
(2002) 07 DEL CK 0114

In the Delhi High Court

Case No : Criminal R. No. 265 of 1999

Lok Housing and Constructions Ltd.

APPELLANT

Vs

Raghupati Leasing and Finance Ltd. and Another

RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 141, 142

Citation : (2003) 115 CompCas 957 : (2002) 100 DLT 38 : (2002) 64 DRJ 332

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Deepak Khadaria, for the Appellant; Sanjay Poddar and Sachin Nawai, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—This petition under Sections 397/401 read with Section 482 of Code of Criminal Procedure (for short "Cr.P.C.") is directed against the order dated 3rd July, 1999 passed by the Court of Metropolitan Magistrate, New Delhi dismissing application of the petitioners for recalling the order of summoning dated 25th July, 1998 u/s 138 read with Section 142 of Negotiable instruments Act (for short "N.I. Act").

2. Facts in brief are that the respondent filed a complaint u/s 138 of N.I. Act against the petitioners alleging that the complainant company, during the course of its business of leasing and financing provided inter-corporate deposit of Rs. 50 lacs (fifty lacs) to the petitioners; and they executed guarantee, promissory note, receipt and other connected documents. The deposit was extended from time to time at their request. It was lastly renewed for 90 days on 7.6.1997. The petitioners issued advance post-dated cheque dated 30th September, 1997 drawn on Bank of India, Andheri (East), Mumbai towards discharge of the principal amount. The cheque was sent for encashment by the complainant on 4th March, 1998 through its bankers ABN Amro Bank, at New Delhi. It was

returned un-paid by the bankers of the accused company with the remarks ""insufficient funds" through memo dated 7th March, 1998. The information in this regard was given to the complainant vide return memo on 17th March, 1998. Thereafter, through notice dated 28th March, 1993 petitioners were called upon to pay the amount covering the said cheque. The accused failed to pay the amount despite notice. The complaint against the company, its Chairman and Managing Director, who are responsible for the conduct of the business of the company was filed. After preliminary evidence, the petitioners were summoned u/s 138 read with Section 142 of N.I. Act. They moved an application for recalling the order of summoning. Complainant opposed the same. Learned Trial Judge by order dated 3rd July, 1999 dismissed their application. This order is under challenge.

3. I have heard the learned Counsel for the parties and have been taken through the record.

4. Learned Counsel for the petitioners firstly argued that the transaction had taken place at Mumbai; the cheque was drawn on "the bank" at Mumbai; it was to be encased at Mumbai and the cheque was dishonoured at Mumbai, Therefore, Courts in Delhi have no territorial jurisdiction to entertain the complaint; and that the complaint was instituted at Delhi with an intent to harass them. The strength to support this argument was sought to be drawn from the observations made by the Supreme Court in Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., . The complainant's case is that one of its office is in Delhi; the cheque in question was deposited by them with their bank at Delhi; the complainant came to know of the dishonouring of the cheque at Delhi; notice was issued from Delhi, Therefore, part of cause action had arisen in Delhi.

5. Law in this regard is settled by the Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, The Supreme Court has observed that the offence u/s 138 of N.I. Act is complete only on the concatenation of five acts which are components of the offence. These are drawing of cheque, presentation of cheque, returning of the cheque un-paid by the drawee bank, giving notice in writing to the drawer demanding payment of the cheque and failure of the drawer to make payment within 15 days of the receipt of the notice. It was further noticed that it is not necessary that all five acts should happen in the same locality; and it is possible that all five acts may have been done at five different localities. It was held that under Sub-clause (d) of Section 178 of Cr.P.C. which provides that where the offence consists of several acts done in different local areas, it may be enquired into or tried by a Court having jurisdiction over any such local area. It was held:

"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 Code. 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 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".

6. In this case, as noticed above, "Branch office of the complainant company is in Delhi; the cheque in question was presented to the bank in Delhi and it was returned unpaid in Delhi; the notice to the petitioners was given from Delhi; and the failure of the petitioners to pay the amount was in Delhi. Therefore, I have no hesitation in holding that part of the cause of action had arisen at Delhi, and the Courts in Delhi have jurisdiction to try the complaint.

7. Learned Counsel Tran support of the proposition that the Courts in Delhi have no jurisdiction had also placed reliance on the decisions, in R.K. Jain v. State and Ors. 1998(1) Crimes 514; Canbank Financial Services Ltd. Vs. Gitanjali Motors Ltd. and Others, , and some decisions of the other High Courts. In my view, after authoritative pronouncement by the Supreme Court in K. Bhaskaran (supra), reference to other decisions cited by learned Counsel for petitioner is not necessary.

