



## Case Comment: Section 143A and Retrospective Perspective in *G.J. Raja* Case

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### I. Introduction

Cheques have been the go-to method for paper-based transactions for a long time. However, as people increasingly embrace digital payments, the number of cheque-based transactions has reduced significantly. Other factors leading to this decline are dispute settlement time lag and credit risks associated with these instruments. There have been constant attempts by the legislature to improve this situation by introducing the provisions of fast-track courts and stricter penalties in cheque dishonour cases. The Supreme Court in *G.J. Raja v. Tejraj Surana*<sup>1</sup> adjudicated on one of these attempts of the legislature: Section 143A of the Negotiable Instruments Act (NI Act), 1881. In this comment, I would showcase how this verdict, which held this section to be prospective was erred in the application of legal principles.

The complaint in this case was lodged in 2016 for the offence of cheque-dishonour punishable under Section 138 of the NI Act. This complaint predated the 2018 amendment introducing Section 143A. In the proceedings, the trial court applied this section retrospectively and directed the drawer to pay interim compensation of 20%. The High Court, in the appeal, reduced it to 15% but upheld the order of the trial court. This was then appealed to the Supreme Court, where the issue was whether this section had prospective or retrospective operation. The apex court set aside the previous orders and held Section 143A to be prospective as it creates new liabilities and obligations for the drawer.

### II. Rules of Temporal Interpretation

The rules of interpretation have been culled out from multiple judicial precedents over time. In *G.J. Raja*, the bench relied on its judgment in *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>2</sup> for the principles bearing on the question of temporal applicability of an

amending statute. As per these principles, 'a statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment.'<sup>3</sup> In general, when any existing law is altered or any new law is inserted during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action had begun, and the new (or updated) law is presumed to be prospective.<sup>4</sup> However, this presumption is subject to a condition—the intention of the legislature. If the statute exhibits an 'express intention' or a 'necessary intendment' for retrospective operation, the general presumption of prospectivity is overridden.

### III. Erroneous application of the principle

Despite relying on the authority of *Hitendra Vishnu Thakur*, the *G.J. Raja* bench misapplied the principle of temporal interpretation. The court emphasized the substantial burden of interim compensation imposed on the respondent by the newly introduced Section 143A. The court took note of how Section 143A creates new disabilities and obligations for the accused and exposes them to coercive recovery methods, affecting their substantive rights and held it to be prospective by applying the presumption discussed above. However, the court did not examine the crucial condition appended to the principle, which states that the presumption of prospective operation only applies if there is no contradicting legislative intention. I contend here that, the legislature intended to apply Section 143A retrospectively and hence the judgment in this case frustrates the object behind this section.

#### A. Deriving Legislative Intent

While the legislative intent behind Section 143A may not be explicitly articulated in the text of the statute, legal precedent, as exemplified by the Supreme Court's

<sup>1</sup> (2019) SCC OnLine SC 989.

<sup>2</sup> (1994) 4 SCC 602.

<sup>3</sup> *ibid* [26].

<sup>4</sup> P St J Langan, *Maxwell on the Interpretation of Statutes* (12th edn, LexisNexis 2010) 220.

decision in *National Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India*,<sup>5</sup> emphasizes that there is no fixed formula for the expression of intent for retrospective operation. If the intention is not expressed, it must be derived in the light of surrounding circumstances. To know the intention behind this section, the interpretation of the Negotiable Instruments (Amendment) Act (NIAA), 2018 by different courts must be considered. Section 143A was inserted in the NI Act along with Section 148 by NIAA, 2018. While NIAA does not expressly provide for its retrospective operation, various courts have examined its applicability on pending cheque dishonour cases. One of these authorities is *Surinder Singh Deswal v. Virender Gandhi*,<sup>6</sup> where the apex court examined the legislative intent of this act while holding Section 148 to be retrospective in operation. The court noted that if the Objects and Reasons of the amendment are considered, then NIAA (2018) was enacted with the intention of retrospective operation, it 'proposed to amend the said act with a view to address the issue of undue delay...[and] to provide relief to the payees of dishonoured cheques.' Therefore, it is reasonable to conclude that the legislature's primary concern when enacting this amendment was to alleviate the substantial backlog of cases (retrospective effect), rather than merely expediting future proceedings. Hence, the provision of interim compensation in Section 143A, with above stated aim was added to provide relief to the payees even for the actions that took place before its effective implementation.

To its credit, the *G.J. Raja* bench distinguished its case from *Surinder Singh Deswal* by highlighting that Section 143A imposes substantive liability, unlike Section 148. However, the critical point missed in *G.J. Raja* is that *Surinder Singh Deswal's* determination rested not on the severity of the liability but on the application of a purposive approach and the contents of the amendment's statement of objects. This crucial distinction escaped the court's scrutiny.

The retrospective intention of the legislature is further supported by the judgments of various High Courts. In *Ajay Shah v. State of Maharashtra*,<sup>7</sup> which specifically pertained to Section 148, the Bombay High Court extended its analysis to the retrospective operation of the entire NIAA. It held that the term 'retrospective' must be given a 'purposive interpretation' and hence, all cases irrespective of when they were instituted must be brought within the ambit of NIAA. Furthermore, the Karnataka High Court, after reviewing the objects and reasons of NIAA, held in one of its judgments that despite the absence of explicit language on retrospective

application, it implied such intention by 'necessary implication.'<sup>8</sup>

#### IV. Conclusion

Considering the principles of interpretation and precedents of mentioned cases, it is reasonable to conclude that Section 143A should have retrospective operation. Thus, the judgment in *G.J. Raja* was erroneous in law.

<sup>5</sup> (2003) 5 SCC 23.

<sup>6</sup> (2019) 11 SCC 341.

<sup>7</sup> (2019) 4 Mah LJ 705.

<sup>8</sup> *V. Narasimha Murthy v. Santhosh J*, 2019 (2) KarLJ 713.