OFFICER IN CHARGE, CID

VS.

SORIS

SUPREME COURT,
JAYASINGHE. J.
TILAKAWARDANE. J.
UDALAGAMA. J.
SC 52/05.
SC SPL LA 90/05 .
CALA (PHC) APN 185/04.
HC BADULLA REV 57/04.
MC BANDARAWELA 236415.

Debt Recovery (Special Provisions) Act, No. 2 of 1990 amended by Act, No. 9 of 1994- Sections 24, 25, 26 -Applicability- Cheques drawn in favour of person other than a lending institution -Can the construction of a statute be limited by its title- Public Property Act - Lending institution?-Debt?-Any person?-Language not ambiguous? - Unreasonable interpretation-Intention of the legislature

The respondent-petitioner filed reports in the Magistrate's Court alleging that the accused had committed an offence under the Public Property Act, in that he issued Cheques without sufficient funds to the Co-operative Society. He was charged in terms of Section 25 of the Debt Recovery Act (DR Act). An objection was raised that the facts disclosed do not warrant presenting a charge in terms of Section 25-DR Act. The objection was overruled, and the High Court affirmed the said order of the Magistrate's Court. The High Court in appeal refused to issue notice, holding that it is an offence to draw a cheque without funds or with insufficient funds and that the nature of the person in whose favour the cheque is drawn is immaterial for a presentation under Section 25 of DR Act. The Court of Appeal acting in revision delivered its order holding that the 'Society' does not fall within the interpretation of a 'lending institution' and held further that the provisions of the Act can be invoked only in relation to transactions involving lending institutions and those that are conducted in the course of recovery of debts.

In appeal it was contended that the provisions of Part 1 of the Act is not applicable for a prosecution under Section 25 (I), and where a cheque is drawn in favour of any person or an institution Section 25 (I) is applicable

HELD:

Per Nihal Jayasinghe.J and Udalagama. J

(1) Section 25 (1) is self contained and exists devoid of any ambiguity and given effect to , without resorting to any other provision, and institution of an action in Part 1 of the DR Act has no relevance whatsoever to a prosecution under Section 25. When a cheque is drawn in favour of any person or institution in terms of Section 25 (1) DR Law is applicable.

(2) The construction of any statute cannot be limited by its title, the true nature of the law is to be determined not by the name given to it or by its form but by its substance. Where the language of the enactment is clear, its construction cannot be affected in any way by the consideration of the title of the Act.

(3) The long title of an Act is looked at only to help resolve an ambiguity and may not be looked at to modify the interpretation of plain language.

Per Shiranee Tilakawardane. J (dissenting) :

"I am reticent to accept that "any person" adverted to in Section 25, of the Act expands the offence to all persons who would dishonour a cheque, even between private parties".

(I) It is an unreasonable interpretation to accept that the legislature intended to confine civil liability to those transactions with lending institutions but to give a wider and expansive criminal liability to include 'all persons'; in the application of the criminal liability envisaged under the said Act as amended.

(2) The provisions of the DR Act were specially enacted to regulate and recover debts that were over due to lending institutions and was a special procedure for regulating the recovery of debts by lending institutions.

(3) A simple reading of the Act as well as the Bill show that the word "debt" had a specific meaning in terms of the DR Act. It was amended to give a limited meaning to the word "debt" which was confined to lending Institutions and not to all monetary transactions.

(4) Even if one need not refer to the long title of the Act in its interpretation, in interpreting the provisions of a statute the intention of the legislature has to be gathered not only from the preamble to the Act but also through the other related provisions of the Act itself and more particularly, when the subject matter dealt with is under different chapters or part of the same statute".

Per Shiranee Tilakawardane. J :

"I am reticent to give Section 25 such a wide or unrestricted meaning on the purposive interpretation of the Act which was for the purpose of affirmatively supporting the lending institutions to recover bad debts. It is my opinion that to give such a wide meaning to those provisions goes beyond the spirit, scope and ambit of the Act. It is also my opinion that the intention of the legislature was clearly to assist the lending institutions to have a more effective recovery procedure and to deal with such defaulters who committed offences under the Act and was specially enacted to assist lending institutions dealing with defaulters".

