
(2011) 03 BOM CK 0237

In the Bombay High Court

Case No : Criminal Application No. 196 of 2011

Mr. Jambu Kumar Jain and Mr. Prafull Kumar Jain	APPELLANT
Vs	
TATA Capital Limited and Others	RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 3 CivCC 714 : (2012) 3 Crimes 587

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : Prabhajit Jawhar, Atman Mehta and Hemant S. Telkar, instructed by Hareesh Mehta and Co, for the Appellant; V.R. Bhosale, APP for Respondent No. 6 and Subhodh Desai, for the Respondent

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties.

2. Respondent No. 1 filed the complaint u/s 138 of Negotiable Instruments Act before the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai against the present Petitioners and Respondent Nos. 2 to 5. Respondent No. 2 is a private limited company and Respondent Nos. 3,4 and 5 as well as the present Petitioners are said to be the directors of the said company. The accused persons had taken credit facility to the tune of Rs. 10 crore by way of term loan as well as by way of purchase invoices discounting facility and by way of sales invoice discounting facility. On 5.8.2009, the accused issued a cheque for payment of Rs. 8,48,500/- to the complainant. The cheque was drawn by the accused No. 1 Company against the account maintained with Andhra Bank , Jawahar Marg, Indore Branch. The cheque was deposited by the complainant with its banker HDFC Bank Ltd. at Indore Branch for presentation to the drawee Bank. However, the cheque was dishonoured and intimation of the same was received by the complainant. In spite of service of the statutory notice making demand of the

cheque amount, the accused persons failed to make payment. Therefore, the complaint was filed u/s 138.

3. The Petitioners have filed this application seeking to quash the proceedings in Criminal Case No. 11638/SS/2009 registered before the Metropolitan Magistrate, Ballard Pier and the process issued therein. The Petitioners have mainly raised two grounds for quashing the proceedings. Firstly, according to them, both these Petitioners had resigned from the post of director on 7.7.2009 ie. even before the cheque in question was issued by the accused No. 1 and therefore, the present Petitioners are not liable to be prosecuted u/s 138. The second ground is that no part of the transaction had taken place at Mumbai and therefore the Metropolitan Magistrate, Mumbai does not have territorial jurisdiction to entertain the complaint. It is contended that the agreement for credit facility was entered into by the parties at Indore. The facility was given and availed at Indore. The accused No. 1 had issued the cheque in question at Indore against its account maintained with Andhra Bank, Indore Branch and the cheque was presented to the drawee Bank at Indore through HDFC Bank, Indore Branch by the complainant. The cheque was dishonoured at Indore and intimation of the same was also received by the complainant at Indore. It is contended that the complainant is a financial institution or company having several branches network all over the country, including at Indore. All the transactions took place at Indore. Only the notice for making payment of the cheque amount was issued from Mumbai.

4. The learned Counsel for the Petitioners contended that in view of the settled law, particularly in Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., , the Metropolitan Magistrate, Mumbai, has no jurisdiction and therefore the complaint could be filed only before the jurisdiction of Magistrate at Indore. Taking into consideration the facts of the case noted above, the case is squarely covered by the judgment of the Supreme Court in Harman Electronics. The facts of that case are almost identical with the facts of the present case and therefore, I hold that the Metropolitan magistrate has no jurisdiction to entertain the application.

5. As it is held by me that the Metropolitan Magistrate Mumbai has no jurisdiction, the complaint may be returned to the complainant to file the same before the Court having jurisdiction. In view of this finding, I do not find it necessary to enter into the question as to whether the Petitioners were or were not directors of the accused No. 1 company at the relevant time. That question can be determined by the Court having jurisdiction.

6. For the aforesaid reasons, the Application is allowed and the case pending before the Metropolitan Magistrate, 33rd Court at Ballard Pier is hereby quashed. However, the complainant shall be at liberty to move the Metropolitan Magistrate to return the complaint for its presentation before the Court having territorial jurisdiction.

Rule made absolute accordingly.