CASE NO.:
Appeal (crl.) 66 of 2001

PETITIONER:
PANKAJBHAI NAGJIBHAI PATEL

Vs.

RESPONDENT:
THE STATE OF GUJARAT & ANR.

DATE OF JUDGMENT: 12/01/2001

BENCH:
K.T.Thomas,,, R.P.Sethi

JUDGMENT:

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J U D G M E N T

THOMAS, J. Leave granted. A Judicial Magistrate of first class, after convicting an accused of the offence@@ JJJJJJJJJJJJJJJJJJJJJJJJJ under Section 138 of the Negotiable Instruments Act (for@@ JJJJJJJJJJJJJJJJJJJJJJJJJ short the NI Act) sentenced him to imprisonment for six months and a fine of Rs.83,000/-. The conviction and sentence were confirmed by the Sessions Judge in appeal and the revision filed by the convicted person was dismissed by the High Court. When the special leave petition was moved, learned counsel confined his contention to the question whether a Judicial Magistrate of first class could have imposed a sentence of fine beyond Rs.5,000/- in view of the limitation contained in Section 29(2) of the Code of Criminal Procedure (for short the Code). As the decision of this Court in K. Bhaskaran vs. Sankaran Vaidhyan Balan and anr. {1999 (7) SCC 510} is in support of the said contention we issued notice to the respondent mentioning that it is limited to the question of sentence. Learned counsel for the respondent contended that the decision of this Court to the effect that power of the Judicial Magistrate of first class is limited in the matter of imposing a sentence of fine of Rs.5000/- is not correct in view of the non-obstante clause contained in Section 142 of the NI Act. We, therefore, heard both counsel on that

aspect.

Section 138 of the NI Act provides the punishment as imprisonment for a term which may extend to one year or fine which may extend to twice the amount of cheque or with both. Section 29(2) of the Code was referred to in Bhaskarans decision (supra) which contains the limitation for a Magistrate of first class in the matter of imposing fine as a sentence or as part of the sentence. That sub-section says that the court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both. On the strength of the said sub-section it was held in Bhaskarans case thus: The trial in this case was held before a Judicial Magistrate of the first class who could not have imposed a fine exceeding Rs.5000/- besides imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit.

In order to obviate the said hurdle learned counsel for the respondent adopted a twin contention. First is that the non-obstante clause in Section 142 of the Act is enough to bypass the limitation imposed by Section 29(2) of the Code. Second is that even apart from the said non- obstante words in the said provision, Section 5 of the Code itself mandated that nothing in the Code would affect any special jurisdiction or power conferred by any other law.

We would first consider the effect of the non-obstante clause in Section 142 of the NI Act. The section reads@@
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thus: 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; (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.

It is clear that the aforesaid non-obstante expression is intended to operate only in respect of three aspects, and@@
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nothing more. The first is this: Under the Code Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But Section 142 of the NI Act says that in so far as the offence under Section 138 is concerned no court shall take cognizance except upon a complaint made by the payee or the holder in due course of the cheque.

The second is this: Under the Code a complaint could be made at any time subject to the provisions of Chapter XXXVI. But so far as the offence under Section 138 of the NI Act is concerned such complaint shall be made within one month of the cause of action. The third is this: Under Article 511 of the First Schedule of the Code, if the offence is punishable with imprisonment for less than 3

years or with fine only under any enactment (other than Indian Penal Code) such offence can be tried by any Magistrate. Normally Section 138 of the NI Act which is punishable with a maximum sentence of imprisonment for one year would have fallen within the scope of the said Article. But Section 142 of the NI Act says that for the offence under Section 138, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of first class shall try the said offence.

Thus, the non-obstante limb provided in Section 142 of the NI Act is not intended to expand the powers of a@@
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Magistrate of first class beyond what is fixed in Chapter III of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of first class in the matter of imposing a sentence as noticed above i.e. if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed Rs.5000/-.

