

[2024] 1 S.C.R. 1179 : 2024 INSC 84

Atamjit Singh
v.
State (NCT of Delhi) & Anr.

(Criminal Appeal no. 516 of 2024)

22 January 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether the High Court was justified in quashing the order passed by the Metropolitan Magistrate summoning Respondent No. 2 in relation to commission of offence under Section 138 of the Negotiable Instruments Act, 1881, on the premise that as on the date of the issuance of the summoning order, the underlying debt and/or liability qua Respondent No. 2 was time barred.

Headnotes

Negotiable Instruments Act, 1881 – s.138 – Code of Criminal Procedure, 1973 – s.482 – Scope of interference by the High Court in proceedings u/s.138 of the NI Act qua allegedly time barred debt at the stage of issuance of summons, whilst exercising its jurisdiction u/s.482 CrPC.

Held: Classification of the underlying debt or liability as being barred by limitation is a question that must be decided based on the evidence adduced by the parties – Question regarding time barred nature of an underlying debt or liability in proceedings u/s.138 of the NI Act is a mixed question of law and fact which ought not to be decided by the High Court exercising jurisdiction u/s.482 CrPC. [Para 7]

Case Law Cited

Yogesh Jain v. Sumesh Chadha, **Crl. Appeal Nos. 1706-1761 of 2022 – relied on.**

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973.

Digital Supreme Court Reports**List of Keywords**

Quashing; Summons; Summoning order; Debt; Liability; Time barred; Scope of interference; Limitation; Mixed question of law and fact.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.516 of 2024.

From the Judgment and Order dated 06.09.2022 of the High Court of Delhi at New Delhi in CRLMC No.556 of 2019.

Appearances for Parties

Sudeep Sehgal, Sandeep Singh, Advs. for the Appellant.

Vikramjit Banerjee, Mukesh Kumar Maroria, Bharat Sood, Saransh Kumar, Vishnu Shankar Jain, Shaurya Rai, Madhav Sinhal, Ms. Deeksha Ladi Kakar, Advs. for the Respondents.

Judgment / Order of the Supreme Court**ORDER**

1. Leave granted.
2. This is an appeal instituted at the instance of the original complainant of a complaint lodged under *inter alia* Section 138 of the Negotiable Instruments Act, 1881 (the “**NI Act**”) (the “**Underlying Complaint**”) assailing an order dated 06.09.2022 passed by the High Court of Delhi (the “**High Court**”) in CRL. M.C. No. 556 of 2019 whereunder the High Court quashed an order dated 03.08.2017 passed by the Metropolitan Magistrate -10, South-East, Saket Court (the “**Trial Court**”) summoning Mr. Amrit Sandhu Coaster/Respondent No. 2 in relation to the commission of an offence under Section 138 of the NI Act (the “**Impugned Order**”).
3. The High Court by way of the Impugned Order deemed it appropriate to quash the underlying proceedings on the principal premise that as on the date of the issuance of the summoning order, the underlying debt and/or liability qua Respondent No. 2 was time barred.

Atamjit Singh v. State (NCT of Delhi) & Anr.

4. *Prima-facie* from the materials placed before us, it is revealed that pursuant to various transactions entered into by and between the (i) Appellant; (ii) Respondent No. 2; and (iii) Jasween Sandhu i.e., Accused No. 2 in the Underlying Complaint, allegedly pertaining to year 2011, the Appellant was owed a sum of approximately Rs.20,10,000/- (Rupees Twenty Lakh Ten Thousand). Accordingly Respondent No. 2 issued a cheque bearing number 329623 dated 06.03.2017 drawn on Syndicate Bank, Branch West Punjabi Bagh, Central Market, New Delhi-110026 for a sum of Rs.20,00,000/- (Rupees Twenty Lakh) in favour of the appellant (the “**Subject Cheque**”).
5. Upon a perusal of the Impugned Judgement, it is disclosed that High Court has relied upon (i) the Assured Returns Agreement dated 16.09.2011; and (ii) other receipts issued by the Appellant to Respondent No. 2, all of which pertain to transaction(s) entered into in the year 2011 to conclude that in the absence of an acknowledgment of any underlying debt between 2011 and the date of issuance of the Subject Cheque i.e., 06.03.2017, the underlying debt could not be held to be legally enforceable debt or liability on account of being barred by limitation. Accordingly, in the aforesaid circumstances, the prosecution of Respondent No. 2 under Section 138 of the NI Act was held to be improper; and accordingly, by way of impugned judgment, the High Court quashed the summoning order issued by the Trial Court; and the Underlying Complaint.
6. At the threshold, it would be apposite to refer to decisions of this Court in **Yogesh Jain v. Sumesh Chadha**, Criminal Appeal Nos. 1760-1761 of 2022 whereunder this Court has opined on the scope of interference by the High Court in proceedings under 138 of the NI Act qua an allegedly time barred debt at the stage of issuance of summons, whilst exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (the “**CrPC**”). The operative paragraph in **Yogesh Jain (Supra)** has been reproduced as under:

*“8. Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the Accused to dislodge the legal presumption available Under Sections 118 and 139 reply of the N.I. Act. **Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the Accused Under Section 482 of the CrPC.**”*

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7. From a perusal of legal position enunciated above, it is clear that the classification of the underlying debt or liability as being barred by limitation is a question that must be decided based on the evidence adduced by the parties. We agree with aforesaid opinion. Undoubtedly, the question regarding the time barred nature of an underlying debt or liability in proceedings under Section 138 of the NI Act is a mixed question of law and fact which ought not to be decided by the High Court exercising jurisdiction under Section 482 of the CrPC.
8. Accordingly, the appeal is allowed, and the Impugned Order is set aside. The proceedings emanating from the Underlying Complaint i.e., CC No. 6437 of 2017 is restored to the file of the Trial Court.
9. Pending application(s), if any, are disposed of. No order as to costs.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case:
Appeal allowed.