

CRR No. 2914 of 2023 (O&M)

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Mandeep Singh vs Kulwinder Singh and another

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Abhay Gupta, Advocate
for respondent No.1.

Mr. T.P.S. Walia, A.A.G., Punjab and
Ms. Swati Batra, D.A.G., Punjab.

1. The petitioner, incarcerated on having been convicted under Section 138 of Negotiable Instruments Act, 1881 by the trial Court as well as Sessions Court, had come up before this Court by filing the present revision petition on 15-Dec-2023 under Section 401 of Code of Criminal Procedure, 1973 [CrPC]. However, since the petitioner did not assail the judgment passed by the Sessions Court within the statutory limitation of ninety days, the petitioner had also filed an application under Section 5 of the Limitation Act seeking condonation of delay of 38 days. Technically speaking, unless the delay was condoned, no criminal revision petition was pending before this Court. Thus, the primary matter before this Court was adjudicating the application under Section 5 of the Limitation Act, 1963.

2. The complainant has been arraigned as the first respondent and the State of Punjab as the second. The first respondent, the aggrieved party, did not file any reply to the delay application CRM-53576-2023. As per the application, the reasons for the delay were the petitioner's confinement in jail, which resulted in exceeding the limitation for challenging the judgment of Sessions Court by 38 days. These are sufficient grounds to condone the delay in filing the revision petition and extend the time to file the appeal. Given the above, the application for delay, CRM-53576-2023, is allowed, the delay is condoned, and the time to file the revision petition is extended till the date of filing.

3. On 19.12.2023, when the matter was listed for the first time, it was adjourned on the petitioner's request to 11.01.2024, on which date notices were issued in both applications and the main revision petition returnable for 26.02.2024. When the matter was taken up on 16.04.2024, respondent No.1- complainant had put in an appearance through his counsel, and on that date, counsel for the petitioner sought time to ascertain the possibility of payment of compensation amount to the complainant and the matter was adjourned for today, i.e., 02-Jul-2024. However, in the meantime, CrPC stood repealed w.e.f. 01-Jul-2024.

4. The Indian Parliament enacted a new criminal procedure code, “The Bharatiya Nagarik Suraksha Sanhita, 2023”, to replace the existing Code of Criminal Procedure, 1973. Vide notification number S.O. 850(E), dated 23rd February 2024, the Central Government appointed the first day of July 2024 as the date on which the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, except the provision of sub-section (2) of section 106, shall come into force. Resultantly, at 00:00:00 hours of 01-Jul-2024, [12 am (midnight)], the ‘Code of Criminal Procedure, 1973’ stood repealed, and ‘The Bharatiya Nagarik Suraksha Sanhita, 2023’, came into force.

5. Since there was a delay in filing the revision petition, technically speaking, no criminal revision petition was pending before this Court, and it was the delay application filed under Section 5 of the limitation Act, 1963, that was pending before this Court and not the primary matter, i.e., the Criminal Revision petition.

6. The proposition of law that sprouts is that the time-barred petitions filed up to 30-Jun-2024 under CrPC, accompanied with applications under S. 5 of the Limitation Act, 1963, pending as of 01-Jul-2024, if the delay is condoned, would be governed under the Code of Criminal Procedure, 1973 or Bharatiya Nagarik Suraksha Sanhita, 2023?

7. Section 531 of the The Bharatiya Nagarik Suraksha Sanhita, 2023, reads as follows,

531. (1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or

proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

8. S.531 of the Bharatiya Nagarik Suraksha Sanhita, 2023, makes it crystal clear that all the appeals, applications, trials, inquiries, or investigations pending on or before 30th June 2024, would continue to be governed under the Code of Criminal Procedure, 1973.

