

(2009) 10 KL CK 0067
In the High Court Of Kerala
Case No : Criminal A. No. 2400 of 2008

Hassan

APPELLANT

Vs

Ambali Hamsa @ A. Hamsa and Another

RESPONDENT

Date of Decision : 19-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1), 322
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 10 KL CK 0067

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : Siraj Karoly, for the Appellant; Rajesh Vijayan, for the Respondent

Judgement

V. Ramkumar, J.—The complainant in C.C. No. 1014 of 2005 on the file of the Judicial First Class Magistrate - II, Perumbavoor is the appellant in this appeal. It was a prosecution u/s 138 of the Negotiable Instruments Act, 1881 in respect of Ext.P1 cheque dated 07.07.2005 allegedly issued in consideration of an earlier borrowal of a sum of Rs. 4,75,000/- made by the accused from the complainant. According to the complainant, the borrowal was from the work site of the complainant at Kolencherry and that too by instalments on three occasions and the total amount borrowed was Rs. 4,75,000/- and Ext.P1 cheque dated 07.07.2005 was issued at the residence of the complainant at Perumbavoor. The cheque is drawn on the Melmuri branch of the Oorakam Service Co-Operative Bank, Malappuram. The cheque was given to the complainant's bank namely State Bank of Travancore, M.O.S.C, Medical Mission Branch, Kolencherry for collection. The cheque was dishonoured by the drawee bank namely, Melmuri branch of the Oorakam Service Co-Operative Bank, Malappuram. The reason for the dishonour was that the payment was stopped by the drawer. Ext.P3 is the intimation given by the collecting bank at Kolencherry to the complainant at Perumbavoor. Ext.P4 is the statutory notice dated 02.08.2005 sent by the complainant's lawyer at Perumbavoor. Ext.P5 acknowledgment card shows that the accused received Ext.P4 notice on 04.08.2005 at Oorakam in Malappuram

District. Ext.P6 is the reply sent by the advocate of the accused at Malappuram to the complainant at Perumbavoor. What is stated in the reply is that the complainant had lost a signed blank cheque on 15.06.2005 and he had given a stop memo to the bank. The accused denied the alleged borrowal as well as the execution of the cheque in favour of the complainant. The complaint was filed on 31.08.2005.

2. The learned Judicial First Class Magistrate - II, Perumbavoor as per the impugned judgment dated 29.05.2008 hold that that court has no territorial jurisdiction to entertain or try the complaint and also entered the merits of the case and acquitted the accused u/s 255(1) Cr.P.C. It is the said acquittal which is assailed in this appeal.

3. I heard both sides.

4. The only point which arises for consideration in this appeal is as to whether the finding recorded by the court below that it has no territorial jurisdiction, is sustainable or not.

5. The point:

If this Court affirms the order passed by the court below to the effect that it has no territorial jurisdiction, then the proper course available to the Magistrate would be to submit the case either to the Chief Judicial Magistrate or to any other Magistrate having jurisdiction as the Chief Judicial Magistrate directs if such Magistrate is within the same District. The court below after having found that it has no territorial jurisdiction, went wrong in entering into the merits of the case.

6. Going by the complainant's case, the borrowal was at Kolencherry in the complainant's work site and the cheque was handed over to the complainant in his residence at Perumbavoor on 07.07.2005. The cheque is drawn on the Melmuri branch of the Oorakam Service Co-Operative Bank, Malappuram. The cheque was entrusted by the complainant in his bank namely S.B.T., M.O.S.C., Medical Mission Branch, Kolencherry. It was the said bank which forwarded the cheque to the drawee bank for payment and as per Ext.P2 memo, the drawee bank dishonoured Ext.P1 cheque for the reason that the payment was stopped by the drawer. Going by the judicial pronouncements, issuance of stop memo by the drawer amounts to dishonour within the meaning of Section 138 of the N.I. Act. Ext.P4 statutory notice was sent within time by the complainant's lawyer at Perumbavoor and was received by the accused at Malappuram on 04.08.2005. The complaint was filed within 45 days of Ext.P5 acknowledgment. The court before which the complaint was filed was the Judicial First Class Magistrate - I, Perumbavoor. After the filing of the complaint, it was made over to the Munsiff's Court, Perumbavoor which was empowered to try the complaints u/s 138 of the N.I. Act as per a notification issued by this Court. The trial of the case was, thus, before the Munsiff's Court, Perumbavoor which while trying the complaints u/s 138 of the N.I. Act was designated as Judicial First Class Magistrate - II, Perumbavoor.

7. According to the court below, the complaint could have been filed either before the Judicial First Class Magistrate, Kolencherry when the alleged borrowal took place or before the Magistrate having territorial limits over the drawee bank and the complaint filed before the Judicial First Class Magistrate - II, Perumbavoor was not maintainable since no part of the cause of action took place within the limits of Perumbavoor and merely because the complainant's lawyer was having his office at Perumbavoor, it would not cloth the Perumbavoor court with jurisdiction to try that complaint.

8. I am afraid that I cannot agree with the above reasoning given by the learned Magistrate. The complainant is admittedly residing at Perumbavoor. Ext.P4 statutory notice was also issued by his lawyer at Perumbavoor. It was to the said lawyer that the advocate for the accused issued Ext.P6 reply from Malappuram. Going by the decision in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , the Magistrate within whose limits the statutory notice was issued, has also the jurisdiction to try the complaint. Here, the complainant is residing within the limits of Perumbavoor court and the lawyer who sent Ext.P4 notice on behalf of the complainant is also having his office at Perumbavoor. Ext.P6 reply to the statutory notice was also received by the said lawyer at Perumbavoor. Hence, the Perumbavoor court had the territorial jurisdiction to entertain and try the complaint. The court below was, therefore, not justified in holding that it does not have territorial jurisdiction to entertain and try the complaint. Moreover, the objection regarding the want of territorial jurisdiction was raised only at the fag end of the trial and it should have been treated as waived. (See Meenakshi Vs. Udayakumar and State of Kerala, . Thus, the court below was not justified in holding that it lacks territorial jurisdiction to entertain and try the complaint. The court below also committed the further illegality of deciding the case on merits after holding that it does not have territorial jurisdiction to entertain the complaint. If as a matter of fact, the objection regarding the territorial jurisdiction had been raised at the earliest opportunity and that objection was upheld by the court, then the course of action open to the court was to proceed u/s 322 Cr.P.C. At any rate, the court below went wrong in going into the merits of the case. The judgment under appeal is, accordingly, set aside and the matter is remitted to the court below with direction to dispose of the case afresh after affording both sides an opportunity of being heard on the evidence already adduced before court.

This appeal is disposed of as above.

Dated this the 19th day of October, 2009.