

(1998) 04 KL CK 0016
In the High Court Of Kerala
Case No : Criminal A. No. 279 of 1994

Itty Mathew

APPELLANT

Vs

Ramani

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201, 462
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 2 CivCC 416 : (1999) 1 CivCC 186 : (1998) 3 RCR(Criminal) 303

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : N.P. Samuel, for the Appellant; P.K. Ashokan, for the Respondent

Final Decision : Allowed

Judgement

K.A. Mohamed Shafi, J.—The complainant in S. T. No. 588/93 on the file of the Judicial First Class Magistrate's Court-II, Thrissur is the appellant. The judgment dated 17.12.1993 passed by the lower Court finding the accused not guilty and acquitting her and setting her at liberty is under challenge.

2. The appellant filed the complaint against the respondent alleging that the respondent issued a cheque for Rs. 8395/- towards the amount due from her in business transaction with the appellant dated 22.12.1992 and when it was sent for collection the cheque bounced and the respondent did not pay the amount inspite of registered notice dated 2.1.1993 intimating her about the dishonour of the cheque and calling upon her to pay the amount and as such the respondent has committed the offence punishable under S. 138 of the Negotiable Instruments Act.

3. The lower Court after trial found that the respondent failed to pay the amount due under Ext.PI cheque to the appellant within 15 days of the receipt of the notice intimating about the dishonour of the cheque and as such the appellant has got cause of action against the respondent After finding that it has no

jurisdiction to try the case, the lower Court held that the respondent is not liable to be punished by the lower Court and accordingly acquitted the respondent.

4. It is in evidence that on receipt of Ext.P7 notice sent on behalf of the appellant to the respondent intimating about the dishonour of the cheque and calling upon her to pay the amount, the respondent has caused to send reply notice Ext.P10 stating that the respondent had already sent a letter dated 30.12.1992 requesting the appellant to present the cheque for encashment only on 12.1.1993 and by that time she will make arrangement for payment and that she has deposited the amount on 12.1.1993 and as such the appellant can re-present the cheque and encashed it.

5. The appellant has contended that as the law then stood the appellant was not entitled to re-present the cheque for encashment once the cheque was dishonored, as by the subsequent presentation he would have lost his right to prosecute the respondent under S. 138 of the Negotiable Instruments Act. Therefore, he did not re-present the cheque for encashment as mentioned in Ext. P10 reply notice.

6. Though the law on the point is now changed and the payee or holder in due course of the cheque is entitled to present the cheque for encashment more than once before the expiry of six months from the date of issue of the cheque and on each dishonour of the cheque he gets a fresh cause of action against the drawer of the cheque, as the law then stood the appellant cannot be found fault with for not representing the cheque as stated in Ext. P10, as it would have deprived him of his right to prosecute the respondent under S. 138 of the Negotiable Instruments Act.

7. It is true that Ext.P4 extract of the ledger pertaining to the account of the respondent maintained in the bank shows that there was sufficient amount to the credit of the respondent to honour Ext PI cheque on 12.1.1993. But that fact will not absolve the respondent from her liability to pay the amount as provided under clause (c) of the proviso to S. 138 of the Negotiable Instruments Act, as under that clause the drawer of the cheque is liable to make payment of the amount to the payee or the holder in due course within 15 days of the receipt of notice and the intimation to the payee or the holder in due course by the drawer that sufficient amount is available in the bank to honour the cheque after it was dishonored, will not absolve him from his liability to pay the amount.

8. In the decision in M.M. Malik and Others Vs. Prem Kumar Goyal, a single Judge of the Punjab and Haryana High Court has observed as follows:

8. Dishonoring of the cheque was only a part of cause of action and the offence was completed only when the petitioner-company failed to discharge its liability to the creditors (the complainant herein). For dishonoring the debt, the petitioners had to find out their creditors and since the creditor has its office at Pehowa, the offence was completed at that place and in this situation, the Court at Kurukshetra had the territorial jurisdiction to try the matter.

9. Therefore, it is clear that it is the duty of the respondent-debtor to find out his creditor and discharge the debt due to him. Hence the vehement argument advanced by the counsel for the respondent that since the respondent was always ready and willing to pay the amount due as per Ext.Pl cheque and in fact, the amount was lying to her credit immediately after the cheque was dishonored and even though that fact was intimated to the appellant by Ext. P10 reply notice the appellant was bent upon to harass the respondent by filing the above complaint, is absolutely unsustainable.

10. The finding of the lower Court that it has no jurisdiction since the cheque was issued at Cherthala, is also not sustainable. Firstly no such contention regarding the jurisdiction of the lower Court to entertain the complaint and prosecute the respondent for the offence punishable under S. 138 of the Negotiable Instruments Act was. raised till the above case came up for hearing after recording the entire evidence. Secondly it is well settled that the Court within whose jurisdiction the cheque was presented by the drawee or holder in due course for encashment has also got jurisdiction to entertain a complaint for the offence punishable under S. 138 of the Negotiable Instruments Act.