Two decisions holding a contrary view have been brought to our notice. The first is that of a Single Judge of the Madras High Court in A.Y. Prabhakar vs. Naresh Kumar N. Shah {1994 Madras Law Journal (Crl.) 91 = 1995 Company Cases (Vol.83) 191}. The other is that of a Single Judge of the Kerala High Court which simply followed the aforesaid decision of the Madras High Court [K.P. Sahdevan vs. T.K. Sreedharan, {1996(2) Criminal Law Journal 1223 = 1996(1) Kerala Law Times 40}]. The learned Single Judge of the Kerala High Court (Balanarayana Marar, J) dissented from a contrary view expressed in an earlier judgment of the same High Court and had chosen to agree with the view of the Madras High Court held in Prabhakar vs. Naresh Kumar N. Shah (supra). What Marar, J. had adopted was not a healthy course in the comity of Judges in that he had sidelined the earlier decision of the same High Court even after the same was brought to his notice. If he could not agree with the earlier view of the same High Court he should have referred the question to be decided by a larger bench. Learned Single Judge of the Madras High Court did not advance any reasoning except saying that Section 29(2) of the Code is not applicable in view of the primary clause in Section 142 of the NI Act. As pointed out by us earlier, the scope of the said primary clause cannot be stretched to any area beyond the three facets mentioned therein. Hence the two decision cited above cannot afford any assistance in this appeal.

The second contention depends upon the construction of Section 5 of the Code. Before that Section is considered it@@
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is advantageous to have a look at the preceding section which is in a way cognate to the provision cited. Section 4(1) of the Code concerns only with offences under the Indian Penal Code but sub-section (2) says that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions of the Code unless any other enactment contains provisions regulating the manner or place of such investigation, inquiry or trial or how otherwise such offences should be dealt with. This means, if an other enactment does not regulate the manner or place of trial etc of any particular offence the provisions of the Code will continue to control the investigation or inquiry or trial of

such offence. Now Section 5 of the Code has to be seen.
5.Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Non-application of the Code on any special jurisdiction or power conferred by any other law for the time being in force is thus limited to the area where such special jurisdiction or power is conferred. Section 142 of the NI Act has not conferred any special jurisdiction or power on a Judicial Magistrate of first class. That section has only excluded the powers of other magistrates from trying the offence under Section 138 of the NI Act.

In this context it is profitable to refer to the method usually adopted by the Parliament for conferring special jurisdiction or powers on magistrates of first class in the matter of awarding sentences obviating the limitation stipulated in Section 29(2) of the Code. The Essential Commodities Act contained a provision as Section 12 which read thus: 12. Special provision regarding fine- Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3.

(Of course the said provision has since been deleted from the statute book when jurisdiction to try the offences under the Essential Commodities Act has been conferred on Special Court which is deemed to be a Court of Sessions.)

Another instance is, Section 36 of the Drugs and Cosmetics Act which says that Notwithstanding anything contained in the Code it shall be lawful for any Metropolitan Magistrate or Judicial Magistrate of the first class to pass any sentence authorised by this Act in excess of the powers under the Code. A similar provision is incorporated in Section 21 of the Prevention of Food Adulteration Act also.

Those instances bear ample illustrations as to how the legislature had exercised when it wanted the limitations@@
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specified under Section 29 of the Code to be surmounted under special enactments. (Those instances are only illustrative, and not exhaustive.) In the absence of any such provision in the NI Act we cannot read any special power into it as having conferred on a magistrate of first class in the matter of imposition of sentence.

In this context, we may also point out that if a Magistrate of first class thinks that the fact situation in a particular case warrants imposition of a sentence more severe than the limit fixed under Section 29 of the Code, the legislature has taken care of such a situation also. Section 325 of the Code is included for that purpose. Sub-section (1) of that Section reads thus: Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and

that he ought to receive a punishment different in kind from, or more severe than that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

If proceedings are so submitted to the Chief Judicial Magistrate under Section 325(1) of the Code it is for the Chief Judicial Magistrate to pass such judgment, sentence or order in the case, as he thinks fit. It is so provided in sub-section (3) thereof. Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in Bhaskarans case (supra) as follows: However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (Hari Singh v. Sukhbir Singh, 1988 (4) SCC 551). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of Magistrate of the first class in respect of a cheque which covers an amount exceeding Rs.5000/- the Court has power to award compensation to be paid to the complainant.

In our view this question does not now pose any practical difficulty. Whenever a magistrate of the first class feels that the complainant should be compensated he can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code. In the result, while retaining the sentence of imprisonment of six months we delete the fine portion from the sentence and direct the appellant to pay compensation of Rs.83,000/- to the respondent-complainant. The said amount shall be deposited with the trial court within six months failing which the trial court shall resort to the steps permitted by law to realise it from the appellant. This appeal is disposed of accordingly.