

Criminal Revision

PRESENT : The Hon'ble Justice Ashim Kumar Roy

Judgment On: 15-02-2010.

C.R.R. No. 3859 of 2009

With

CRAN No. 3134 of 2009

Mr. Arani Murali

versus

The State of West Bengal & Anr.

Point:

Territorial jurisdiction: Whether a Court has the territorial jurisdiction to hold a trial of an offence punishable under Section 138 of the Negotiable Instruments Act merely because the notice was sent from a place situated within its territorial limit - Negotiable Instruments Act - S.138

Fact: The petitioner who has been facing his prosecution under Section 138 of the Negotiable Instruments Act has moved this Court for quashing of the said proceedings on the ground the Ld. Metropolitan Magistrate before whom the proceeding is pending is lacking of territorial jurisdiction.

Held: No Court has the territorial jurisdiction to hold a trial of an offence punishable under Section 138 of the Negotiable Instruments Act merely because the notice was sent from a place situated within its territorial limit. (paragraph – 5)

Cases cited:

Harman Electronics Private Limited & Anr. Vs. National Panasonic India (P) Ltd., reported in (2009) 1 SCC (Cri) 610

K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr., reported in (1999) 7 SCC 510, (ii) Vinay Devanna Nayak Vs. Ryot Sewa Sahakari Bank Ltd., reported in (2008) 2 SCC 305, (iii) Karnataka State Financial Corporation Vs. N. Narasimahaiah, reported in AIR 2008 SC 1797, (iv) Smt. Shamshad Begum Vs. B. Mohammed, reported in AIR 2009 SC 1355, (v) Ramish Francis Toppo Vs. Violet Francis Toppo, reported AIR 1989 (Cal) 128, (vi) Jaisri Shau Vs. Rajdewan Dubey & Ors., reported in AIR 1982 SC 83, (vii) Syed Mohideen Vs. Government of Tamil Nadu & Anr., reported in AIR 1986 (Madras) 188 M. Natarajan Vs. State by Inspector of Police, SPE, CBI, ACB, Chennai, reported in (2008) 3 SCC (Cri) 507

For Petitioner : Mr. Krishnendu Bhattacharjee
For State : Mr. Kasem Ali Ahmed
For O.P. No. 2 : Mr. Madhusudan Saha Roy

The Court:

1. The petitioner who has been facing his prosecution under Section 138 of the Negotiable Instruments Act has moved this Court for quashing of the said proceedings on the ground the Learned Metropolitan Magistrate, 8th Court, Calcutta, before whom the proceeding is pending is lacking of territorial jurisdiction.

2. Now, having regards to the statement of facts made in the petitioner of complaint together with those contained in the demand notice, the admitted position is as follows;

(a) The complainant has his registered office at Calcutta. The Proprietorship concern of the accused situated at Peenya Industrial Area, Bangalore.

(b) To liquidate legally enforceable existing debt and liability which the accused owe to the complainant issued an account payee cheque drawn on UCO Bank, Peenya Industrial Area Branch in favour of the complainant company.

(c) The complainant deposited the said cheque to its banker Axis Bank, Peenya Extension Counter at Bangalore for easy and rapid clearance and encashment of the same within the validity of the said cheque, but the said cheque was returned unpaid with the remarks "fund insufficient".

(d) A demand notice under Section 138 (b) of the N.I. Act was sent to the accused at his office address from Kolkata through the learned advocate of the complainant company.

(e) The said notice was duly delivered and received by the accused on 6th of September, 2008.

(f) It appears from the demand notice which is an annexure to this criminal revision that the said notice was sent to the accused at his office address at Peenya, Bangalore and same was served upon him there.

3. On behalf of the petitioner reliance has been heavily placed on the decision of the Hon'ble Supreme Court in the case of Harman Electronics Private Limited & Anr. Vs. National Panasonic India (P) Ltd., reported in (2009) 1 SCC (Cri) 610 and it is submitted since the Court before whom the impugned proceeding is pending is lacking of territorial jurisdiction is not legally empowered to proceed with the same.

On the other hand, on behalf of the complainant/opposite party reliance have been placed on the following decisions, viz., (i) K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr., reported in (1999) 7 SCC 510, (ii) Vinay

Devanna Nayak Vs. Ryot Sewa Sahakari Bank Ltd., reported in (2008) 2 SCC 305, (iii) Karnataka State Financial Corporation Vs. N. Narasimahaiah, reported in AIR 2008 SC 1797, (iv) Smt. Shamshad Begum Vs. B. Mohammed, reported in AIR 2009 SC 1355, (v) Ramish Francis Toppo Vs. Violet Francis Toppo, reported AIR 1989 (Cal) 128, (vi) Jaisri Shau Vs. Rajdewan Dubey & Ors., reported in AIR 1982 SC 83, (vii) Syed Mohideen Vs. Government of Tamil Nadu & Anr., reported in AIR 1986 (Madras) 188. It has been contended the Learned Court before whom the impugned proceeding is pending has necessary territorial jurisdiction to try the alleged offence.

