
(2009) 11 BOM CK 0146

In the Bombay High Court

Case No : Criminal Revision Application No. 7 of 2009

Crompton Greaves Ltd.

APPELLANT

Vs

Shivam Traders, Shri Ratanlal Ranasaria and Mrs. Manju
Ranasaria

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179
Negotiable Instruments Act, 1881 (NI) — Section 126, 138, 72, 84

Citation : (2009) 111 BOMLR 4669 : (2010) 2 CivCC 751 : (2010) CriLJ 1227 :
(2011) 2 Crimes 607 : (2010) 3 MhLj 246 : (2010) 5 RCR(Criminal) 649

Hon'ble Judges : U.D. Salvi, J

Bench : Single Bench

Advocate : S.D. Lotlikar and P.S. Lotlikar, for the Appellant; J. Godinho, for the Respondent

Judgement

U.D. Salvi, J.—A question as to the territorial jurisdiction of J.M.F.C. "C" Court, Ponda, Dist. North Goa to try an offence punishable u/s 138 of N.I. Act arises in the present Criminal Revision Application. Facts giving rise to the aforesaid offence are as under:

The respondents / accused Nos. 2 and 3 proprietors of the respondent / accused No. 1 Shubham Traders had issued three post dated cheques in the total sum of Rs. 11,46,276.86ps. in favour of the appellant/ complainant M/s. Crompton Greaves Ltd. having its registered office at Mumbai and its Electric Division at Ponda, Goa towards full and final settlement of their dues arising out of purchase of the electrical items. One of these cheques being cheque No. 963905 dated 2.1.2007 for Rs. 10,55,574/-drawn on Thane Janata Sahakari Bank, Khopat, Thane branch was presented within the validity period for realisation through Union Bank of India, Ponda, Goa Branch-appellant's/ complainant's banker; and drawee bank Janata Sahakari Bank Ltd, Khopat, Thane Brnach had dishonoured and returned the said cheque on the ground that the respondents/ accused had closed their account with return memo dated 12.1.2007. The appellant/

complainant, therefore, issued a legal notice dated 31.01.2007 through its Advocate from Ponda, Goa calling upon the respondents /accused to effect the payment of the cheque amount within 15 days from the date of the receipt of the said notice to the appellant/ complainant Company having its undertaking at Ponda, Goa. The respondents/ accused received the said legal notice on 08.02.2007. However, the respondents/ accused failed and neglected to effect the payment of the cheque within stipulated period of 15 days i.e. on or before 23.02.2007. Notice remained unreplied. The cause of action, according to the appellant/ complainant, for filing the said complaint arose on 24.02.2007. Eventually, the complaint in respect of the commission of the offence u/s 138 of the N.I. Act was lodged against the respondents/ accused on 07.03.2007 in the Court of J.M.F.C, Ponda. After recording the verification of the complainant, the learned J.M.F.C., Ponda issued process u/s 138 of N.I. Act against the respondents / accused.

2. On 03.10.2008, the respondents/ accused moved an application for returning the complaint to the complainant for want of jurisdiction. The appellant/ complainant replied the said application. After hearing the parties, the learned J.M.F.C, Ponda allowed the application dated 03.10.2008 and returned the complaint to the complainant for its presentation before the Court of competent jurisdiction.

3. The learned J.M.F.C, Ponda concluded that the transaction of the purchase of electrical goods had actually taken place outside its jurisdiction and the cheque drawn on the bank at Thane was issued by the respondents/ accused at Mumbai i.e. outside its jurisdiction. The learned J.M.F.C. did consider the fact that the complainant has its undertaking in Ponda, cheque was presented at Ponda, returned unpaid at Ponda, demand notice was issued in Ponda, monies against the cheque amount were required to be paid to the complainant at Ponda, and further concluded with reference to the judgment reported in Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another, that monies are always required to be paid at the place where the business transaction had taken place and, therefore, the aforesaid considerations flowing from the aforesaid facts are not the grounds to file the complaint before it. On this premise the learned J.M.F.C. returned the complaint to the appellant/ complainant for presenting the same before the Court of competent jurisdiction.