Casereferred to :

1. Re Wykes R vs. Wilkes (1769) 4 Burr. 2527
2. Mahijibahai Mohanbahai Barot v Patel Manibahai AIR 1965 SC 1477.

APPEAL from a judgment of the Court of Appeal.
Buwaneka Aluvihare DSG for appellant
H.G. Hussain for accused-petitioner-respondent

October 12, 2005

NIHAL JAYASINGHE. J

The Respondent-Petitioners filed reports in the Magistrate's Court of Bandarawela alleging that the accused had committed an offence under the Public Property Act, in that the Petitioner-Respondent issued cheques to the value of Rs. 4.6 Million without sufficient funds to Udapalatha Multipurpose Co-operative Society. The said cheques had been issued by the accused as payment for the purchase of seed potatoes and the said cheques had been dishonoured. The Respondent-Petitioners having obtained advice from the Attorney -General filed charges in terms of section 25 of the Debt Recovery Act No.2 of 1990 as amended. When the matter came up for trial before the Magistrate, a preliminary objection was raised on behalf of the accused that the action filed by the Respondent-Petitioners cannot be maintained and moved for the discharge of the accused from further proceedings. It was urged on behalf of the accused that the facts disclosed, does not warrant presenting a charge in terms of Section 25 of the Debt Recovery Act.

After hearing submissions, the learned Magistrate overruled the objection and accordingly fixed the trial for 11.6.2004. Aggrieved by the said order of the learned Magistrate, the accused invoked the revisionary jurisdiction of the Provincial High Court of Uva Province to have the said order of the learned Magistrate set aside. The learned High Court Judge after hearing submissions refused notice. The Respondent-Petitioners submit that whilst refusing to issue notice, the learned High Court Judge held that in terms of Section 25 (1) (a) of the Debt Recovery Act, it is an offence to draw a cheque without funds or with insufficient funds and that the "nature" of the person in whose favour the cheque was drawn is immaterial for a prosecution under that Section. Aggrieved by the said order of the learned High Court Judge, the accused invoked the revisionary jurisdiction of the Court of Appeal. On 01.4 .2005, the Court of Appeal delivered order holding that Udapalatha MPCS does not fall within the interpretation of a "lending institution" and held further that the provisions of the Act can be invoked only in relation to transactions involving lending institutions and those

that are conducted in the course of recovery of debts. The Court of Appeal also specifically held that Udapalatha MPÇS does not fall within the interpretation of the meaning of "institution of action" and therefore has no relevance to prosecutions instituted in terms of the provisions of the Act

Aggrieved by this order, the Respondent-Petitioners filed Special Leave to Appeal and the Court after hearing submissions granted leave on the following questions of law:

(I) Where an offence has been committed in terms of Section 25 of the Debt Recovery Act, are the provisions of Part I of the said Act applicable ?

(2) Where, a cheque is drawn in favour of any person or an institution, is Section 25 (I) of the Debt Recovery Act applicable ?

Mr. Buvaneka Aluwihare, D. S. G., submitted that the Debt Recovery Act contained five parts and that the 1st to 4th parts referred to the recovery procedure in respect of -moneys lent and advanced by lending institutions and that Part 5 constitutes criminal responsibility in respect of "any person" who knowingly draws up a cheque which is dishonoured by a bank for want of funds. Learned Deputy Solicitor General further submitted that the long title ought not to be looked into if the section is unambiguous and clear and submitted that there is no ambiguity as set out in Part 5, section 25(1) (a) where criminal responsibility is cast on any person who transacts business with any institution or person and that if it was within the contemplation of the legislature that "person" should include only those transactions or financial business with a lending institution, Section 25(1)(a) would have made it clear and in unambiguous terms that the person contemplated in section 25(1)(a) is only a person who has transactions with a lending institution. Learned Deputy Solicitor General went on to submit that there is no link between Parts I to 4 and Part 5 and that Part 5 stands alone, and that the sole purpose of Part 5 is to visit criminal liability on a person who knowingly draws a cheque which is dishonoured by a bank for want of funds.

Learned Deputy Solicitor General also referred to Interpretation of Statutes by Bindra (9th Edition, page 38), where it is stated that "The construction of the statute cannot be limited by its title. The true nature of the law is to be determined not by the name given to it or by its form, but by its substance, where the language of the enactment is clear, its construction cannot be affected in any way by the consideration of the title of the Act." Thus Section 25 of the Act is clearly not ambiguous. It is further stated in the same book "if the language of the Act is plain, Courts cannot refuse to give effect to it generally because it happens to go beyond the matters mentioned in the title". When there is no doubt as to the construction to be put upon the words of a section, Court cannot limit it's construction because of the Title of the Act, though the said construction clearly exceeds the scope of both the title and the preamble.

Buckley J in the case of *Re-Wykes* [1] declared, "The long title of an Act is looked at only to help resolve an ambiguity and may not be looked at to modify the interpretation of plain language."

It is significant to note that section 25 is placed under the heading "Miscellaneous". In the case of *Mahijibahai Mohanbahai V. Patel Manibahai*[2] the Indian Supreme Court held "The placing of a particular section in a part of the Code dealing with a specific subject matter may support the contention that, that section deals with a part of the subject dealt with by that part, but that cannot be said when a particular section appears under a part dealing with Miscellaneous matters. The part under the heading "Miscellaneous" indicates that the section in that part cannot be allocated wholly to a part dealing with a specific subject, for the reason that the section entirely falls outside the other part or for the reason that they cannot entirely fall within a particular part."