Learned Counsel heavily relied upon the observations made by Supreme Court in Shri Ishar Alloy Steels Ltd. (supra). In my view, the observations made therein, do not answer the question involved here. In that case, Supreme Court was considering the question of presentation of the cheque within six months from the date on which it was drawn on "the drawee bank" either directly or otherwise. It is in that context that the Supreme Court considered the use of direct article "The" in words "The bank". It was held that the cheque must reach "The bank" (the drawee bank) within six months. The emphasis laid by the learned Counsel on the words "a bank" and "the bank" used in Section 138 of the N.I. Act, does not help the contention. Learned Counsel even argued that there is a typing error in the Supreme Court judgment. There is no merit in this contention and the same is rejected.

8. Learned Counsel for the petitioners next argued that except the directions arrayed as accused Nos. 2, 8, 9 and 10 in the complaint, remaining seven directors have no concern with the accused company. They did not enjoy any control over the day-to-day functioning of the company, that impleading of all directors of the company is an abuse of the process of the Court. Reliance was place on Mahendra Pratap Singh Ratra and Another Vs. N.K. Metals and Another, , and Vikash Pawha v. State, 1996(4) Crimes 520. Factual situation in these cases was different. In this case there is a clear averment to the effect that the accused 2 to 12 were officers were in-charge and responsible to the company for the conduct of day-to-day business at the time of commission of offence. The Annual Report of the company showing that all accused persons were active directors was also filed along with the complaint, (mark "C"). It is essentially a question of fact, which can be decided only after the parties lead their respective evidence and not at this stage. By virtue of Section 141 of the N.L Act, the onus to prove that some of the accused persons were not responsible for the conduct of the business would be on them. There is no merit in the above contention and the same is rejected.

9. Learned Counsel for the petitioners next argued that cheque in question had become stale, as after the issuance of the cheque, the accused company made part payment which was accepted by the complainant. Reliance was placed on the letter dated 9th April, 1997 written by the petitioners to the complainant company by which they had sent a proposal stating that if the proposal was acceptable, duplicate copy of the same be signed and sent back. He argued that along with the proposal they had also sent a cheque of Rs. 3,62,866/-, to the complainant which was encashed, Therefore, the cause of action did not survive. I am unable to agree. In this case the cheque dated 30.9.1997 is for Rs. 50.0 lacs (Rupees fifty lacs only). It was dishonoured on 17th March, 1998. The petitioners failed to pay the amount despite notice dated 28th March, 1998. The payment of Rs. 3,62,866/- sent vide cheque dated 29th December, 1997 was accepted subject to a fresh cheque for re-payment of the principal amount being issued by the petitioners. That having not been done, it did not wash away the offence committed on the basis of previous cheque. In any case, what is the effect of such a payment can be appreciated only after trial.

10. Learned Counsel for the petitioners also argued that the cheque in question was not given for discharge, in the whole or in part of any debt or other liability. It was given as collateral security, and on the basis of such a dishonoured cheque, proceedings u/s 138 of N.I. Act are not maintainable. In support of his submission, reliance was placed on the decision of the Gujarat High Court in Om Prakash v. Gurucharan Singh 1997 (3) Crimes 433. The answer to my mind is simple. Section 139 of N.I. Act states that it shall be presumed unless contrary is proved that the holder of a cheque received the cheque of the nature referred to in the Section 138 for the discharge in whole or in part of any debt or other liability. The section raises presumption that cheque was drawn for consideration. This issue was also settled by several authoritative pronouncements of the

Supreme Court i Maruti Udyog Ltd. Vs. Narender and Others, , and M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, 6 , wherein it was held:

"15. A similar view has been taken by this Court in the case of K.N. Beena v. Muniyappan reported in 2001(7) Scale 331, wherein again it has been held that u/s 139 of the Negotiable Instruments Act the Court has to presume, in a complaint u/s 138, that the cheque had been issued for a debt or liability.

16. There is Therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability."

The Apex Court rejected the similar contention in recent case in A.V. Murthy Vs. B.S. Nagabasavanna, and it was held:

"This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case of that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous."

11. In view of the settled proposition of law, this contention also stands rejected. No other point was argued.

12. For the foregoing reasons, I find no merits in the petition and the same is dismissed. Trial Court record be sent back forthwith and Trial Court is directed to expedite the trial.