4. Learned Advocate Lotlikar for the appellant/ complainant submitted that issuance of cheque authorises the payee named therein to receive the payment at any place lawfully and, therefore, the place of presentation of cheque to its banker Union of India, Ponda, Goa Branch spells out a jurisdiction and the complaint u/s 138 of N.I. Act can be lodged in a Court within whose local jurisdiction such place falls. He further argued that from the reading of Section 126 of N.I. Act the payment against the cross cheque is expected at any place where the banker of the payee is situate. Learned Avocate Lotlikar for the appellant/ complainant further submitted that the Single Judge of this Bench

while delivering the judgment dated 07.02.2008 in Criminal Writ Petition No. 07/2008 Damodar S. Prabhu v. Balkrishna R. Naik and Ors. differed from the view taken by the learned Single Judge at Nagpur in Ahuja Dongre's case (supra) and referred the matter to a larger bench. However, he submitted that the reference to a larger bench did not fructify as the issues were settled by the parties amicably before it could reach its logical end. From the context of the order dated 07.02.2008 in Criminal Writ Petition No. 7/2008, he pointed out how the learned Single Judge of this Bench had found a narrow view of the law taken by the learned Single Judge of the Bench at Nagpur in Ahuja Dongre's case (supra) and, therefore, a deeper thought needs to be given to the ratio decidendi in the Ahuja Dongre's case before the legal provisions governing the territorial jurisdiction of the Court as found in the Code of Criminal Procedure are interpreted. According to him, the view taken in the Ahuja Dongre's case (supra) is directly contrary to the law laid down by the Apex Court in K. Bhaskaran's case as observed in Single Judge's order dated 07.02.2008 in Criminal Writ Petition No. 07/2008. He further placed reliance on judgments reported in 2005 All M R (Cri.) Journal 65 Vuppaula Venkata Nageshwara Rao v. Tulluri Chit Funds Pvt. Ltd. and Anr.; 2002(4) All M R J 22 Lok Housing and Construction Ltd. v. Raghupati Leasing and Finance Ltd. and Anr.; 2008 All M R (Cri.) Journal 271 Nallamilli Themini Reddy v. Bunga Vijaya Kumari and Anr.

5. Learned Advocate Godinho for the respondents/ accused submitted that the learned J.M.F.C. had given a clear finding as disclosed from the complaint and material placed before it that all business transaction culminating the drawal of cheque in question had taken place outside the jurisdiction of Ponda Court and, therefore, mere issuance of notice or presentation of cheque for realisation would not confer jurisdiction on the Court in whose jurisdiction the place of presentation of cheque for realisation or issuance of notice falls. He relied on the judgments reported in 2009(5) Mh.L.J. 273 Diptikumar Mohanty v. Videocon Industries Ltd.; 2009 All M R (Cri.) 3038 Shah and Modi Developers and Anr. v. State of Maharashtra and Anr.; Jinraj Paper Udyog Vs. Dinesh Associates and Another, ; 2007(1) Bom CR (Cri.) 1031 Ahuja Nandkishore Dongre v. State of Maharashtra and Anr.; 2006 All M R (Cri.) 2482 Laxmi Travels v. G. E. Countrywide Consumer and Anr.

6. After having heard the parties and considering the plethora judgments cited, it is abundantly clear that Chapter 13 of the Code of Criminal Procedure 1973, particularly Section 177, 178, 179 therein provides answer to the material question in the present controversy. Section 177 of the Code indicates ordinary place of enquiry of trial of every offence by a Court in following terms:

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

This, therefore, poses a question as to the commission of the offence u/s 138 of the N.I. Act. The Hon'ble Apex Court while delivering the judgment in K. Bhaskaran's case 2000(5) Bom CR 178 SC K. Bhaskaran v. Sankaran Vaidyan

Balan and Anr. analysed the components of the said offence, which go in its making as under:

- (i) Drawing of the cheque
- (ii) Presentation of the cheque to the bank
- (iii) Returning the cheque unpaid by the drawee bank
- (iv) Giving notice in writing to the drawer of the cheque demanding the payment of the cheque amount,
- (v) Failure of the drawer to make payment within 15 days of the receipt of the notice. - vide para 14 therein.

This analysis of the offence u/s 138 of the Act has been the foundation of the several judgments including much debated Ahuja Dongre's case (supra).