11. The counsel for the appellant vehemently argued that under S. 462 of the Crl. P.C. even if the proceedings were taken in wrong place, the finding or the sentence passed by the criminal court cannot be set aside unless it appears that such error has in fact, occasioned a failure of justice. According to him, even if the lower Court had no territorial jurisdiction, since no question of failure of justice is involved in this case, the lower Court should have proceeded with finding the respondent guilty and convicting and sentencing her once it found that the cheque issued in discharge of a legally enforceable liability was dishonored for insufficiency of funds.

12. S. 462 of the Cr.P.C. reads as follows:

462. Proceedings in wrong place - No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice

13. In the decision in Smt. Raj Kumari Vijn Vs. Dev Raj Vijn, , where the Supreme Court had been dealing with S. 531 of the old Crl. P.C. corresponding to S. 462 of the present Crl. P.C. had observed as follows:

The Section therefore, relates to a defect of jurisdiction. As has been stated by this Court in Purushottamdas Dalmia Vs. The State of West Bengal, , there are two types of jurisdiction of a criminal court, namely, (1) the jurisdiction with respect to the power of the Court to try particular kinds of offences, and (2) its territorial jurisdiction. While the former goes to the root of the matter and any transaction of it makes the entire trial void, the latter is not a peremptory character and is curable under S. 531 of the Code. Territorial jurisdiction is

provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the Court....

8. So where a Magistrate has the "power" to try a particular application under S. 488, and the controversy relates solely to his territorial jurisdiction, there should, ordinarily, be no reason why S. 531 of the code should not be applicable to the order made by him.

14. In this case, the respondent has no contention that any failure of justice will be caused by the trial of the case before the lower Court. Moreover, the respondent had no contention of all that the Court has no jurisdiction all the entire evidence was recorded and the matter was being heard. Therefore, S. 462 of the Crl. P.C. is squarely applicable to the facts of this case.

15. Even if the lower Court found that it had no jurisdiction to try the case, it is not at all justified in finding the respondent not guilty and acquitting her. If at all the lower Court should have followed the procedure provided under S. 201 of the Crl. P.C. if it was of the view that the Court had no jurisdiction to take cognizance of the offence in which case the complaint should have been returned for presentation to the proper Court with an endorsement to that effect. Therefore, in that view, also the lower Court was in error in finding the respondent not guilty and acquitting her.

16. In this case, the lower Court found that the Court has no jurisdiction to take cognizance of the offence since the cheque was issued at Cherthala. The contention of the appellant that the cheque was issued at his residence at Kuriachira, within the jurisdiction of the lower Court, is not accepted by the lower Court and found the cheque was issued at Cherthala. It is well settled now that the Court has jurisdiction over the area where the cheque was issued or delivered or where the drawer of the cheque fails to make payment of the money or where the cheque was presented for encashment or the area where the payment was to be made. Therefore, the appellant had cause of action to file the complaint before the lower Court where the cheque was presented for encashment and the lower Court had jurisdiction to take cognizance of the offence. Therefore, the finding of the lower Court that it had no jurisdiction to take cognizance of the offence is absolutely unsustainable.

17. The counsel for the appellant submitted that in view of the fact that the lower Court has found that the respondent has committed the offence punishable under S. 138 of the Negotiable Instruments Act and that finding is arrived at by the lower Court on a proper appreciation of the evidence on record, there is absolutely no necessity to remit the case to the lower Court, only for the purpose of awarding sentence to the respondent and this Court itself can award appropriate sentence in this appeal itself.

18. Even though the respondent has contended that technically no offence

punishable under S. 138 of the Negotiable Instruments Act is committed by the respondent since there was amount lying to her credit from 12.1.1993 onwards and she intimated that fact to the appellant and as such the respondent is not guilty of the offence punishable under S. 138 of the Negotiable Instruments Act, I have already held that that contention of the respondent is not sustainable since once the cheque was dishonored for want of sufficient funds and that fact was intimated by the appellant to the respondent, it is the duty of the respondent to pay the amount due as per the cheque under the proviso (c) to S. 138 of the Negotiable Instruments Act and it is not sufficient if she intimated the appellant that there is amount available to her credit and the appellant can represent the cheque and encashed the same. Therefore, it is clear that the respondent is guilty of the offence punishable under S. 138 of the Negotiable Instruments Act. I also find that instead of remitting the case to the lower Court only for the purpose of awarding the sentence, in the interest of justice this appellate Court itself should award the sentence. Therefore, the respondent is found guilty of the offence punishable under S. 138 of the Act and convicted and sentenced her to pay a fine of Rs. 10,000/- in default of payment to undergo simple imprisonment for three months. In the event of payment of fine the appellant will be entitled to Rs. 9000/-.

The Crl. Appeal is allowed accordingly.