Mr. Hussain for the accused submitted that section 25 applies only in situations where transactions are between lending institutions and a "person" and section 25 has no application in respect of transactions entered into between two private persons or "a person" which is not a lending institution. Mr. Hussain submitted that if one looks at the definition of "debt", it clearly envisages an instance where

money had been obtained from a lending institution and not from any other source. Mr. Hussain sought to give a very restricted interpretation to the application of section 25(1) and confines the said provisions to an ambit where the transactions were purely between a borrower and a lending institution. He submitted that Act No. 2 of 1990 was brought in to speedily recover money by lending institutions and to punish those who defrauded lending institutions and not to deal with transactions between persons or institutions outside the scope of the Act. He submits further that "any person" should be understood and interpreted (in helping) with the spirit of the Act and not independently as used in common parlance; that section 25 framed under Miscellaneous deals with officers and officer referred to therein normally related to transactions referred to in the statute and not to transactions outside the scope of the statute and that the person should be understood in that spirit.

We have considered the submissions of the learned Deputy Solicitor General and Mr. Hussain. We are of the view that section 25 (1)(a) is self-contained and exists devoid of any ambiguity and given effect to, without resorting to any other provision. We are also of the view that "institution of an action" in Part I of the Debt Recovery Act has no relevance whatsoever to a prosecution instituted under section 25 (1) of the Act. We, accordingly, are mindful of the fact that the Debt Recovery Act as amended, was necessitated by the expansion of commercial transactions and that a prosecution under the normal law was highly time consuming and protracted.

We accordingly answer, question (1) as follows: that the provisions of Part I of the Act is not applicable for a prosecution under section 25 (I) of the Act. We also hold that in respect of the 2nd question of law, the cheque drawn in favour of any person or institution in section 25 (I) of the Debt Recovery Act is applicable in respect of the respondents. We accordingly allow the appeal and set aside the order of the Court of Appeal dated 30.3.2005. No costs.

UDALAGAMA J - I agree.

Appeal allowed.

Shiranee Tilakawardane, J (Dissenting)

I have had the privilege of listening to the Judgment dictated by my brother Judges but respectfully have to dictate a differing opinion. I will not deal with the facts, which have been succinctly set out by my brother Judges. Also since this is a dictated judgment I wish to deal with the matter only in a summary and concise manner. Parties conceded that the essence of the case dealt with the recovery of moneys between two parties namely the Udapalatha Multipurpose Corporative Society on the one hand and the accused-petitioner on the other in a sum of Rs. 5,467,100 Million (approximately Rs. 5.4 Million) which had arisen as a result of the dishonoring of several cheques.

At the outset of his argument, learned Deputy Solicitor General unequivocally and specifically stated that he conceded that the charges pertained to a transaction between two persons, and did not involve a recovery by a lending institution. The charge which had been preferred against the accused-petitioner-petitioner-respondent, on specific advice given by the Attorney-General was under Section 25 (1) (a) of the Debt Recovery (Special Provisions) Act No.2 of 1990 as amended by Act No. 9 of 1994.

Special leave was granted on 19.7.2005 on the following questions of law:-

The matter to be determined is whether the charge under section 25 (1) (a) which had been preferred against the accused-respondent could be extended to include a situation where the drawee of the cheque is not a lending institution.

The provisions of the Debt Recovery Act No. 2 of 1990 were specially enacted to regulate and recover debts that were overdue to lending institutions and was a special procedure for regulating the recovery of debts by lending institutions. Even though the learned Deputy Solicitor General argued that one need not refer to a long title of an Act in its interpretation, in interpreting the provisions of a statute the intention of the legislature has to be gathered not only from the

preamble to the Act but also through the other related provisions in the Act itself and more particularly, when the subject matter dealt with is under different chapters or parts of the same statute.

In considering the nature of the recovery of the debt that is envisaged under the Act, it is set out with clarity and defined under section 21 of the amending Act No. 9 of 1994 in the following manner:-

"debt" means a sum of money which is ascertained or capable of being ascertained at the time of the institution of the action, and which is in default, whether the same be secured or not, or owed by any person or persons, jointly or severally or as principal borrower or guarantor or in any other capacity, ,and alleged by a lending institution to have arisen, from a transaction in the course of banking, lending, financial or other alleged business activity of that institution, but does not include a sum of money owed under a promise or agreement which is not in writing;"

Whilst it is clear that according to the provisions of the aforesaid Act, recovery procedures for the recovery of a debt, are only available to lending institutions, the question that arises for determination, in my view is whether the penal consequences and the creation of an offence in terms of section 25(1) extends beyond a cheque that has been dishonored to a lending institution.