7. It is possible that each of the five acts going into making of an offence u/s 138 of the N.I. Act could be done at five different localities. The Hon'ble Apex Court did recognise such possibility and observed thus :

Para 15. 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 concatenation of all the above five act is a sine qua non for the complaint of the offence u/s 138 of the Act. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

Where the offence consist 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.

Para. 16-Thus, it is clear, if the five different acts were done in five different localities by one of the Courts exercising jurisdiction in one of five local areas can become the place of trial for the offence u/s 138 of the Act. In other words, the complainant can choose any one of those Courts having jurisdiction over anyone of the local area 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 an offence u/s 138 of the Act.

8. The Learned Single Judge of Nagpur Bench eruditely expressed in Ahuja Dongre's case (supra) that unlike statutory provisions, which could be applied by an analogy or by an inductive or deductive logic to different situations, observations in the judgments have to be read in the context of the facts in which judgment was rendered. Proceeding further, the learned Single Judge in Ahuja Dongre's case analysed the language of clauses 2 and 3 of the acts enumerated as the components of the offence in para 14 of the K. Bhaskaran's judgment (supra) and differed with the view of the Andhra Pradesh High Court and Delhi High Court taken in Vupppala Venkat Nageshwar Rao's case (supra) and Prem Cashew Industries case reported in (2001) All M R (Cri.) Journal 33 Prem Cashew Industries v. Zen Pareo. It is correct that while creating an offence

u/s 138 of the N.I. Act, the whole scheme of the Act was not changed and the cheque issued continued to be defined as a bill of exchange drawn on a specified banker. Section 72 of the N.I. Act lays down as under;

Subject to the provisions of Section 84 a cheque must in order to charge the drawer be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of this drawer.

In light of this provision a cheque has to be presented to the drawee bank at the place mentioned on the cheque.

9. Section 126 of the N.I. Act stipulates:

Payment of cheque crossed generally - Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially - Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Thus, it merely prohibits payment against crossed cheque directly to the holder/payee but its banker.

10. The law, therefore, does not make the payee's banker through whom the cheque is presented a "drawee". Such a banker acts as an agent of payee and not an agent of drawee bank. Learned Advocate Mr. Lotlikar's submission that the place of presentation of the cheque by the payee to its banker at Ponda spells out the jurisdiction for the Court of J.M.F.C. at Ponda is, therefore, without any merit.

11. The learned Single Judge of this Bench with reference to K. Bhaskaran's case, particularly para Nos. 11,12 and 13 therein, while dealing with the case of Damodar Prabhu (supra) opined that the view taken by the learned Single Judge in Ahuja Dongare's case is directly contrary to the law laid down by the Apex Court in K. Bhaskaran's case. For understanding this controversy, relevant paras from K. Bhaskaran's case can be gainfully reproduced herein below:

Para.11 - We fail to comprehend as to how the trial Court could have round so regarding the jurisdictional question u/s 177 of the Code "every offence shall ordinarily be inquired into and tried in a Court within whose jurisdiction it was committed." The locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criteria to determine the place of offence. It must be remembered that offence u/s 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in Clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety

of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carried on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence u/s 138 of the Act.

Para. 12.-Even otherwise the rule that every offence shall be tried by a Court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word "ordinarily" to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a Court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the Court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code Stretches its scope to a still wider horizon.

It reads thus:

179 Offence triable where act is done or consequence ensues. -When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose jurisdiction such thing has been done or such consequence has ensued.

Para 13.-The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the Courts to try the offence was sought to be determined.

12. Going by the scheme of the provisions in Chapter XIII of the Code of Criminal Procedure regarding jurisdiction of Criminal Courts, it can very well be seen that the place of commission of the offence is the place where ordinarily enquiry or trial in respect of the said offence can be held. Many a times it happens as discussed hereinabove that the offence comprises of several acts, each of such act being performed or committed at several distinct places. It is also possible that it remains uncertain in which of local areas the offence was committed. There is also possibility that an offence continues to be committed in more than one local areas. Considering these possibilities, Section 178 of the Code allows the enquiry or trial of such offences be held by the Court in any of such local areas. Section 179 of the Code stretches its scope further so as to allow the enquiry or trial to be held by a Court within whose local jurisdiction either an act necessary to constitute an offence has been done or the consequence of such act has ensued when an act is an offence by reason of anything which has been done and of consequence which has ensued. To understand the amplitude of the provisions governing the territorial jurisdiction of a Court in the matter of an offence u/s 138 of N.I. Act one has to read para Nos. 11,12,13,14,15 and 16 in K. Bhaskaran's case and not restrict one's view to paragraph No. 14 of the

Bhaskaran's judgment only. Nonetheless, paragraph No. 14 in Bhaskaran's case clearly specifies concatenation of a number of acts necessary to complete an offence u/s 138 of the N. I. Act. Whether each of those acts are clearly revealed or not so as to remove uncertainty in that regard is the matter, which can be perceived from the facts of the each case.

