(2008) 01 AHC CK 0079

In the Allahabad High Court

Iqubal Ahmad Khan APPELLANT

Vs

State of U.P. and Rajeshwar Mishra RESPONDENT

Date of Decision : 02-01-2008

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 178, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2009) 1 ALD(Cri) 9 : (2008) 3 BC 86 : (2008) CriLJ 2177

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—Heard learned Counsel for the applicant and learned Additional Government Advocate.

2. This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the complaint case No. 3176 of 2006, u/s 138 of the Negotiable Instrument Act (Rajesh Kumar Mishra v. Iqbal Ahmad Khan), pending in the court of Additional Chief Judicial Magistrate, Court No. 6, Jhansi.

3. The brief facts of the case are that a complaint was filed by Rajeshwar Mishra alleging that as the complainant wanted to purchase the house of the applicant and the complainant gave an advance of Rs. 4,60,000/- for this purpose to the applicant. As the applicant pleaded his inability to get the house vacated to hand over to the complainant in accordance with the agreement, he gave one Bank Draft of Rs. 3,55,000/- on 30.8.2005 drawn on Punjab National Bank, Parichha, Jhansi and another cheque amounting to Rs. 105,000/- dated 15.12.2005, drawn on Corporation Bank, to the complainant at his residence at Parichha, Jhansi and assured him that the said cheque would definitely be encashed. The complainant deposited the cheque at his bank, viz. State Bank of India Parichha, Jhansi on 1.5.2006. On 2.6.2006 the complainant received information from the bank that the aforesaid cheque had been dishonoured on account of insufficiency of funds

and had been returned to the State Bank of India on 22.5.2006. In accordance with the provisions of the Negotiable Instrument Act, the complainant gave due notice to the applicant to pay the said amount within fifteen days, but payment was not done and consequently the complainant lodged the complaint on 6.7.2006 u/s 138 of the Negotiable Instrument Act read with Section 420 IPC.

4. On 21.9.2006 an order was passed by the Magistrate taking cognizance u/s 138 of the Negotiable Instrument Act as he found the complaint and notices etc. to be in order.

5. A single submission has been made by the learned Counsel for the applicant that the disputed property was to be sold in Lucknow and that as a matter of fact the cheque of Rs. 105,000/- of the Corporation Bank was drawn on Faizabad Road Branch at Lucknow and hence only the Court at Lucknow had jurisdiction in the matter and that Jhansi court had no jurisdiction in the. matter. Learned Counsel has also placed reliance on a decision of a learned Single Judge of Bombay High Court in the case of Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another,

6. It is noteworthy that it was only mentioned in a paragraph that the said cheque was drawn on Faizabad Road Branch, Lucknow of the Corporation Bank but the copy of the cheque was not filed nor even the notice of the bank that the cheque is being returned for insufficient fund was filed.

It may be mentioned that the case of Ahuja Nandkishore (Supra) has dissented from the decisions of Andhra Pradesh High Court in Vuppala Venkata Nageshwara Rao Vs. Talluri Chit Funds Private Limited and Another, Kerala High Court in Mattathil Ouseph Ittira Vs. State of Kerala and Manuel P.M., and the Delhi High Court in Prem Cashew Industries and Ors. v. Zen Pareo 2001 All 33 and has sought to explain the decision of the Apex Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, .

7. For the purpose of the decision of this case, it is unnecessary to go into the question as to whether the learned Single Judge of the Bombay High Court was right in dissenting from decisions of the Andhra Pradesh, Kerala and Delhi High Court. It would be relevant to point out here that in the case of Ahuja Nandkishore Dongre (Supra) no part of the cause of action had arisen within the jurisdiction of the Court at Digras where the complainant had been filed as in that case admittedly the cheque was issued in district Bhandara in respect of the transaction of loan which had taken place at Bhandara and which had been drawn on Bank of India, Bhandara Branch. The accused resided at Bhandara and the complainant is not shown to be resident within the jurisdiction of the Court of Magistrate at Digras. It was further observed, that the Court at Digras has no casual connection with the lis.

8. Contrary to the said case, in the present case the complaint clearly shows that the complainant was a resident of Jhansi. The cheques were drawn at Jhansi, one was drawn on Punjab National Bank Parichha, Jhansi and the another cheque of

Rs. 105,000/- was drawn on Corporation Bank (which although there is no evidence to the effect), but it may be assumed for the sake of argument that it was drawn on Corporation Bank in a branch at Lucknow. The representation to the complainant that the cheque would be honoured was made at Jhansi when the cheque was handed over to the complainant by the applicant.

Paragraphs 14, 15 and 16 of the judgment in K. Bhaskaran (Supra) may be usefully extracted here:

14. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence : (1) Drawing of the cheque, (2) Presentation of the cheque to the 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.

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 5 different localities. But concatenation of all the above five is a sine qua non for the completion 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 consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

16. Thus it is clear, if the five different acts were done in five different localities any one of the Courts exercising jurisdiction in one of the 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 any one of the local areas 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 the offence u/s 138 of the Act.

9. As is clearly stated in the aforesaid case that it is not at all necessary that drawing of the cheque, presentation of the cheque to the bank, returning the cheque unpaid by the drawee bank, giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and failure of the drawer to make payment within 15 days of the receipt of the notice should all have been perpetrated in the same locality and it was even possible that each of those five acts could be done at five different localities. Only a concatenation of all the five acts are a sine qua non for the completion of the offence u/s 138 of the Negotiable Instrument Act.

10. Here in the present case clearly all the five ingredients are present and although most of the acts such as drawing of the cheque, presentation of the cheque to the bank, return of the cheque by the drawer bank etc. all related to Jhansi, but only cheque was drawn on a Lucknow Branch of the Corporation

Bank. In such circumstances it has rightly been observed by the Apex Court that as the amplitude stands so widened in view of Section 178(d) of the Code of Criminal Procedure that it would be "an idle exercise to raise jurisdictional question regarding the offence u/s 138 of the Negotiable Instrument Act."

On this ground, therefore, this application u/s 482 of Code of Criminal Procedure cannot succeed.

Another independent reason for rejecting the application that it has been filed very belatedly as admittedly the order of the Additional Chief Judicial Magistrate, Jhansi taking cognizance has been passed as far back as on 21.9.2005.

11. In this view of the matter, there is no force in this application. It is accordingly rejected.

However, it is provided that if the applicant appears before the court below within three weeks and applies for bail in the aforesaid case, his prayer for bail shall be considered and decided expeditiously and the trial court is directed to decide the case expeditiously.

Office is directed to send a copy of this order to the court below within a week.