
(2019) 08 MP CK 0104

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 3674 Of 2017

Bhopal Singh

APPELLANT

Vs

Harish

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397(3), 482
Negotiable Instruments Act, 1881 — Section 138, 142

Citation : (2019) 08 MP CK 0104

Hon'ble Judges : S.K. Awasthi, J

Bench : Single Bench

Advocate : M.K. Sharma, Jitendra Singh

Final Decision : Dismissed

Judgement

1. The applicant has preferred the present petition under Section 482 of the Cr.P.C. against order dated 06/03/2017 passed by First Additional Sessions Judge, Mandsaur in Criminal Revision No. 79/2015, whereby revision petition filed against order dated 21/11/2014 passed by Judicial Magistrate First Class, Mandsaur in Criminal Case No. 2937/2013 has been dismissed, wherein objection raised by the applicant/accused regarding territorial jurisdiction of the court has been rejected.

2. Briefly stated facts of the case are that the applicant/accused delivered a cheque in favour of the respondent on 04/08/2013 for an amount of Rs.2,65,000/- of State Bank of India, Branch-Malhargarh, District-Mandsaur towards the payment of loan amount. The respondent deposited the same in Central Bank of India, Branch-Narayangarh, District-Mandsaur and the same was received unpaid on 10/09/2013 with the remark that "stop payment by drawee". Thereafter, complainant/ respondent issued a notice to the applicant for payment of the cheque amount, when the applicant has failed to comply with the notice, then respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the applicant/accused before the court of Judicial

Magistrate First Class, which was got registered and the applicant was summoned by the trial Court.

3. The applicant/accused filed an application before the court of Judicial Magistrate First Class, Mandsaur for rejection of the complaint on the ground that no cause of action has been arisen within the territorial jurisdiction of Malhargarh, District-Mandsaur, therefore, the court of Judicial Magistrate First Class, Mandsaur has no jurisdiction to entertain the same because both the parties are residing in village Narayangarh, Teh. Malhargarh District-Mandsaur. The applicant issued post dated cheque drawn on State Bank of India, Branch-Malhargarh in favour of the complainant/respondent. The respondent/complainant is a resident of Village Narayangarh, Teh. Malhargarh, District-Mandsaur, hence, he presented the cheque in question for encashment in Central Bank of India, Branch-Narayangarh, which was return unpaid, therefore, the JMFC, Mandsaur did not possess territorial jurisdiction to hear the case. The said applicant was dismissed by the trial Court, vide order dated 03/03/2015 holding that the complainant issued a legal notice through his counsel for payment of the corresponding cheque value and thereupon he filed a criminal complaint against the applicant/accused at Mandsaur, therefore, the Mandsaur court is having territorial jurisdiction to hear the matter. The aforesaid order was challenged before the Sessions court by filing Criminal Revision No. 79/2015, which was also got dismissed by impugned order, which is a subject matter of challenge before this Court.

4. Learned counsel for the applicant submits that both the parties are resident of Village-Narayangarh, Teh.-Malhargarh, District-Mandsaur. The transaction between the parties has taken place in Narayangarh. The applicant issued post dated cheque drawn on Branch-Malhargarh in favour of the respondent/complainant and he presented the cheque in Central Bank of India, Branch-Narayangarh, Teh. Malhargarh, District-Mandsaur, which was received unpaid with the remark that payment stopped by drawer. Looking to the aforesaid circumstances, the JMFC, Mandsaur is not having any territorial jurisdiction to entertain the aforesaid complaint and tried the case. The court of JMFC, Malhargarh is the competent court to try the aforesaid complaint case, therefore, the trial Court as well as the revisional Court have committed grave error in rejecting the application filed by the applicant. Hence, learned counsel for the applicant, prays for setting aside of the impugned orders.

5. On the other hand, learned counsel for the respondent opposed the prayer and prayed for rejection of the petition.

6. I have heard learned counsel for the parties and perused the record.

7. From the perusal of the documents filed alongwith the complaint, it appears that the complaint was filed on 26/08/2013 and it was registered on 28/10/2013, thereafter, particular of offence was read over to the applicant/accused and the case was fixed for recording the complainant's evidence. Thereafter applicant has

moved an application for rejection of the complaint on the ground that the court of JMFC, Mandsaur is not having any territorial jurisdiction to tried the matter.

8. The NI Act has been amended by the legislature and provisions of Section 142 of the NI Act, 1881 has been inserted, wherein it is provided that the offence under Section 138 shall be filed and tried only by a court within whose local jurisdiction,- (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. This amendment Act came into force w.e.f. 15/06/2015; whereas the present complaint was presented in the year 2013.

9. The amendment Act 2015 was passed published on 29/12/2015 in the gazette and it was came into effect from 15/06/2015 and the impugned order was passed on 03/03/2015, therefore, at the time of passing of the impugned order, the amending act was not came into force, therefore, the same is not applicable in the facts and circumstances of the present case.

10. The trial Court as well as revisional Court are of the view that the question regarding territorial jurisdiction of the complaint is mixed question of law and facts, which can be decided after recording the evidence lead by the parties.

11. Looking to the aforesaid facts and circumstances of the case, this Court is of the view that the courts' below have not committed any error in rejecting the application filed by the applicant. Moreover so, under Section 397(3) of the Code of Criminal Procedure, a second revision petition after the first had been dismissed is not maintainable by way of the filing the petition under Section 482 of the Cr.P.C. with the High Court. More often than once it has been observed that inherent powers of the Court should not be utilised. Reference to some of the precedents in this regard would be in the fitness of things. In the case of Dharampal v. Smt. Rameshri, 1993 (1) RCR (Crl.) 696 : (1993) 1 SCC 435 : AIR 1993 SC 1361, the Apex Court held as under:-

".....The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under S. 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of Ist respondent. On this short ground itself, the impugned order of the High Court can be set aside."

12. Similarly, in the decision rendered in the case of Deepti @ Arati Rai v. Akhil Rai, Judgement Today 1995 (7) Supreme Court 175 the Supreme Court held that once first revision petition has been dismissed, the second revision petition would not be maintainable and further that inherent powers cannot be ordinarily utilised when the second revision is expressly barred. In the case of Krishnan v.

Krishnaveni, 1995 (3) RCR (Crl.) 638 : (1997) 4 SCC 241 : AIR 1997 SC 987 , similar question had come up for hearing. It was held that inherent powers could only be utilised if there is failure of justice. In those cases, the High Court may interfere but reiterated that second revision is not maintainable after the dismissal of the first revision petition.

13. The position becomes clear. This is a second revision petition filed by way of petition under Section 482 of the Cr.P.C. after the dismissal of the first revision petition. It must be held to be not maintainable and, in fact, specifically barred under sub-section (3) of Section 397 of the Code of Criminal Procedure.

14. Taking this view of the matter, it is not a fit case to exercise the powers vested under Section 482 of the Cr.P.C., as there is no abuse of the process of the Court nor the interest of justice so require. Consequently, the petition fails and is accordingly dismissed as not maintainable.

15. Let a copy of this order be sent to the concerned trial Court for information and necessary compliance.