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Willard India Ltd. and ors. Vs. State and ors.

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Court : Delhi

Decided On : Apr-08-2005

Reported in : 120(2005)DLT685

Judge : Manju Goel, J.

Acts : Negotiable Instruments Act - Sections 138 and 142; Child Marriage Restraint Act, 1929 - Sections 9; Code of Criminal Procedure (CrPC) , 1973 - Sections 468 and 469

Appeal No. : CRLR 45/2003 and Crl. M. 76/2003

Appellant : Willard India Ltd. and ors.

Respondent : State and ors.

Advocate for Def. : S. Kohli, Adv. for the State and ; Anil Gera, Adv. for Respondent No. 2

Advocate for Pet/Ap. : B.D. Batra and; J.K. Sethi, Advs

Disposition : Petition dismissed

Judgement :

Manju Goel, J.

1. This revision petition calls for examination of the question of limitation for taking cognizance in a complaint case under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act). The impugned order dated 29.11.2002 considered the plea of limitation raised by the petitioners who were the accused in the complaint case and held that the complaint was filed within limitation and, thereforee, cognizance could be taken even after the expiry of one year from the date on which the cause of action arose. The facts leading to the present revision petition are as under.

2. The complaint was presented before the trial court on 5.12.1996 when the Magistrate passed the following order.

'Fresh complaint received. It be checked and registered.

Present : Complainant in person with counsel.

Heard. Put up for CE on 9.5.97.'

3. No order showing that cognizance was taken was passed on that date. Nor was any order summoning the petitioners was made. It was only on 13.7.1998 that the trial court passed an order directing issue of process against the petitioners. It was submitted before the learned trial court that as per the provisions of Section 468 and 469 of the Cr.P.C. the cognizance of an offence under Section 138 of the Act could be taken within one year from the date of commission of the offence and that by the time the process was ordered against the petitioners, that is, on 13.7.1998 more than one year of the date of the offence had expired. In support of his case learned counsel for the petitioners cited the judgment of the Supreme Court in the case of Krishna Pillai v. T. A. Rajendran and Anr. .

4. There is no doubt that filing of a complaint and taking cognizance are two distinct acts. There is also no dispute that the cognizance is taken on the date when the Magistrate finds that an offence had been committed. This finding of the Magistrate can be recorded by a speaking order. If it is not so done, the order to issue process against the accused itself can be taken as indication of the fact that the Magistrate had taken cognizance of an offence. It cannot be disputed that in

the present case cognizance was not taken on 5.12.1996.

5. There is no dispute that the complaint was within time. The complainant, that is, respondent No.2 came to the court in time and that was all that was required of him. The complainant cannot be made to suffer dismissal of his complaint only because the Magistrate concerned, for one reason or other, could not take cognizance of the offence immediately on the presentation of the complaint. In this view of mine, I am supported by the following judgments of the various High Courts.

(i) Kamal H. Javeri and Anr. v. Chandulal Gulabchand Kothari and Anr. reported as . (ii) Basavantappa Basappa Bannihali and Anr. v. Shankarappa Marigallappa Bannihalli reported as 1990 Cri.L.J. 30. (iii) Dr. Anand R. Nerkar v. Smt.Rahimbi Shaikh Madar and Ors. reported as : 1991(1)BomCR629 . (iv) Zain Sait v. Intex-Painter, Interior Decorators, Civil Workers, Maintenance Workers and Water Profors and Ors. reported as .

6. Addressing the question, the High Court of Kerala in the case of Zain Sait (supra) expressed the following opinion.

'There could be a case where the complaint is filed on the last date of limitation and on account of the inconvenience or otherwise of the Court the sworn statement of the complainant could be recorded only on a later date and the Magistrate took cognizance after the expiry of limitation. If the date of taking cognizance is taken the date to determine the period of limitation that would amount to penalising the party for no fault of his. Such a construction cannot be placed under S.468 of the Code. A construction possible in the circumstance is that the bar under S.468 of the Code from taking cognizance will operate only when the complaint is barred by limitation.'

7. The respondent No.2 in this case is on a much better footing because his complaint is under Section 138 of the Act for which special provision of limitation has been made under Section 142 of the Act which is as under:

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 under section 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:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

8. It is clear from a plain reading of Section 142 of the Act that it is a complete code of limitation in respect of an offence punishable under Section 138 of the Act. The opening word of this Section are 'notwithstanding anything contained in the Code of Criminal Procedure, 1973'. Thus for taking cognizance of the offence the provisions of the Code of Criminal Procedure so far as it relates to limitation will not have to be looked into. The three conditions for taking conginzance are:

1. The complaint has to be in writing made by the payee or the holder in due course of the cheque.

2. The complaint is made within one month of the date on which the cause of action arose.

3. The court taking cognizance is not inferior to a Metropolitan Magistrate or Judicial Magistrate First Class.

9. If the complaint is not made within one month from the date on which the cause of action arose the complainant can satisfy the Court that he had sufficient cause for not making a complaint within that period. The Magistrate could thus condone the delay in filing a complaint and take cognizance thereon. Instead of subjecting

the complaint and taking of cognizance under Section 138 of the Act to the provisions of Limitation under Section 468 of the Cr.P.C. The Act has prescribed a period of limitation of its own. Further, the Act has said that the provisions of the Cr.P.C. will not apply in respect of the matters covered by Section 142 of the Act. In this situation it is a futile exercise to referred to the provisions of Section 468 of the Cr.P.C. and to argue that the Magistrate could not have taken cognizance because more than a year from the date on which the cause of action arose had expired. If the complaint under Section 138 of the Act is within time nothing prevents the Magistrate from taking cognizance thereon even after expiry of one year from the date of the cause of action.

10. The judgment of the Supreme Court in the case of Krishna Pillai (supra) refers to Section 9 of the Child Marriage Restraint Act, 1929 which created a period of limitation for the offence under that Act. The Child Marriage Restraint Act was much earlier in point of time to the Code of Criminal Procedure of 1973 which introduced the concept of limitation for taking cognizance of certain offence. The Supreme Court was not at all concerned with the inter action between Section 468 of the Cr.P C. and Section 9 of the Child Marriage Restraint Act, 1929. That judgment given in the fact situation of its own cannot have any application to the present case.

11. In view of the above I find that the petitioners cannot be discharged on the plea of limitation. The revision petition is accordingly dismissed.

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