
(2010) 07 BOM CK 0204

In the Bombay High Court

Case No : Criminal Writ Petition No. 32 of 2010

Mr. Luis Souza

APPELLANT

Vs

Shri K.P. Siwach and Another

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 07 BOM CK 0204

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : J. Godinho, for the Appellant; C.A. Ferreira, Public Prosecutor, for the Respondent

Judgement

N.A. Britto

1. This petition is filed by the accused who is prosecuted u/s 138 of the Negotiable Instruments Act 1881, and is directed against the order dated 3.4.2010 of the learned Judicial Magistrate First Class, Mapusa by which learned Judicial Magistrate First Class, has come to the conclusion that he has jurisdiction to try the complaint, inter alia, observing that the complainant is residing within his jurisdiction and the transaction also took place within his jurisdiction. There is no dispute that the complainant is a resident of Porvorim, within the jurisdiction of learned Judicial Magistrate, First Class, Mapusa. As per the complaint, the complainant had advanced a friendly loan to the accused in sum of Rs. 6,20,000/- and towards the repayment, the accused had issued a cheque dated 20.4.2008 for sum of Rs. 6,20,000/-.

2. The complainant deposited the said cheque for collection with his banker at Mapusa. The accused is a resident of Panaji, within the jurisdiction of Judicial Magistrate First Class, Panaji. The cheque was given by the accused drawn on Punjab and Sind Bank, Panaji.

3. The demand notice was sent by the complainant through his Advocate working

at Panaji and as far as this aspect is concerned, the learned Judicial Magistrate, First Class, has referred to the case of Nutan Damodar Prabhu Vs. Ravindra Vassant Kenkre, (2008 ALL MR (Cri) 446) wherein it was observed that:-

In the demand notice the advocate had not demanded payment for him, but for the client and since the client's address was given in the notice, the payment was obviously required to be made to the complainant at this residence which was within the jurisdiction of the learned JMFC, Panaji. Needless to observe the common law principle that the debtor should seek the creditor and pay the debt to him at the place where he resides can be invoked and applied in such cases as well.

4. Shri Godinho, Learned Counsel on behalf of the accused submits that the amount due on the cheque was payable at Panaji and therefore it is the learned Judicial Magistrate, First class, at Panaji who will have jurisdiction to try the case. Shri Godinho, further submits that this Court in criminal appeal no. 77/2009 by judgment dated 16.12.2009 has come to the conclusion that there is conflict of views taken by learned Single Judge in Criminal Revision No. 7/2009 in case of Crompton Greaves with the view taken by learned Single Judge of Aurangabad Bench in Deepti K. Mohanti Versus Videocon Industries and has referred the matter to the Division Bench and therefore this petition be decided after the said controversy is resolved.

5. Considering the facts of the case, in my view it is not at all necessary to await for the decision on reference made. As far as the facts of this case go, there is no dispute that the complainant resides at Porvorim. The accused had taken a loan from him, and presumably from Porvorim. Notice was issued on his behalf and obviously to make payment to the complainant at Porvorim. The complainant had deposited the cheque with his banker at Porvorim. On identical facts, there are several decided cases.

6. There is no dispute that the case of K. Bhaskaran vs. Sankaran Vidhyan Balan and anr (1991 (7) SCC 510) still holds the field on the point of jurisdiction and the same was followed by the Apex Court in Smt. Shamshad Begum Vs. B. Mohammed, and again in M/s Harmon Electronics(P) Ltd., and anr. Versus M/s National Panasonic India Ltd., (2009 ALL MR(cri) 280.

7. The Division Bench in the case of Mrs. Preetha S. Babu Vs. Voltas Ltd. And Anr. (2010 ALL MR (Cri) 1025 has held that :-

if the complainant calls upon the accused to make payment at place mentioned in the demand notice and the accused fails to make payment at the place, part of cause of action undoubtedly arise at that place.

The learned Division Bench also held that:-

When in paragraph 14, the Supreme Court say that "presentation of the cheque to the bank" is a component of the offence u/s 138 of the Negotiable Instruments Act, it is possible to hold that it conveys presentation of the cheque

at the drawee bank or the collecting bank of the payee. It is pertinent to note that in item (2) of paragraph 14, the Supreme Court has used the words "the bank" and in item (3) thereof the Supreme Court has used the words "drawee bank". Nothing prevented the Supreme Court from using the words "drawee bank" in item (2) instead of the words "the bank". It is possible to hold that the fact that it has not done so indicates that in the opinion of the Supreme Court, presentation of the cheque can be done either at the drawee bank or the collecting bank of the payee.

8. The case of Ahooja Nandkishore Dongre versus State of Maharashtra 2007 (1) Bom CR 1031 is stated to be in appeal before the Apex Court. The learned Single Judge who delivered the Judgment in Ahooja N. Dongre(supra) says in Equbalbegum and Others Vs. Abdul Rahim Fateh Mohammad and Others, that K. Bhaskaran's case is followed strictly in Ahooja Dongre's case as a authoritative pronouncement(see para 35).

9. This being the position and the in the light of law laid down by the Apex Court in K. Bhaskaran followed in Smt. Shamshad Begum and Harmon Electronics and now by the Division Bench in Mrs. Preetha S. Babu, the conclusion arrived at by the learned Judicial Magistrate First Class, cannot be faulted. It is therefore not necessary to discuss in detail the facts situation of the cases which because of conflict of views have been referred for a decision of Larger Bench.

10. Hence no interference is called for in the impugned Order.

11. Writ Petition is hereby dismissed.

12. Accused to appear before the learned Judicial Magistrate First Class, Mapusa on 19.7.2010 at 10.00a.m. Writ Petition is disposed off accordingly.