13. Item No. 4 in para 14 of K. Bhaskaran's case speaks of giving notice in writing to the drawer of the cheque demanding payment of the cheque amount. Such demand comes into effect only when notice in writing is served on the drawer of the dishonoured cheque. Only on service of such notice and failure on the part of the accused drawer to pay the demanded amount within a period of 15 days thereafter, the commission of an offence u/s 138 of N.I. Act is complete. Section 138 of N.I. Act does not stipulate any specific place where notice in writing demanding the payment to the drawer of the cheque has to be served. This would depend upon the facts and circumstances of every case.

14. In the instant case notice in writing demanding the payment of the amount of cheque dishonoured within 15 days from the date of the receipt of the said notice was addressed on behalf of the undertaking/ electrical division of M/s. Crompton Greaves Ltd. at Ponda, Goa to the respondent accused. The Complaint also reveals that the applicant complainant M/s. Crompton Greaves Ltd was operating its electrical division at Betoda, Ponda, Goa. This fact was reiterated in verification Exh.9. The respondents/ accused in order to come out of the net of the offence u/s 138 of the N.I. Act, were expected to make good the payment due under the dishonoured cheque to the complainant at his undertaking at Ponda as required by the demand notice dated 31.01.2007. Failure of the respondents/ accused - drawer of the dishonoured cheque to make payment as demanded completes the offence u/s 138 of the Act in terms of item No. 5 of para. 14 in K. Bhaskaran's case.

15. The penal provisions in Chapter XVII of N.I. Act, 1881 were incorporated with a view to encourage the use of cheques and enhancing the credibility of the instrument. Credibility of cheque could only be enhanced with the assurance regarding receipt of cheque amount, which is sought to be achieved by the said penal provisions. Non- receipt of the payment of cheque amount is the consequence of the act's, which includes illegal omissions, comprising of dishonour of the cheque and failure to positively respond to the notice of demand given by the payee or holder in due course of the cheque as the case may be within the stipulated period. The payee or holder in due course of the cheque can legitimately expect the payment of cheque amount either at the place where he ordinarily resides or carries on business or works for gain. Ordinarily, therefore, item No. 5 in para 14 of K. Bhaskaran's judgment would enable the payee or the holder in due course of the cheque to prosecute the drawer at any of the places, where he either resides or carries on business or works for gain. The learned Single Judge delivering the judgment in Ahuja Dongre's case expressed similar view in para 21 of his judgment. Even after considering para Nos. 11, 12 and 13

of K. Bhaskaran's judgment, particularly Section 179 of the Code, it is difficult to concur with the view that the judgment of the learned Single Judge of Nagpur Bench in Ahuja Nandkishore Dongre's case is directly contrary to the law laid down by the Apex Court in K. Bhaskaran's case.

16. Though the learned J.M.F.C. acknowledged the fact that the accused was required to make the payment to the complainant at his undertaking at Ponda, his view regarding the territorial jurisdiction to enquire and try into an offence in the said case was swayed by the judgment in Ahuja Dongre's case merely for the reason that business transaction had not taken place in Ponda and the money must be paid at the place where the business transaction takes place. However, the learned Magistrate remained unmindful of the fact that the drawer of the dishonoured cheque - the accused have failed to make the payment to the complainant/ payee at Ponda the place where the payee worked for gain, in response to the notice of demand made as per Section 138 of the N.I. Act.

17. In view of the aforesaid discussion, the impugned order dated 06/11/2008 returning the complaint to the complainant passed by J.M.F.C., "C", Court, Ponda is set aside. The case is remanded back to the learned J.M.F.C., "C" Court at Ponda for disposal according to the law. Criminal Revision Application No. 07/2009 is disposed off accordingly.