

(2012) 11 BOM CK 0107

In the Bombay High Court

Case No : Criminal Application No"s. 1952-1957 of 2011

Deepak Ravikant Nagar and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 3 ABR 397 : (2013) ALLMR(Cri) 36

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : Avishkar S. Shelke, for the Appellant; N.R. Shaikh, Assistant Public Prosecutor for State and Shri S.S. Chapalgaonkar, Advocate, for the Respondent

Judgement

T.V. Nalawade, J.—Rule. Rule made returnable forthwith. By consent both the sides are heard for final disposal.

2. All the proceedings are filed u/s 482 of the Code of Criminal Procedure for relief of quashing and setting aside the criminal proceeding filed for offences punishable u/s. 138 of the Negotiable Instruments Act. The private complaints are pending in the Court of 4th Judicial Magistrate

(First Class.), Dhule and they are as follows,

1. S.T.C.C. No. 3470/2007.
2. S.T.C.C. No. 3474/2007
3. S.T.C.C. No. 3472/2007
4. S.T.C.C. No. 3471/2007
5. S.T.C.C. No. 3473/2007
6. S.T.C.C. No. 3475/2007

The applicant company was doing its business at Indore (M.P.) and it had some business transactions with respondent No. 2 firm, the complainant. It is contended that there was written agreement between the parties and under the memorandum of understanding (MOU) it was decided that all the disputes will be referred to Court from Khargone (M.P.). It is contended that in connection with the transaction some cheques were given to the complainant at Indore and they were of a Bank from Indore. It is contended that in view of these circumstances, only a Court from Madhya Pradesh can have jurisdiction to entertain such complaints but the cases are filed in the Court of Judicial Magistrate (First Class), Dhule (Maharashtra). It is contended that only to harass the accused such step is taken by the complainant.

3. Both the sides are heard. Both the sides relied on some reported cases. Copies of complaints are produced and this Court has perused the allegations made in the complaints. There is reference to the agreement made in connection with the business in the complaints. This record is sufficient to infer that the transactions took place in Madhya Pradesh. The contentions in the complaints show that the cheques were issued on a Bank from Indore and the cheques were deposited for encashment, in a Bank from Indore. Only the statutory notice was sent from Dhule.

It appears that on the basis of the place from where statutory notice was sent, the cases came to be filed in the Court of Judicial Magistrate (First Class), Dhule.

4. The Advocate for complainant placed reliance on following cases.

- (i) K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another,
- (ii) Smt. Shamshad Begum Vs. B. Mohammed,
- (iii) Narendramal Bafna and Coventry Spring and Engineering Company Limited Vs. State of Maharashtra and Mansurprasad Shivnathprasad Gupta,
- (iv) I (2011) BC 241 (Bom.)

5. On the other hand, the advocate for present petitioners/accused placed reliance on the cases reported as:-

- (i) Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., .
- (ii) Mrs. Preetha S. Babu Vs. Voltas Limited and State of Maharashtra,

The facts and circumstances of the present case show that the transactions took place in Madhya Pradesh. There was written agreement that the disputes will be referred to Court from Madhya Pradesh. The cheque handed over was of a Bank from Madhya Pradesh in Madhya Pradesh, The cheque was presented for encashment by the complainant in a Bank from Madhya Pradesh. Thus the only step which was taken by the complainant against the accused in Maharashtra was the sending of notice from Dhule (Maharashtra). The facts and circumstances of the case of Harman Electronics (P) Ltd. and Another Vs.

National Panasonic India Ltd., cited supra are similar to the facts of present case. Division Bench of this Court has considered the aforesaid cases of Harman Electronics, [2009 ALL MR (Cri.) 280 (S.C.): 2009 (1) ALL MR 479 (S.C.)], Smt. Shamshad Begum Vs. B. Mohammed, , K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, cited supra. Latest case on this point is of Harman Electronics. This Court, Division Bench has observed that the ratio of Harman Electronic in respect of question involved in that case is binding and it is the only authority on the question whether the Court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction. The ratio says that only due to this circumstances, the Court can not get jurisdiction and the Court where the transactions took place, where the cheque was issued and where the cheque is dishonored will have to be considered for ascertaining the jurisdiction. In view of these circumstances, this Court holds that the Judicial Magistrate (First Class), Dhule has no territorial jurisdiction in respect of these cases. So, all the complaints need to be returned to the complainant. The cases were filed in Dhule, apparently due to ratio of K. Bhaskaran's case. So, the orders of issue process made in the main matters need to be set aside. In the result, the following order.

ORDER

Process issued by the Magistrate in all the cases is hereby quashed and set aside.

After receipt of this order, within four weeks from that day, the Magistrate is to return the complaints to the complainant along with entire record for presentation before competent Court having jurisdiction.

The complainant may file the complaints before Magistrate having jurisdiction within two weeks thereafter.

The complainant will be at liberty to move the Magistrate for refund of Court fee and refund is to be given to the complainant. To see that the process, if any, is issued in future by the competent Judicial Magistrate (First Class), is served on the accused, this Court has taken E mail address and postal address of the accused as supplied by applicant No. 1. They may be used by the complainant for service of summonses.

Rule made absolute in aforesaid terms.