It appears that all parties to this case are in agreement that the provisions relating to recovery of a debt are confined to debts that are owed only to lending institutions. This procedure therefore replaced the existing recovery procedure under the Civil Procedure Code.

Clearly therefore the provisions relating to Debt Recovery in the said Act are confined to recovery of loans by lending institutions

A simple reading of the Act as well as the Bill which has been provided by the learned Deputy Solicitor General shows that the word "debt" had a specific meaning in terms of this Act. Indeed the Bill was specifically amended to give a limited meaning to the word "debt" which

was confined to lending institutions and not to all monetary transactions.

The draft Bill. which was proposed on 23.01.1990 has restricted the meaning of the word debt as it existed, a fact that was conceded by the learned Deputy Solicitor General. Admittedly therefore a much more restrictive definition was given, even by the amendment Act 9 of 1994 of the aforesaid Act by section 21, where recovery was restricted to the banking activity of a lending institution. Such amendment to the original Bill would not have been needed if the Act was proposed to have a wider application as argued by the learned Deputy Solicitor General.

The argument was also preferred by the learned Deputy Solicitor General that Part 5 relates to "a stand alone section" and does not have any connection with the recovery of debts by a lending institution and therefore the words "any person" that has been used mean any person within the jurisdiction of Sri Lanka who has entered into any financial transaction with any other person and who draws a cheque under the following circumstances:-

(a) knowingly draws a cheque which is dishonored by a bank, for want of funds.

(b) gives an order to a banker to pay a sum of money, which payment is not made or there being no obligation on such banker to make payment or the order given being subsequently countermanded, with a dishonest intention, or ... "

Whilst this liability clearly circumscribes "any person" to include any drawer of a cheque the Act as amended is seemingly silent as to who the drawee of the cheque should be. So that where the Act clearly broadly defines the liability of the offender or perpetrator as any person, the drawee has not been set out with equal clarity. I am reticent to give this section such a wide and unrestricted meaning on the purposive interpretation of the Act which was for the purpose of affirmatively supporting the lending institutions to recover their bad debts. It is my

opinion that to give such a wide meaning to those provisions goes against the spirit, scope and ambit of this Act.

In this context, Part I of the Act deals with the institution of a Civil action, a fact conceded even by the learned Deputy Solicitor General, for the recovery of a debt which must necessarily be to a lending institution. His argument is that the criminal matters instituted under these provisions of section 25 are not precluded to, and goes beyond the lending institutions and would include all persons who enter into transactions by way of cheques. To give such a meaning, it would in my opinion mean that the intention of the legislature was to give a confined meaning under the civil law, confining debt recovery to lending institutions, but to give an expansive and liberal application under criminal law, to include all persons who entered into such a transaction and defaulted on a cheque.

Furthermore, even Part 5 itself specifically in sections 24 and 26 refer to "institutions". It is my opinion, that this section must be cautiously interpreted under the whole spirit of the Act to mean that the procedure was optional to the lending institution, and whether the procedure was civil or criminal it was one that was restricted to transactions involving the lending institutions. That is a lending institution was entitled to proceed to recover by way of the new expeditious recovery procedure set out under the Act or to proceed against the defaulter by way of criminal prosecution, but in all such actions the drawee was restricted to lending institutions.

I am reticent to accept that "any person" adverted to in terms of section 25 of the said Act, expands the offence to all persons who would dishonor a cheque, even between private parties. The normal procedure and practice in commercial transactions involve post dated cheques, and this procedure would be precluded if the interpretation was to be given in the wide sense that was argued by the State Counsel. To give this meaning would attract a wider jurisdiction, beyond the jurisdiction that has been envisaged both in terms of the preamble to the Act and to other sections in the Act. An amendment to the Penal Code could have served the purpose better, had such been the real intention of the legislature.

It would also be in my opinion an unreasonable interpretation to accept that the legislature intended to confine civil liability to those transactions with lending institutions but to give a wider and expansive criminal liability to include "all persons" in the application of the criminal liability envisaged under the said Act as amended.

The interpretation that the learned Deputy Solicitor General requires from this Court is to take the simple words "any person" in isolation from both the preamble of the Act and the other sections referred to in other parts and even in this part of the Act, which he referred to as "a stand alone section" .

It is my opinion that the intention of the legislature was clearly to assist the lending institution to have a more effective recovery procedure and to deal with such defaulters who committed offences under the Act and was specifically enacted to assist lending institutions dealing with defaulters.

Accordingly, I see no merit in the argument of the learned Deputy Solicitor General. The appeal is dismissed. No costs.

Appeal dismissed.

By majority decision appeal allowed.