9. However, the present criminal revision was time-barred and what was pending before this Court was the application under Section 5 of the Limitation Act, 1963, which was filed under a criminal revision petition under section 401 of the Code of Criminal Procedure, 1973. Thus, a reference to Section 6 of the General Clauses Act, 1897, is relevant, and it reads as follows:

S.6, The General Clauses Act, 1897

Effect of repeal.—Where this Act, or any 4[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

10. A perusal of section 6, clause (c) makes it apparent that no right privilege, obligation, or liability acquired, accrued, or incurred under any enactment which has been repealed shall be affected by such repeal. Clause (e) makes it evident that any legal proceeding or remedy regarding such right privilege, obligation, liability penalty, forfeiture, or punishment shall remain unaffected and governed by the old Act.

11. In *National Planners v. Contributories*, AIR 1958 Punjab 230, a full bench of Punjab and Haryana High Court, while answering the scope of repealed statutes, held in the following terms,

It is a well settled rule of common law that when an action is brought under a statute which is afterwards repealed, the Court loses jurisdiction of the suit pending under the repealed Act and is unable to deliver judgment therein. The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law

that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law (*Kay v. Goodwin*, (1830) 6 Bing. 576, 582). It follows as a corollary that if a statute is unconditionally repealed without a saving clause in favour of pending suits, all actions must stop where the repeal finds them, and if final relief has not been granted before the repeal goes into effect, it cannot be granted afterwards (*Merlo v. Johnston City & B. M.*

Coal and Min. Co., (1913) 258 Illinois 328. A similar principle applies a law conferring jurisdiction and it has been held repeatedly that the appeal of a statute giving jurisdiction to a Court deprives it of the right pronounce judgment in a proceeding previously pending. This principle has been stated with admirable clarity in the case of *Hunt v. Jennings, 33 American Decisions 465*, where Blackford, J. expressed the view that whenever a statute from which a Court derives its jurisdiction in particular cases is repealed, the Court has no right to proceed under the repealed statute even in suits pending at the time of the repeal, unless the right is expressly saved by the repealing Act or by a general Act regulating repeals.

To mitigate this harsh rule of the common law, the Legislature considers it expedient from time to time to enact saving clauses which expressly provide that whenever a statute shall be repealed, such repeal shall not affect pending actions founded thereon.

The second saving clause is embodied in Section 6 of the General Clauses Act, 1897 and is a part of every Act passed by the Central Legislature in the same way as if it were expressly enacted in the body of the Act itself. It has been applied specifically to proceedings under the Act of 1913, for section 658 of the Act of 1956 declares that the mention of particular matters in sections 645 to 657 or in any other provisions of the latter Act shall not prejudice the general application of Section 6 of the General Clauses Act, 1897 with respect to the effect of repeals. Section 6 of the Act of 1897 provides that in every Central Act passed after 1897, unless a contrary intention appears in the repealing Act, the repeal shall not affect any investigation, legal proceeding or remedy and that any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed. Or, to put in a slightly different language, this provision declares that proceedings which were commenced by virtue of a statute which has been repealed shall not be dismissed by the Court for want of jurisdiction after the repeal of that statute, as under the common law, but that the said proceedings shall continue to be dealt with by the Court as before and shall be carried to final judgment and execution by the said Court in exactly the same way as if the statute had not been repealed.

12. It would also be appropriate to refer to the S. 5 of The Limitation Act, 1963, which reads as follows:

S. 5 of The Limitation Act, 1963

Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5

of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. —The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

13. The effect of condonation of delay is that the delay is forgiven, and the plea is treated as filed within the limitation period; thus, it would relate back to the date on which the limitation expired. The said date would be the determining factor, and the procedure that was applicable on that date would apply to the revision.

14. Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023 explicitly specifies that pending appeals shall be disposed of or continued as if the new law had not yet taken effect, following the provisions of CrPC. The petition and the accompanying application seeking an extension of time were filed and registered in the registry of this Court when CrPC, 1973 was in force and were pending on the 1st of July 2024; hence, they would fall under the scope of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita, 2023. Therefore, based on the above, this petition shall have to be adjudicated under S. 401 of the CrPC, 1973 and not under S. 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

15. Given the above, since the delay application stands allowed, list the Criminal Revision Petition 04-Jul-2024.

(ANOOP CHITKARA)
JUDGE

02.07.2024
Jyoti Sharma