

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 516 OF 2024

[arising out of Special Leave Petition (Crl.) No. 298 of 2023]

ATAMJIT SINGH

...APPELLANT(S)

VERSUS

STATE (NCT OF DELHI) & ANR.

...RESPONDENT(S)

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.

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.**”*

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.

.....J.
(VIKRAM NATH)

.....J.
(SATISH CHANDRA SHARMA)

NEW DELHI
JANUARY 22, 2024

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 298/2023

(Arising out of impugned final judgment and order dated 06-09-2022 in CRLMC No. 556/2019 passed by the High Court Of Delhi At New Delhi)

ATAMJIT SINGH Petitioner(s)

VERSUS

STATE (NCT OF DELHI) & ANR. Respondent(s)

(IA No. 199663/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 22-01-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMAFor Petitioner(s) Mr. Sudeep Sehgal, Adv.
Mr. Sandeep Singh, AORFor Respondent(s) Mr. Vikramjit Banerjee, Adv.
Mr. Mukesh Kumar Maroria, AOR
Mr. Bharat Sood, Adv.
Mr. Saransh Kumar, Adv.
Mr. Vishnu Shankar Jain, Adv.
Mr. Shaurya Rai, Adv.
Mr. Madhav Sinhal, Adv.

Ms. Deeksha Ladi Kakar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

Pending application(s), if any, are disposed of.

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS(RANJANA SHAILEY)
COURT MASTER

(Signed order is placed on the file.)