

SUPR EME COUR T OF I ND I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl)... 2009  
CRLMP.NO(s). 11309

(From the judgement and order dated 27/01/2009 in CRLM No.2153/1996  
of The HIGH COURT OF DELHI AT N. DELHI)

DIRECTOR OF LOTTERIES HARYANA

Petitioner(s)

VERSUS

O.P. CHIRANIA & ORS.

Respondent(s)

With CLRMP.11309/2009( c/delay in filing SLP )

Date: 31/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Neeraj Kumar Jain,Adv.  
Mr. Arvind Nayyar,Adv.  
Mr. Sandeep Chaturvedi,Adv.  
Ms. Naresh Bakshi,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

This Special Leave  
th  
Petition is directed against the judgment and order dated 27  
January, 2009, passed by the Delhi High Court in Crl. Misc. M.No.  
2153/96, quashing the complaint filed against the respondents by  
the petitioner as being barred by limitation.

th  
The complaint was sent by post on 4 November, 1992. At  
the relevant point of time, Section 142 of the Negotiable  
Instruments Act, 1881, provided that notwithstanding anything  
contained in the Code of Criminal Procedure, 1973, no court could  
take cognizance of an offence punishable under Section 138 except  
on a complaint in writing, made by the payee or, as the case may  
be, the holder in due course of the cheque made within one month  
on which cause of action arose.

From the materials on record, it is clear that the complaint

had been received after the period prescribed in Section 142(b) of the aforesaid Act. It is on such ground of the limitation that the complaint was rejected by the High Court.

Learned counsel appearing for the Director of Lotteries Haryana, the petitioner herein, has submitted that notwithstanding the provisions of Section 142(b) of the Negotiable Instruments Act, 1881, having regard to the provisions of Section 473 Cr.P.C., the Court is vested powers to take cognizance even after the period of limitation if it is satisfied on the facts and in the circumstances of the case, that the delay has been properly explained or that in the interest of justice it is necessary to do so. It was submitted that the said provision would have overriding effect over the provisions of Section 142(b) and that the court taking cognizance of the offence had the jurisdiction to extend the period of limitation.

The High Court has considered the matter at some length and relying on several judgments both by this Court as well as by the High Court, arrived at the conclusion that the provisions of Section 142(b) would prevail over the provisions of Code of Criminal Procedure, and, accordingly, rejected the complaint.

We are in agreement with the view expressed by the High Court, having particular regard to the provisions of the Negotiable Instruments Act, 1881, which is a special Act, and those of the Code of Criminal Procedure, 1973, which generally governs the procedure for investigation and trial of criminal offences. Having regard to the provisions of contained in Section 142, which indicates that notwithstanding contained in the Code of Criminal Procedure, no court should take cognizance of any punishment under Section 138, except in the manner provided in Clauses (a) and (b), we are of the view that it was the intention of the Legislature that the provisions of the Special Act will have an overriding effect over the general provisions of the Code of Criminal Procedure which have been subsequently excluded.

In this connection, it may be indicated that by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002,

a proviso was inserted to Section 142(b) which empowers the court taking cognizance even after the limitation. In other words, prior to the amendment a complaint could be entertained only within the period as prescribed in Clause (b) of Section 142 and not beyond the said period. Addition of the proviso, in fact, ends support to the view which we have taken. we are, therefore, unable to accept the submissions made on behalf of the petitioner and the Special Leave Petition is dismissed.

(Ganga Thakur)  
P.S. to Registrar

( Juginder Kaur )  
Court Master