainant shall be directed to pay to the accused the amount of interim compensation with interest at the bank rate; (iv) the interim compensation payable under said Section can be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 ('the Code', for short); and (v) if the accused were to be convicted, the amount of fine to be imposed under Section 138 of the Act or the amount of compensation to be awarded under Section 357 of the Code would stand reduced by the amount paid or recovered as interim compensation.

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10. Since Sub-Section (5) of Section 143A stipulates that the interim compensation could be recovered as if it were a fine under Section 421 of the Code, said Section 421 also needs to be considered at this stage. Section 421 appears in Chapter XXXII of the Code which Chapter deals with 'Execution, Suspension, Remission and Commutation of Sentences'. By very context and the language of the provisions contained in the Chapter, they apply in cases where the guilt of an accused is determined and he is convicted of an offence punishable with sentence and/or fine. Part-C of the Chapter deals with 'Levy of Fine' and Section 421 appearing in said Part-C is to the following effect:-

> "421. Warrant for levy of fine.- (1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may –

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana has made an order for the payment of expenses or compensation out of the fine under section 357. (2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub- section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

11. According to Section 421 of the Code, fine could be recovered either by warrant of attachment or sale of movable property belonging to the offender or by issuance of warrant to the Collector authorising him to realise the amount as arrears of land revenue from the movable or immovable property or both of the defaulter.

12. It is thus clear that in case an accused, against whom an order to pay interim compensation under Section 143A of the Act is passed, fails or is unable to pay the amount of interim compensation, the process under Section 421 can be taken resort to which may inter alia result in coercive action of recovery of the amount of interim compensation as if the amount represented the arrears of land revenue. The extent and rigor of the Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana procedure prescribed for such recovery may vary from State to State but invariably, such procedure may visit the person concerned with coercive methods.

13. For instance, by virtue of Section 183 of the Maharashtra Land Revenue Code, 1966, in case there be a default in payment of land revenue, the person concerned could be arrested and detained in custody for 10 days in the office of the Collector or of a Tehsildar unless the arrears of revenue which were due, were paid along with the penalty or interest and the cost of arrest and of the notice of demand as also the cost of his subsistence during detention.

14. In the present case, the Complaint was lodged in the year 2016 that is to say, the act constituting an offence had occurred by 2016 whereas, the concerned provision viz. Section 143A of the Act was inserted in the statute book with effect from 01.09.2018. The question that arises therefore is whether Section 143A of the Act is retrospective in operation and can be invoked in cases where the offences punishable under Section 138 of the Act were committed much prior to the introduction of Section 143A. We are concerned in the present case only with the issue regarding Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana applicability of said Section 143A to offences under Section 138 of the Act, committed before the insertion of said Section 143A.

15. While considering general principles concerning 'retrospectivity of legislation' in the context of Section 158-BE inserted in the Income Tax Act, 1961, it was observed by this Court in Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited1 as under:-

> "28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre2, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."

16. Similarly, while considering the effect of modified application of the provisions of the Code, as a result of Section 20(4)(bb) of the Terrorist 1(2015) 1 SCC 1 2 (1870) LR 6 QB 1 Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana and Disruptive Activities (Prevention) Act, 1987, whereunder the period for filing challan or charge-sheet could get extended, this Court considered the issue about the retrospective operation of the concerned provisions in Hitendra Vishnu Thakur and others vs. State of Maharashtra and others3 as under:-

> "26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

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(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

17. The fourth and the fifth principle as culled out by this Court in Hitendra Vishnu Thakur3are apposite to the present fact situation.

18. The provisions contained in Section 143A have two dimensions. First, the Section creates a liability in that an accused can be ordered to pay over upto 20% of the cheque amount to the complainant. Such an order can be passed while the complaint is not yet adjudicated upon and the guilt of the accused has not yet been determined. Secondly, it makes available the machinery for recovery, as if the interim compensation were arrears of land revenue. Thus, it not only creates a new disability or an obligation but also exposes the accused to coercive methods of recovery of such interim compensation through the machinery of the State as if the interim compensation represented arrears of land revenue. The coercive methods could also, as is evident from provision like Section 183 of the Maharashtra Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana Land Revenue Code, in some cases result in arrest and detention of the accused.

19. We must at this stage, refer to a decision of this Court in Employees' State Insurance Corporation vs. Dwarka Nath Bhargwa4 where provisions of Section 45B, which was inserted in Employees State Insurance Act, 1948 with effect from 28.01.1968 was held to be procedural and that it could have retrospective application. Said Section 45B is as under:-

> "45B. Recovery of contributions. - Any contribution payable under this Act may be recovered as an arrear of land revenue." The issue was whether the modality of recovery so prescribed in said Section 45B could be invoked in respect of amounts which had become payable on 27.01.1967 and 24.01.1968, i.e. before said Section 45B was inserted in the statute book. While holding that the arrears could be recovered as arrears of land revenue, it was observed, "It is not in dispute and cannot be disputed that the contributions in question had remained payable all throughout and were not paid by the respondent."

20. It must be stated that prior to the insertion of Section 143A in the Act there was no provision on the statute book whereunder even before the 4 (1997) 7 SCC 131 Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana pronouncement of the guilt of an accused, or even before his conviction for the offence in question, he could be made to pay or deposit interim compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section 357 of the code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by the introduction of Section 143A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for consideration in Employees' State Insurance Corporation4 case.

21. Though arising in somewhat different context, proviso to Section 142(b) which was inserted in the Act by Amendment Act 55 of 2002, under which cognizance could now be taken even in respect of a complaint filed beyond the period prescribed under Section 142(b) of the Act, was held to Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana be prospective by this Court in Anil Kumar Goel v. Kishan Chand Kaura5. It was observed:-

> "10. There is nothing in the amendment made to Section 142(b) by Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28-11- 1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted."

22. In our view, the applicability of Section 143A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation.

23. We must, however, advert to a decision of this Court in Surinder Singh Deswal and Ors. vs. Virender Gandhi6 where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the accused is

already found guilty of the offence under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to 5 (2007) 13 SCC 492 6 (2019) 8 SCALE 445 Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal5 stands on a different footing.

24. In the ultimate analysis, we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order.

25. The Appeal is allowed in aforesaid terms.

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26. In the end, we express our sincere gratitude for the assistance rendered by Mr. Vinay Navare, learned Amicus Curiae.

.....J. [Uday Umesh Lalit] .....J. [Vineet Saran] New Delhi;

July 30, 2019