4. I have given my anxious and thoughtful consideration to the rival submissions of the parties. The case laws relied upon by them have also been taken into consideration.

5. In course of his argument the learned advocate of the opposite party no. 2 vehemently urged that the complainant company maintained a bank account with Axis Bank, Dalhoushee Branch, Kolkata but for easy and rapid clearance of the said cheque, the same was deposited at the Peenya Branch of the said Bank taking advantage of core banking service. He also produced a letter addressed to the complainant company by its banker Axis Bank Limited, Dalhoushee Branch as well as the dishonoured cheque in question and the cheque returning memo which are lying with the records. Since, correctness of the said documents has not been disputed by the learned advocate of the petitioner, those are taken into consideration. It appears from the aforesaid documents that the cheque in question was deposited at Axis Bank, Penny Branch, Bangalore. The petition of complaint is absolutely silent as to where the transactions were held between the parties and where the cheque was delivered to the complainant company. In the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr. (supra), a Division Bench of the Apex Court in paragraph 14 held the following of the Acts which are the components of the offence punishable under Section 138 of the Negotiable Instruments Act;

- (a) Drawing of the cheque.
- (b) Presentation of the cheque to the bank.
- (c) Returning the cheque unpaid by the drawee bank.
- (d) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.
- (e) Failure of the drawer to make payment within 15 days of the receipt of the notice.

It has further been held in paragraph 15 that it is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178 (d) of the Code is useful. It is extracted below:

“178. (a)-(c) * * *

(d) where the offence consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas.”

Finally, the Apex Court came to the following conclusion in paragraph 16;

“Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.”

Subsequently, in the case of Smt. Shamshad Begum Vs. B.

Mohammed (supra) decided on 3rd November, 2008, another Division Bench of the Apex Court followed the earlier view of the Hon’ble Supreme Court in the case

of K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr. (supra) as regards to the question which could be the place of trial in case of an offence punishable under Section 138 of the Negotiable Instruments Act.

However, in the case of Harman Electronics Private Ltd. & Anr. Vs.

National Panasonic India (P) Ltd. (supra) decided on 12th December, 2008, another Division Bench of the Supreme Court gave a decision on the same question as to the place of trial of an offence punishable under Section 138 of the Negotiable Instruments Act, taking into account the observation of the Apex Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr. (supra).

The Hon’ble Supreme Court in paragraphs 12 and 13 held as follows;

“The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for collection of the cheque admittedly was available at Chandigarh and the said facility was availed of. The certificate dated 24-6-2003, which was not produced before the learned court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi branch of Citibank. We, therefore, have no other option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonour of the cheque also took place at Chandigarh. The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would

give rise to a cause of action for taking cognizance under the Negotiable Instruments Act. (para 12).

It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act are intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.” (para 13)

According to the aforesaid decisions of the Hon’ble Supreme Court which is latter in point of time and where Supreme Court has taken into consideration its earlier decision, in fact the territorial jurisdiction of the Court has been practically narrowed and it was held sending of notice from a particular place would not give rise to cause of action but communication of notice would. Therefore, no Court has the territorial jurisdiction to hold a trial of an offence punishable under Section 138 of the Negotiable Instruments Act merely because the notice was sent from a place situated within its territorial limit. In this connection it would be more appropriate to rely on the decision of the Hon’ble Apex Court in the case of M. Natarajan Vs. State by Inspector of Police, SPE, CBI, ACB, Chennai, reported in (2008) 3 SCC (Cri) 507, where the Supreme Court in paragraph 38 held as follows;

“...Once this Court had noticed the observations made in Hira Lal case and then narrowed the width of the observations expressed in para 27 thereof, we must proceed in terms of the subsequent judgment where the earlier judgment was taken note of.”

For the reasons as aforesaid, I am of the opinion that the Learned Metropolitan Magistrate, 8th Court, Calcutta, before whom the aforesaid

proceeding is pending has no jurisdiction to hold the trial in respect thereof. Accordingly, the impugned proceeding stands quashed.

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However, this order will not preclude the opposite party, i.e., the complainant company to file a complaint before the appropriate Court at Bangalore in accordance with law. I also make it clear the complainant shall have the liberty to file such complaint within a month from the date of receipt of certified copy of this order.

In view of disposal of the main criminal revisional application, the application for extension of interim order being CRAN No. 3134 of 2009 has now become infructuous and accordingly stands disposed of.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)