

(2011) 04 MAD CK 0263

In the Madras High Court

Case No : Criminal O.P No. 21758 of 2010 and M.P. No's. 1 and 2 of 2010

Haya Systems India Pvt. Ltd. and K.S. Abdul Aziz APPELLANT

Vs

Don Construction Chemicals India Ltd. RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 2, 200
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 7 RCR(Criminal) 2540

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : P.V.S. Giridhar, for the Appellant; V. Paul Das, for the Respondent

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—This criminal original petition is filed, after invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, to call for the records and quash the criminal proceedings in C.C. No. 7888 of 2007, on the file of the learned XVIII Metropolitan Magistrate Court at Said pet.

2. The facts, which giving rise to the criminal original petition may be summarised briefly as follows:

(i) The Respondent herein has filed a case in C.C. No. 7888 of 2007, on the file of the learned XVIII Metropolitan Magistrate Court at Said pet against the Petitioners alleging that they have committed an offence punishable u/s 138 of the Negotiable Instruments Act.

(ii) In the said complaint, the Respondent has alleged that the second Petitioner herein had purchased construction chemicals from the Respondent and issued four cheques dated 20.04.2007, 05.05.2007, 20.05.2007 and 05.06.2007 on behalf of the first Petitioner for a total sum of Rs. 9,50,000/- drawn on Citi Bank N.A., Bangalore. It is also alleged that when the cheques were presented for encashment through their bankers namely Canara Bank, Teynampet Branch,

Chennai on 07.06.2007, they were bounced back on 08.06.2007 with an endorsement "Refer to Drawer". This fact was intimated to the Respondent by his banker. Hence, the Respondent was constrained to issue a legal notice to the Petitioners on 26.06.2007, which was received by them on 28.06.2007. It is also alleged that since the Petitioners had failed to pay the cheque amount within the stipulated period, the above said complaint is filed.

3. Mr. P.V.S. Giridhar, learned Counsel appearing for the Petitioners has contended that the complaint did not disclose the commission of any offence much less u/s 138 of the Negotiable Instruments Act particularly the insufficient of funds has not been pleaded. Further, the demand made in the legal notice dated 01.08.2008 has also not been disclosed. He has also argued that the so called complaint could not be treated as a complaint u/s 2(d) of the Code of Criminal Procedure and as such no cognizance could have been taken by the learned XVIII Metropolitan Magistrate Court at Said pet.

4. Further, the learned Counsel has also submitted that the learned XVIII Metropolitan Magistrate Court at Saidapet has no territorial jurisdiction to entertain the complaint u/s 177 of the Code of Criminal Procedure. The disputed cheques were drawn on M/s. Citi Bank N.A., Bangalore. In this connection, he would submit that neither issuance of notice from a place nor the location of the collecting bank can create jurisdiction in respect of a complaint u/s 138 of the Negotiable Instruments Act.

5. Further, the learned Counsel has also submitted that the first Petitioner is a firm based in Bangalore at Karnataka and the Respondent is also a firm having branch in Bangalore. There is no transaction in Chennai between the Petitioners and the Respondent and equally there is no outstanding due to the Respondent as alleged and the cheques have not been dishonored due to the insufficiency of funds. He would submit further that none of the ingredients to constitute the offence punishable u/s 138 of the Negotiable Instruments Act occurred within the legal jurisdiction of the learned XVIII Metropolitan Magistrate Court at Said pet. In order to substantiate his arguments, the learned Counsel has placed reliance upon the following decisions:

1. Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., ,
2. Shri Ishar Alloys Steels Ltd., v. Jayaswals Neco Ltd., reported in 2001 Law Suit (SC) 341
3. Gopal Mishra Vs. State and Another, ,

6. On the other hand, Mr. V. Paul Das, learned Counsel appearing for the Respondent submitted that the Respondent has supplied construction chemicals to the Petitioners on credit basis as a running account and as on 16.09.2006 the outstanding of sum of Rs. 10,11,956.45 was due and liable by the Petitioners and in order to discharge their liability they had issued the following cheques in favour of the complainant:

Sl. No.

Cheque No.

Amount (in Rupees)

Date

1

000 187

1,00,000/

20.04.2007

2

000 188

1,00,000/

5/5/07

3

000 143

5,00,000/

20.05.2007

4

000 141

2,50,000/

5/6/07

Drawn on Citi Bank N.A., Bangalore.

7. Since the cheques were bounced back when they were presented for encashment with an endorsement "Refer to Drawer" on 08.06.2007, the Respondent was constrained to file a criminal complaint u/s 138 of the Negotiable Instruments Act read with Section 200 of the Code of Criminal Procedure to deal the Petitioners in accordance with the provisions of Section 138 of the Negotiable Instruments Act.

8. Further, the learned Counsel has also submitted that no ingredients were available to constitute an offence u/s 138 of the Negotiable Instruments Act against the Petitioners and that the learned XVIII Metropolitan Magistrate Court at Said pet is having jurisdiction to take cognizance of offence as against the Petitioners. He has also added that the present petition u/s 482 of the Code of Criminal Procedure has been filed to protract the proceedings, which could not be

allowed and if it is allowed the very purpose of the complaint, which the Respondent had filed under proviso to Section 138 of the Negotiable Instruments Act would be frustrated.

9. In order to substantiate his arguments, the learned for the Respondent has also drawn this Court's attention to the statement of accounts, copies of the cheques and the returned memo as well as the legal notice exchanged between the Petitioners and the Respondent, which are appended to the petition.

