(2009) 02 BOM CK 0067

In the Bombay High Court

Case No : Criminal Writ Petition No. 497 of 2008 and Criminal Revision Application No''s. 250 and 251 of 2007

Dipti Kumar Mohanty, (Proprietor - Monisha Agency)	APPELLANT
Vs	
Videocon Industries Ltd. Kitchen Appliances (India) Ltd. Vs Mrs. Manisha Choudhary, Proprietor, Kalyani Agency	RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 201
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 4 CivCC 125 : (2009) CriLJ 3220 : (2010) 5 RCR(Criminal) 1218

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : Santosh S. Jadhavar, in Criminal Writ Petition No. 497 of 2008 and V.J. Dixit, instructed by S.B. Yawalkar, in Criminal Revision application Nos. 250 and 251 of 2007, for the Appellant; L.B. Pallod in Criminal Writ Petition No. 497 of 2008 and S.S. Jadhavar in Criminal Revision Application Nos. 250 and 251 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—By this common judgement, the writ petition and criminal revision applications noted above are being decided together in as much as questions of law and facts involved therein are of identical nature.

2. A brief resume of background facts in the context of Writ Petition (Cri. W.P. No. 497/2008) may be stated. The petitioner and the respondent - M/s Videocon Industries Ltd. were having transactions. The petitioner is proprietor of M/s Monisha Agency. The respondent is a multinational Company. One of its branch office is at Bhubneshwar. The petitioner used to purchase goods from the respondent''s branch at Bhubneshwar. The petitioner allegedly issued a cheque dated 05-06-2006 for Rs. 3,00,000/- (rupees three lacs) in favour of Videocon International Ltd. The cheque was drawn on UCO Bank. The cheque was

presented by the respondent in State Bank of India, Ahmednagar for encashment. It was sent by the said Bank to the drawee Bank i.e. UCO Bank, branch at Tangi (Orissa) for realization. The cheque was dishonoured by the payee Bank with remark "funds insufficient". The respondent issued demand notice dated 22-11-2006 to the petitioner by registered post. Inspite of service of the notice, the payment was not made within 15 days. Consequently, the respondent instituted a private complaint case (S.T.C. No. 8704/2006) against the petitioner for commission of offence u/s 138 of the Negotiable Instruments Act.

3. The petitioner filed an application (Exh-20) to dismiss the complaint for want of jurisdiction. The petitioner contended before the learned Magistrate that his place of business is at Chandpur (Orissa). The transactions were with branch of the respondent (complainant) at Bhubneshwar (Orissa). The cheque was issued at Chandpur (Orissa) and was dishonoured within the territorial jurisdiction of the Criminal Court at Khurda (Orissa) or Bhubneshwar, but on basis of fake cause of action, the criminal complaint was instituted in the Court at Ahmednagar.

4. The learned Judicial Magistrate held that part of cause of action arose within jurisdiction of Ahmednagar Court. The learned Judicial Magistrate noticed that the payment was demanded under the demand notice from the petitioner at the branch office situated at Ahmednagar and, therefore, the complaint was maintainable within the jurisdiction of Ahmednagar. The application was accordingly rejected.

5. In the context of the two (2) revision applications, noted above, it may be stated that two (2) different cheques were issued by the respondent Smt. Manisha, who is proprietor of M/s Kalyani Agency, Bhubneshwar. The original complainant M/s Kitchen Appliances (India) Ltd. is the revision applicant of both the revision applications. The cheques were drawn on United Bank of India, branch at Khurda (Orissa). They were presented by the complainant at State Bank of India, Ahmednagar branch. They were sent to the payee Bank. Both the cheques were dishonoured due to insufficiency of funds in the account of the respondent. Then, demand notices were issued on 27-06-2007 through an advocate from Ahmednagar. The respondent gave reply dated 17-07-2007. The non-payment of the demanded amount at Ahmednagar, according to the complainant, gave cause of action to file the criminal complaints (S.T.C. No. 3824/2007 and S.T.C. No. 3825/2007).

