

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No.297/2004

(From the judgement and order dated 18/09/2003 in CRLW No. 784/2003 of HIGH COURT OF DELHI AT N. DELHI)

GURCHARAN SINGH & ANR.

Petitioner(s)

VERSUS

M/S. ALLIED MOTORS LTD. & ANR.

Respondent(s)

(With appln(s) for stay and office report)

Date: 17/12/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner(s)Mr. Sanjeev Kumar Tiwari, Adv.
Mr. S.K. Verma,Adv.

For Respondent(s)Mr. Jaspal Singh, Sr.Adv.
Mr. S.P. Sharma, Adv.
Mr. Ashwani Bhardwaj,Adv.
Mr. Abhishek Atrey, Adv.
Mr. Shishir Singh, Adv.

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

(S. Thapar)
PS to Registrar

(Vijay Dhawan)
Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.....OF 2004
(Arising out of SLP(Crl.)No. 297/2004

Gurcharan Singh & Anr.

Appellant (s)

versus

O R D E R

Leave granted.

The High Court, by the impugned order, has stayed the proceedings initiated by the appellants against respondents under Section 138 of the Negotiable Instruments Act pertaining to eight cheques till the completion of civil proceedings between the parties.

Respondents filed a petition under Articles 226 and 227 of the Constitution of India against the complainants/appellants herein and the Presiding Officer of the Court as Respondent No.3, seeking issue of appropriate directions declaring proceedings in Criminal Complaint Nos. 168 of 2002, 113 of 2002, 114 of 2002 and 128 of 2002, initiated by the complainant against them pending in the Criminal Court, on the ground of same being not maintainable and inoperative and seeking a declaration that the same cannot be continued any longer, in view of the award having been made in Civil Proceedings in favour of the accused. Further direction was sought against the appellants to withdraw those complaints and to close the proceedings in the criminal complaint against Respondent No.3.

The impugned judgment directs that since the subject matter of the post-dated cheques, on which the complaints are based, was subject matter of adjudication before the Arbitrator and the Arbitrator has pronounced the award thereupon and civil proceedings, challenging the award, were pending, it is a fit case to stay the proceedings of the criminal complaints.

Most of the complaints were filed before the award was made. It is also not in issue that objections to the award are pending. It is evident that the civil proceedings for recovery and the criminal proceedings under Section 138 of the Negotiable Instruments Act are based on independent cause of action. The making of the award may be a defence in the complaints but to what extent such a defence is valid or not, would depend upon the facts and circumstances of each case. Mere making of the award cannot be a ground to stall or stay the proceedings initiated under Section 138 of the Negotiable Instrument Act. That being the only ground on which the criminal proceedings of complaint cases have been stayed, we are unable to sustain the impugned judgment of the High Court. We, however, wish to make it clear that we are expressing no opinion, one way or the other, either on the complaints or on the defence that may be available to the accused in law.

For the aforesaid reasons, we set aside the impugned judgment of the High Court and direct that the complaint cases would proceed in accordance with law.

The appeal is allowed in the above terms.

.....J
(Y.K. Sabharwal)

.....J
(D.M. Dharmadhikari)
New Delhi,
December 17, 2004

