

CASE NO.:
Appeal (civil) 3482 of 2000

PETITIONER:
State of Karnataka

RESPONDENT:
Paramjit Singh and Ors.

DATE OF JUDGMENT: 02/03/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Challenge in these appeals is to the judgment rendered by a Division Bench of the Karnataka High Court in a writ petition which was filed challenging validity of Section 27 of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'). One of the two appeals is by the State of Karnataka and the other by the Union of India. The basis of the challenge was that the District and the State Commission and National Commission and the Forum created under the Act have been clothed with blanket powers to pass orders including an order of civil imprisonment for the breach that may be committed by the party against whom the order is passed under the Act. As Section 27 does not prescribe any procedure for trial and, therefore, it was prayed that it should be declared as unconstitutional, being violative of Article 21 of the Constitution of India, 1950 (in short 'the Constitution'). The High Court held that an offence has been created without prescribing any procedure for the Forums or the Commissions created under the Act to impose the punishment provided in Section 27. Therefore, it was of the view that the proviso to Section 27, as it stood then, authorised the Forums and the Commissions to impose a punishment without providing any procedure, resulting in deprivation of rights conferred upon the persons under Articles 20 and 21 of the Constitution and, therefore, the same was liable to be struck down, being unconstitutional. It was, however, held that the striking of the proviso to Section 27 did not render the whole provision un-constitutional. Finally, it was observed that the proviso to Section-27 was violative of the fundamental rights, as enshrined under Articles 20 and 21 of the Constitution and, thus, was liable to be quashed. It was further held that but for the proviso, there was no un-constitutionality in the main provision. It was observed that the offence created and penalties provided under Section 27 can be tried and imposed only in accordance with the observations made in the judgment relating to the trial of offences under the Indian Penal Code, 1860 (in short 'the IPC') and other laws, as contained in Section 4 of the Code of Criminal Procedure, 1973 (in short 'the Code'). It was held that by filing a complaint before the criminal court in accordance with the procedure prescribed, the offence created and the penalty provided under Section 27 can be tried and imposed.

The State of Karnataka and the Union of India have questioned the correctness of the view expressed by the High Court. Learned counsel for the Union of India and the State of Karnataka contended that after having been held that the main part of Section 27 was not un-constitutional, the proviso which only permitted imposition of lesser fine or sentence of imprisonment, cannot by any stretch of imagination, be held to be un-constitutional. It was submitted that the District Forum, the State Commission and the National Commission were conferred with a power to sentence any person who has failed or omitted to comply with the order passed by the District Forum or two Commissions. Therefore, the proviso, in

no way, dilutes the power for such imposition or levy. Learned counsel for respondent No. 1 on the other hand submitted that the questions have really become academic after the amendment to Section 27.

Section 27, prior to its amendment in 2003 read as follows:

''Penalties: Where a trader or a person against whom a complaint is made or the complainant fails to omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both:

Provided that the District Forum, the State Commission or the National Commission, as the case may be if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section''.

After amendment, Section 27 reads as follows:

1. Penalties: (1) Where a trader or a person against whom a complaint is made (or the complainant) fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person (or complainant) shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.''

It is to be noted that by the Consumer Protection (Amendment Act), 2002 (62 of 2002), as contained in Section 23 of the Amending Act, the proviso which was struck down as un-constitutional by the High Court has been omitted. Sub-Section (2) has been introduced which provides that the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of First Class for the trial of offences under the Act and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the First Class of the Code. The amendments have been made effective with effect from 15.03.2003. The controversy has, therefore, become academic. The appeals are, accordingly, disposed of but without any order as to costs.