6. In both the criminal complaint cases, similar applications were submitted by the respondent - Smt. Manisha for dismissal of the complaint cases on the ground of lack of territorial jurisdiction. The learned Judicial Magistrate held that no cause of action arose within the jurisdiction of the Court at Ahmednagar and, therefore, directed return of the complaint cases u/s 201 of the Criminal Procedure Code to the complainant for presentation of the same at the appropriate Court having jurisdiction to entertain the complaints.

7. By filing criminal writ petition, the original accused in the criminal complaint case bearing S.T.C. No. 8704/2006 challenges the order dated 31st July, 2008 whereby the learned Judicial Magistrate rejected his application for dismissal of the complaint.

8. By filing the criminal revision applications, the original complainant challenges the orders dated 8th October, 2007 rendered by the learned Judicial Magistrate (F.C.) whereby return of the complaints to him is directed, holding that the Court at Ahmednagar has no territorial jurisdiction to deal with the same.

9. Heard learned Counsel for the parties.

10. Common thread of arguments advanced by Mr. Pallod, advocate and Mr. Dixit, Senior Advocate is that the payment was to be received at Ahmednagar where the cheque was presented, the notice of demand was issued from Ahmednagar and the drawer of the cheque was called upon to make the payment at Ahmednagar and the dishonour was communicated there which give rise to cause of action within the territorial jurisdiction of the Court at Ahmednagar. They rely on observations in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , Rakesh Nemkumar Porwal Vs. Narayan Dhondu Joglekar, and "Smt. Shamshad Begum v. B. Mohammed" Cri. Appeal No. 1715 of 2008 (S.C.)

11. Mr. Jadhavar, advocate, however, would submit that the cheque was issued within territorial jurisdiction of the Courts at Khurd, it was payable to the office of the drawer at Bhubneshwar (Orissa) and the goods were delivered from said office which is the appropriate place where the complaint could have been filed. He would submit that mere presentation of the cheque at Ahmednagar Bank of the drawee will not give cause of action to file the complaint at Ahmednagar. He would further submit that place of sending the notice is also not the place where cause of action could arise. He seeks to rely on view taken in Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another, , Smt. Nutan Damodar Prabhu and Shri Damodar S. Prabhu Vs. Ravindra Vassant Kenkre also known as Ravindra Kenkre and State Represented by the Public Prosecutor, and "Harman Electronics (P) Ltd. and Anr. v. National Panasonic India Ltd." 2009 (1) All MR 479 (S.C.).

12. There is no dispute about the fact that the transactions pertaining to delivery of goods did not take place within the territorial jurisdiction of the Court at Ahmednagar. As has been laid down in case of "K. Bhaskaran" (supra) and Kusum Ingots and Alloys Ltd., etc. Vs. Pennar Peterson Securities Ltd. and Others, , the offence u/s 138 is completed after commission of several interconnected acts as stated below:

(a) Drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for the discharge in whole or in part of any debt or liability;

(b) Presentation of the cheque by the payee or the holder in due course to the bank;

(c) Returning of the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque.

(d) Giving of notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount; and

(e) Failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

The five (5) acts stated above need not, of course ,take place at the same place. The cause of action is a bundle of facts. It is well settled that cause of action may arise at two (2) different places having regard to commission of any particular act by the offender. The scope of Section 177 of the Criminal Procedure Code would encompass within its fold, such several places where parts of the cause of actions may arise.

13. To begin with, I shall proceed to examine whether mere presentation of the cheque in question at Ahmednagar would give cause of action to the Court there. The cheque was admittedly issued on the Bank having branch at Tangi/Khurda (Orissa). Thus, the payment was to be cleared by the said Bank. The presentation of cheque cannot be at the whim of the holder of the cheque. In this context, I may usefully refer to observations in "Shri Ishar Alloys Steels Ltd. v. Jayaswals NECO Ltd." AIR 2001 S.C. 1161. It is a case decided by three (3) Judges'' Bench of the Apex Court. The Apex Court observed:

...The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying of particularising effect opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank.

The above observations would make it manifest that the expression "the bank" referred to in Clause (a) to the Proviso to Section 138 of the Negotiable Instruments Act would mean the drawee Bank on which the cheque is drawn and not any other Bank. Obviously, mere presentation of the cheque in question in the Bank of the payee at Ahmednagar is of no consequence. The argument of the learned advocate Mr. Pallod and learned senior advocate Mr. Dixit, on this score, is, therefore, unacceptable. The presentation of the cheques in question at Ahmednagar by itself cannot be a cause of action available within the territorial jurisdiction of that Court.

