(2010) 10 DEL CK 0021

In the Delhi High Court

Case No : Criminal M.C. 1988, 1989 and 2373 of 2010

Mahika Enterprises and Another APPELLANT

Vs

State (NCT of Delhi) and Another RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : AIR 2011 Delhi 306 : (2011) 1 BC 210 : (2010) 173 DLT 361 : (2010) 7 RCR(Criminal) 1769

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Ranjit Khatri, for the Appellant; M.P. Singh, APP for State and I. Ghosh, for the Respondent

Judgement

A.K. Pathak, J.—The above petitions are being disposed of together as not only these are similar in facts, but the questions of law canvassed before this Court, are also same.

2. Petitioners seek quashing of complaints u/s 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as "the Act") filed by respondent No. 2, pending in the court of Metropolitan Magistrate, New Delhi. It was alleged in the complaint that the petitioner No. 1 was appointed as dealer by respondent No. 2 for the sale and purchase of electrical goods manufactured by it. From time to time, goods were supplied by the respondent No. 2 to petitioner No. 1. Respondent No. 2 was maintaining an account in his books regarding the supplies made and the payments received. Petitioner No. 2 was proprietor/ partner of petitioner No. 1. In order to discharge its liability, petitioner No. 1 had issued cheques bearing Nos. 916032 dated 2nd October, 2008 for Rs. 71,337/-, 916033 dated 22nd October, 2008 for Rs. 10,000/- and the third cheque bearing No. 916034 dated 13th March, 2009 for Rs. 71,337/- all drawn on State Bank of Mysore, J.C. Road Branch, Bangalore, favouring the respondent No. 2. On presentation, aforesaid cheques were returned unpaid by the banker of

respondent No. 2 with the remarks "payment stopped by the drawer" on 13th October, 2008, 28th October, 2008 and 24th March, 2009 respectively. Despite service of statutory notices of demand dated 21st October, 2008, 17th November, 2008 and 30th March, 2009 in respect of the above cheques, petitioners failed to pay the amount of these cheques within fifteen days of the service of said notices. Thus, petitioners had committed an offence u/s 138 of the Act.

3. With regard to territorial jurisdiction of Delhi courts, it was alleged that cause of action to file the complaints had arisen within the jurisdiction of Delhi as respondent No. 2 had presented the cheques in its account in Corporation Bank, Connaught Place Branch, New Delhi as also the notices were issued from Delhi.

4. From the averments made in the complaint it is clear that, according to the respondent No. 2, Delhi courts were having jurisdiction since the cheques were presented for encashment by respondent No. 2 with its banker at New Delhi as also because the notice of demand had been issued from Delhi. Thus, the question which needs to be answered in this case is as to whether the Delhi courts have jurisdiction to entertain and try the complaint u/s 138 of the Act (i) because the cheques had been deposited by the complainant/respondent No. 2 with its bank for collection at Delhi; (ii) since the legal demand notices were issued from Delhi; even though no other cause of action had arisen within the territorial jurisdiction of Delhi courts.

5. Letter head of respondent No. 2 shows that its registered office is at Kolkata with its head office at Delhi. Invoices show that respondent No. 2 has its works at Faridabad. From the photocopy of e-mail placed on record (Annexure R-5), it appears that respondent No. 2 also has a regional office at Bangalore. Be that as it may, in the complaint, as per the complainant, jurisdiction of Delhi courts has been invoked only on the ground that cheques had been presented at Delhi as also the statutory notices were issued from Delhi.

6. In the facts of this case, in my view, merely because the cheques had been deposited by the respondent No. 2 with its bank at Delhi for collection would not attract the jurisdiction of this Court. Similarly, issuance of statutory demand notice from Delhi will also not vest the jurisdiction in Delhi courts.

7. In K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, it had been held that the offence u/s 138 of the Act can be completed only with the concatenation of number of acts, that is (i) drawing of the cheque (ii) presentation of the cheque to the bank (iii) returning the cheque unpaid by the drawee bank (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount (v) failure of the drawer to make payment within 15 days of the receipt of the notice. In case 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 chose any 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.

8. It may be noted that in this case respondent No. 2 has invoked the jurisdiction of Delhi courts on the grounds of (i) presentation of the cheque by the respondent No. 2 in its bank at Delhi (ii) giving notice in writing to the drawer of the cheque demanding payment of cheque amount.

9. In Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., Supreme Court had held that mere issuance of notice would not attract territorial jurisdiction of that court. In V.S. Thakur v. State of NCT of Delhi and Anr. (Delhi) 2010 (1) JCC (NI) 40, a Single Judge of this Court has held that sending of notice from Delhi by itself would not confer jurisdiction on Delhi courts. Similar view has been taken in Som Sugandh Industries Ltd. and Anr. II (2010) DLT (CRL.) 475. In this judgment also, it was held that mere sending of notices from Delhi to outside does not confer jurisdiction on Delhi courts. In Online IT Shoppe India Pvt. Ltd. and Ors. v. State and Anr. 2010 (1) JCC (NI) 27, also it was held that sending notice from Delhi need not confer jurisdiction on Delhi courts.

10. Section 138 of the NI Act reads as under:

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 provisions of this Act, be punished with imprisonment for 2["a term which may extend to two 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 the 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 induce 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, 3["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques 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.

11. Bare perusal of Section 138 of the N.I. Act clearly indicates that the cheque

has to be presented on the drawer''s bank where account has been maintained. It is only the banker of the drawer which will be in position to say that the cheque amount exceeds the arrangement. Only drawer''s bank can return the cheque unpaid on account of "insufficient funds" in the account of drawer or for any other reason. The payee of the cheque has no option but to present the cheque for encashment to the drawer''s bank on which the cheque had been drawn either personally or through a bank. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn that too within a period of six months. This makes it clear that merely because the payee had deposited the cheque in his bank at Delhi by itself would not be sufficient to show that he had "presented the cheque" at Delhi.

12. In Shroff publisher and Distributors Pvt. Ltd. v. Springer India Pvt. Ltd. 2008 Criminal Law Journal 1217, it has been held that the payee has an option to present the cheque in any bank including the collecting bank where he has his account, but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawer''s bank, on which cheque is drawn. In Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., Supreme Court held that "the bank" referred to in Clause (a) to the proviso to Section 138 of the Act means the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee in whose favour the cheque is issued. In ICICI Bank Ltd. Vs. Subhash Chand Bansal and Others, this Court held that the court in whose territorial jurisdiction drawee bank is situated would have territorial jurisdiction to entertain the complaint in question. Similar view has been taken in Online IT Shopee India Pvt. Ltd., and V.S. Thakur (reports cited supra).

13. Counsel for the respondent has placed reliance on Din Dayal Kayan v. SMC Global Securities Ltd. 171 (2010) DLT 447 and an unreported judgment dated 21st July, 2010 of a Single Judge of this Court in Crl. M.C. 555/2010. In my view, these judgments do not advance the case of respondent No. 2 in any manner being in different facts, in as much as, the catena of judgments cited supra have not been considered therein. In K. Bhaskaran (supra), place of business of complainant has not been identified as the place vesting the court with necessary jurisdiction.

14. For the foregoing reasons, it is ordered that the complaints filed by the respondent No. 2 be returned to it within four weeks for presenting the same before a competent court having jurisdiction over the matter.

15. All the above petitions are disposed of in the above terms.

