

(1993) 09 KL CK 0047
In the High Court Of Kerala
Case No : Criminal M.C. No. 1093 of 1993

Mrs. Jaya Baby

APPELLANT

Vs

K.K. Vijayan and Another

RESPONDENT

Date of Decision : 20-09-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 26, 29, 325, 357, 357(1)
Drugs and Cosmetics Act, 1940 — Section 27(a), 36
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1993) 2 KLJ 704 : (1994) 1 RCR(Criminal) 118

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Johnson Manayani, for the Appellant; Dinesh Mathew J. Murikan and Director General of Prosecutions (M. Retna Singh), for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas J.

1. The contention raised in this petition requires some consideration although it appeared at first as bereft of any substance. The contention is that the offence u/s 138 of the Negotiable Instruments Act (for short "the Act") can be tried only by a chief judicial magistrate or a chief metropolitan magistrate when the cheque amount exceeds Rs. 2,500/-. The reason advanced by the counsel in support thereof is that since the fine amount imposable for the offence can go upto twice the cheque amount, no magistrate other than a chief judicial magistrate or chief metropolitan magistrate) has the power to impose (a fine exceeding rupees five thousand. Counsel conveyed the grievance of the petitioner that in such cases court would be precluded from awarding compensation to the complainant from the fine amount realised commensurate with his loss. Petitioner filed a complaint before a chief judicial magistrate alleging that first respondent has committed the offence u/s 138 of the Act. The cheque involved in the case was for Rs. 2,25,000/-. The chief judicial magistrate took cognizance of the offence on the

complaint, but later made over the case to the court of a judicial magistrate of first class situate in the same district, as the chief judicial magistrate was told that a connected case was pending in that court.

2. According to the petitioner, if the case is to be disposed of by the magistrate to whose court the case stands transferred, petitioner would be put to handicap for the following reasons: The sentence prescribed for the offence u/s 138 of the Act is imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of cheque or with both. u/s 357 (1) of the Code of Criminal Procedure (for short the Procedure Code) the court is empowered to order the whole or any part of the fine realised to be paid as compensation. No upper limit it is fixed for the quantum of fine if the chief judicial magistrate has to pass the sentence. But a magistrate of first class, other than a chief judicial magistrate or metropolitan magistrate, cannot impose a fine exceeding Rupees five thousand. Hence even if a magistrate of first class is considerate and desirous of providing recompense for the loss of the complainant, he can not help the complainant by imposing a fine more than the said limit. Therefore, learned counsel pleads that the case should have been tried only by the chief judicial magistrate.

3. If the above argument gains acceptance the consequence is that all chief judicial magistrate courts would be inundated with spate of complaints since most of the cheques would be for amounts far in excess of half the figure upto which a judicial magistrate of first class can impose the fine sentence. Parliament would not have intended to create such a situation when it provided in Section 142 of the Act that no court inferior to that of a judicial magistrate of first class (or metropolitan magistrate) shall try such offence.

4. From another angle this question can be viewed. The maximum term of imprisonment provided for the offence u/s 138 of the Act is one year. u/s 26 of the Procedure Code an offence under the Indian Penal Code can be tried by a court by which such offence is shown in the First Schedule to the Procedure Code to be triable. It further provides that any offence under any other law shall be tried by such court as mentioned in that behalf in such law. When no such court is mentioned in such law, the Section provides that the offence may be tried by any other court by which such offence is shown in the First Schedule to the Procedure Code to be triable. In the Second Division of the First Schedule to the Procedure Code, it is mentioned that any offence punishable with imprisonment with less than three years can be tried by any magistrate. Hence, even if Section 142 has not mentioned specifically as to the court which can try the offence, any judicial magistrate of first class (now there is no magistrate of second class in Kerala State) would have got jurisdiction to try the offence u/s 138 of the Act.

5. There is no merit in the contention that the complainant would be put to handicap due to want of powers for the magistrate to impose a fine amount more than rupees five thousand. If such magistrate is of opinion that a more sentence is warranted, he can resort to the steps envisaged in Section 325 of the

Procedure Code. Even without resorting to such steps, a magistrate can alleviate a complainant's grievance by resort to Section 357 (1) of the Procedure Code. Supreme Court has counselled for the liberal use of the redressal measures contemplated in Section 357 (Hari Kishan Vs. Sukhbir Singh and Others,). Contextually it is useful to refer to what Sankaran Nair, J. has directed in State of Kerala r. Ashraf 1993 (1) KLT 501) bringing the attention of all Sessions Judges and judicial magistrates to the guidelines laid down in Hari Krishan's decision.

6. Learned counsel cited the decision of Allahabad High Court in Ravindra Prakash v. Union of India (1984 CrL. L.J. 1321). That was a case in which the offence involved was Section 27 (a) of the Drugs and Cosmetics Act, 1940 (for short Cosmetics Act"). As a magistrate of first class proceeded to try the offence, a request was made on behalf of Union of India to commit the case to the court of sessions on the ground that the sentence prescribed for the offence was imprisonment for life. But the request was turned down by the magistrate. The matter was then taken to the High Court. It was held by a learned single judge that the case should have been tried by a Court of Sessions. K.C. Agarwal, J. as he then was) relied on the decision of the Calcutta High Court in State v. Bijoy Kumar Chatterjee 1977 CrL.L.J. 1503 But the position involved in those two decisions was different. No particular court is mentioned in the Cosmetics Act for trial of offences under that Act. There are some offences under the Cosmetics Act for which the punishment prescribed is imprisonment which may extend to six years. Under the Second Division of the First Schedule to the Procedure Code such offences can be tried by a magistrate of first class. But such a magistrate could not award a sentence of imprisonment beyond Three years in view of the limitations contained in Section 29 of the Code. To circumvent the said limitation, a provision is incorporated in the Cosmetics Act (Section 36) that notwithstanding anything contained in the Procedure Code a magistrate can impose any sentence authorised by the Act. Hence the above two decisions are of no help to bolster up the contention advanced by the learned counsel.

For the aforesaid reasons, I do not find any scope for interference with the action adopted by the Chief judicial magistrate making over the case to the file of a judicial magistrate of the first class in the same district.

Criminal Miscellaneous Case is accordingly dismissed.