14. The fact situation in case of "Smt. Shamshad Begum v. B. Mohammed" Criminal Appeal No. 1715/2008 appears to be quite on different footings. A copy

of the judgement rendered by Single Bench of the Karnataka High Court in Criminal Petition No. 939/2005 giving rise to above appeal is placed on record. The Court noticed that before issuing notice to the petitioner (accused) in that case, he (complainant) had shifted his residence to Mangalore and, therefore, had issued the notice from Mangalore and the same was received by the petitioner - accused. That is not the fact situation of the present case. The branch office of the Company of the respondent (complainant) in Criminal Writ Petition No. 497/2008 is still at Bhubneshwar and that of the petitioners in the above referred two (2) revision petitions is also at Bhubneshwar. Both the Companies deal in sale of electronic items through their branch offices. The head offices of both the Companies are at Mumbai. Obviously, there was no reason for the complainants to issue notices of demand through their advocate from Ahmednagar.

15. The Apex Court in "Harman Electronics (P) Ltd. and Anr. v. National Panasonic India Ltd." 2009 (1) All MR 479, held that issuance of notice would not by itself give rise to a cause of action, but communication of notice would. The relevant observations would show that the place of issuance of notice by itself would not determine the jurisdictional issue. The relevant observations of the Apex Court may be usefully quoted:

A Court derives a jurisdiction only when the cause of action arose within his jurisdiction. The same cannot be conferred by any act of omission or commission on the part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, commission of an offence completes. Giving of notice, therefore, cannot have any precedence over the service. It is only from that view of the matter in M/s. Dalmia Cement (Bharat) Ltd. Vs. M/s. Galaxy Traders and Agencies Ltd., emphasis has been laid on service of notice.

16. A Single Bench of this Court in "Ahuja Nandkishore Dongre v. State of Maharashtra and Anr." (supra), held that jurisdiction has to be gathered from place where the money was intended to be paid. So, the Court within whose jurisdiction the cheque was merely presented for realisation, cannot be said to have jurisdiction to try the offence. It is important to note that there is no written agreement between the parties to pay the amounts shown under the cheques in question at Ahmednagar. The cheques were not drawn on the Bank office at Ahmednagar. The mere fact that notice was issued from Ahmednagar would not clothe the jurisdiction on the Court of Judicial Magistrate at Ahmednagar. As stated before, the receipt of the notice and non-payment of the demanded amounts are ingredients which will have precedence over the place wherefrom the notice of demand was issued. Therefore, the Court of Judicial Magistrate at Ahmednagar cannot have jurisdiction to entertain the complaints.

17. The averments in the complaint that the Company carries on business at Ahmednagar is of no much relevance in the fact situation of the present case. It need not be emphasized that the head office of both the Companies is at Mumbai. The goods were delivered by the branch offices situated at Bhubneshwar. The cheques were issued and drawn on branch of the Bank at Tangi/Khurda (Orissa). The demand notice was served on the concerned accused at the places situated in Orissa State. In the absence of any written agreement to pay the amounts at Ahmednagar, the jurisdiction cannot be assumed to be with the said Court merely because it is stated in the demand notice that the payment shall be made there. The case of "K. Bhaskaran" (supra) is duly considered and discussed by the learned Single Judge (Chavan, J.) in "Ahuja Nandkishore Dongre" (supra). This Court held that the place of notice would not by itself determine the jurisdictional issue. I have gone through judgement of learned Single Judge in "Nutan Damodar Prabhu and another" (supra).

18. Considering totality of the circumstances and the fact situation, discussed hereinabove, I have no hesitation in holding that the Court of Judicial Magistrate at Ahmednagar has no territorial jurisdiction to entertain the complaint cases. Hence, Criminal Writ Petition No. 497/2008 is allowed. The impugned order is quashed. The two revision applications (Criminal Revision Applications No. 250/2007 and 251/2007) are dismissed. The private complaint case bearing S.T.C. No. 8704/2006 be returned to the respondent - M/s Videocon Industries Ltd. for presentation in the appropriate Court having jurisdiction over that matter. No costs.