
(2007) 02 OHC CK 0028
In the Orissa High Court

Maresh Jain and Another

APPELLANT

Vs

Oswal Chemicals and Fertilizers Ltd.

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 30

Citation : (2007) 4 BC 346 : (2007) CLT 600 (Suppl CrI) : (2007) CriLJ 1520 :
(2007) 1 OLR 389 : (2007) OLR 600 (Suppl CrI)

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The order dated 24th September, 2006 passed by learned J. M. F. C (P), Kujang in I.C.C. No. 1/2001 is assailed invoking inherent jurisdiction u/s 482 of the Criminal Procedure Code. Admittedly, the opp. party filed the aforesaid complaint case, inter alia, alleging commission of offence u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "N. I. Act") by the petitioners, who are arrayed as accused in the said complaint case. Before the Magistrate the accused petitioners filed a petition with the averment that the complaint case was not maintainable at Jagatsingpur as no cause of action had arisen within the jurisdiction of the said Court and as such prayed that the same should be dismissed in limine. According to the petitioners a complaint case can be instituted for commission of offence u/s 138 of the N. I. Act where the cheque in dispute was issued and/or at the place where the cheque was presented for collection or at the place where the cheque was not honoured or at the place where the creditor's /debtor's office or residence is located or at the place from which legal notice was issued.

2. Relying upon the averments made in the complaint petition, learned Counsel for the accused-petitioners submits that in the case at hand the cheque in question was drawn on ABN Amro Bank, Mumbai. The cheque was presented for

collection at S.B.I., Industrial Finance Branch, Barakhamba Road, New Delhi. The office and residence of the creditors are situated at Kasturba Gandhi Marg, New Delhi and Sahajahanpur, Uttar Pradesh respectively. The place of debtors office and residence are both situated at V.P. Road (Bombay), Mumbai. The Lawyer's notice was sent to the accused-petitioners on 17th November, 2000 from Delhi. Hence according to the accused petitioners no cause of action arose at Paradeep and institution of the complaint case against the accused-petitioners in the court of J.M.F.C. (P), Kujang is not tenable in law in view of the fact that the alleged cause of action arose beyond the territorial jurisdiction of the said Court. According to the accused-petitioners, they had never visited Paradeep on 14th September, 2000 nor did admit their liability before the complainant for having supplied sub-standard quality of material, nor did issue any cheque at Paradeep or made any assurance over telephone to the opposite party. Thus, filing of the complaint petition at Kujang has been made with an avowed oblique motive of harassing the accused-petitioners.

3. Learned Counsel for the opposite party complainant at the other hand strongly repudiated all the aforesaid submissions advanced and submitted that the cheque having been presented at Paradeep, the cause of action arose at that place. Even otherwise according to learned Counsel for the opposite party the question of jurisdiction being a mixed question of fact and law, the same could not be decided before trial at this stage and the Court below therefore rightly rejected the prayer of the accused-petitioners.

4. To appreciate the submissions advanced by learned Counsel for both sides, it would be prudent to refer to the relevant provisions of the N.I. Act which are quoted herein below;

Section 30 - Liability of drawer. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder provided due notice of dishonour has been given to; or received by, the drawer as hereinafter provided.

XXX XXX XXX Section 138--Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to be Bank within a period of six months from

the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Section 30 of the N. I. Act deals with civil liability in case of dishonouring of a cheque and the said Section stipulates that the drawer has to compensate the holder of the cheque. The intention of the Legislature thus is very clear that if a cheque issued is dishonoured for want of funds and even after service of the notice if the amount is not paid within the period prescribed, it would constitute an offence u/s 138 of the N. I. Act. A cumulative reading of Sections 30 and 138 of the N. I. Act leads to the conclusion that only if the three conditions specified in Section 138 of the Act exist then an offence is deemed to have been committed. Thus the pre-requisite for commission of such an offence is that the cheque must have been dishonoured for the reason that the amount of money standing to the credit of the drawer was not sufficient to honour the cheque or that it exceeded the financial arrangement made with the Bank apart from other conditions.

5. Coming to the question of jurisdiction, it should be considered that the issuance of the cheque and its dishonouring are only a part of cause of action and the offence is complete only when one failed to discharge his liabilities to pay any sum of money to another by way of issuing a cheque.

6. From the discussions made above and in view of the facts of the case, it is clear that a part of cause of action arose at Paradeep inasmuch as the cheque was given at Paradeep in respect of transactions made at Paradeep. Further in the complaint petition, it is clearly mentioned in Para-IX that accused No. 1 during his visit to Paradeep on 14-9-2000 admitted his liability for having sub-standard quality of material and agreed to make payment of Rs. 20,03,321/- towards their liability. Accused No. 1, it appears, issued the cheque. The learned Magistrate has taken note of all these facts and has arrived at a conclusion that in fact a part of the cause of action did arise at Paradeep and as such the said Court has jurisdiction to entertain the case.

7. After going through the impugned order, I do not find any infirmity or illegality. The question of liability and commission of offence is a mixed question of facts and law which has to be gone into in course of trial of the complaint case. This Court, therefore, is not inclined to interfere with the impugned order in exercise of its inherent jurisdiction u/s 482 of the Code of Criminal Procedure and

dismisses this case granting liberty to the parties to raise all their submissions, both factual and legal, in the complaint case.