10. Further, in support of his contentions, the learned for the Respondent has also placed reliance upon the following decisions:

1. M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, ,

2. K. Bhaskaran v. Sankaran Vaidhyan Balanand Anr. reported in (1997) 7 SCC 510,

3. M/s. Jayam Company and Anr. v. T. Ravichandran, reported in 2003 (2) DCR 145,

11. Before we go into the merits of the case, it maybe better to refer the proviso to Section 177 of the Code of Criminal Procedure. Section 177 of the Code of Criminal Procedure reads as follows:

Section 177.-Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

The scope and application of the proviso to Section 177 of the Code of Criminal Procedure is that the competency of a forum to take cognizance of an inquiry into, and trial of, an offence, as defined by Section 2 of the Code is determined by the place in which the offence may have been committed.

12. Section 178 of the Code of Criminal Procedure is also very much relevant to make a reference. Section 178 of the Code of Criminal Procedure reads as follows:

Section 178.-(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it maybe inquired into or tried by a Court having jurisdiction over any of such local areas.

13. On coming to the instant case on hand, as per the case of the Respondent,

the above mentioned four cheques were said to have been issued by the Petitioners to the Respondent on various dates as detailed above. The total cheque amount is Rs. 9,50,000/-. These cheques were bounced back on 08.06.2007 with an endorsement of "Refer to Drawer". The Respondent being the complainant had issued the statutory notice on 26.06.2007. It is significant to note here that all those four cheques were presented for collection before the Bank of the Respondent i.e. Canara Bank, Teynampet Branch, Chennai-600 018. But, those cheques were returned dishonored by the Respondent banker on 08.06.2007 with an endorsement of "Refer to Drawer". Therefore, it is thus clear that the cheques were presented by the Respondent before his banker i.e. Canara Bank, Teynampet Branch, Chennai-600 018 and those cheques were returned dishonored by the Respondent banker on 08.06.2007 with an endorsement of "Refer to Drawer". Further, the Respondent had issued a statutory notice, which is required under the proviso (b) to Section 138 of the Negotiable Instruments Act.

14. On careful consideration of the case of the Respondent, this Court is of the view that the Respondent has duly complied with all the ingredients, to constitute an offence u/s 138 of the Negotiable Instruments Act i.e. the proviso to (a), (b) and (c) to Section 138 of the Negotiable Instruments Act.

15. It is also pertinent to note here that the statutory notice appears to have been sent from Chennai to the Petitioners. For the completion of the offence punishable u/s 138 of the Negotiable Instruments Act, the following five components are sine qua non (1) Drawing of the cheque, (2) Presentation of the cheque to the drawee bank, (3) Returning the cheque unpaid by the drawee bank (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount (5) Failure of the drawer to make payment within 15 days of the receipt of the notice. It is not necessary that all the 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 components are very much essential to constitute the offence u/s 138 of the Negotiable Instruments Act. As discussed in earlier paragraphs, referring Section 178(d) of Code it is clear that if the five different acts were done in five different localities any one of the Courts exercising jurisdiction in one of the five localities can become the place of trial for the offence u/s 138 of the Act.

16. The learned Counsel appearing for the Petitioners, in support of his contentions, has also placed reliance upon the decision in Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., . In this case a Division Bench of the Hon'ble Supreme Court has held that If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses

(b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

17. In this case, the Apex Court has also held that Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. The court ordinarily will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary.

18. Further, the Apex Court has also observed that a Court derives jurisdiction only when the cause of action arose within its 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 a 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 precedent over the service. A banking institution holding several cheques signed by the same borrower cannot only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-a-vis the provisions of the Code of Criminal Procedure. In this case, the decision relied upon by the learned judge for the Respondent in *K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr.* reported in (1997) 7 SCC 510 has also been referred to.

19. With very great respect to the Hon'ble Supreme Court, this Court considered that the above cited decision in *Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd.*, is not made applicable to the facts and circumstances of the present case on hand. Because, the above cited case hinges around the center point of issuance of notice and that was why the Hon'ble Supreme Court has held that issuance of notice would not by itself give rise to cause of action. But communication of notice would. In the given case on hand as discussed in the foregoing paragraph, the above specified four cheques were presented by the Respondent for collection in their bank namely Canara Bank, Teynampet Branch, at Chennai-600 018. Those cheques were returned dishonored by the banker on 08.06.2007 with an endorsement of "Refer to Drawer". Thereafter, the Respondent had issued a statutory notice to the

Petitioners, which is required under the proviso (b) to Section 138 of the Negotiable Instruments Act. Hence, it is clearly established that not only the notice, but the other ingredients viz. presentation of the cheques, dishonor exchequers and issuance of legal notice were all taken place within the local jurisdiction of the learned XVIII Metropolitan Magistrate Court at Said pet.

20. For the foregoing reasons, the Respondent being the complainant can choose any one of the local areas within the territorial limits of which all those five acts were done.

21. This Court has carefully gone through the averments of the petition filed by the Petitioners u/s 482 of the Code of Criminal Procedure as well as the averments of the complaint filed by the Respondent before the learned XVIII Metropolitan Magistrate Court at Saidapet. It is obvious to note here that the case in C.C. No. 7888 of 2007, on the file of the learned XVIII Metropolitan Magistrate Court at Said pet is in part-heard stage and PW1 was examined both in chief as well as in cross.

22. Having regard to the related facts and circumstances and on considering the submissions made on behalf of both sides, this Court is of view that the reasons assigned by the Petitioners are not adequate to quash the criminal proceedings in C.C. No. 7888 of 2007, which is pending on the file of the learned XVIII Metropolitan Magistrate Court at Said pet.

23. With these observations, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.