
(2013) 08 MP CK 0188

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 5531 of 2009

M/s. Jai Shri Ram Motors

APPELLANT

Vs

M/s. Bhopal Tractors Pvt. Ltd.

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 08 MP CK 0188

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : Atul Gupta, for the Appellant; L.K. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Paliwal, J.—This petition has been preferred u/s 482 of Cr.P.C., for quashing the private complaint bearing case No. 3115/2007, filed by the non-petitioner u/s 138 of Negotiable Instruments Act, in the Court of JMFC, Gwalior. The brief facts of the case are that, petitioner firm is a proprietorship firm of whose Shri Ravi Gupta is the proprietor/partner and had applied for the dealership of the Sonalika Tractors for the area of Etah (U.P.) from the manufacturer of the Sonalika Tractors i.e. International Tractors Limited Hoshiarpur (Punjab), which they have provided to the petitioner firm. After getting the dealership from the manufacturer the petitioner has started the agency of Sonalika Tractors in Etah under the name and style of "M/s. Jai Shri Ram Motors". Petitioner has started purchasing tractors and spare parts from "M/s. Bhopal Tractors Pvt. Ltd." E-49, Foundry Nagar, Agra (U.P), which is nearest depot of Sonalika Tractors from Etah. It is further alleged that when business was started between both the parties petitioner gave them two blank cheques of Canara Bank, Etah Branch bearing No. 565604 and 565605 respectively, in the Office of the non-petitioner firm at E-49, Foundry Nagar, Agra (U.P.) for making smooth transaction between the parties and for inspiring confidence of the petitioner in the non-petitioner.

Both the parties had carried on business very smoothly and whatever items were purchased by the petitioner from the non-petitioner from their depot at Agra, the petitioner had made the payment through cheque in Agra only. Petitioner has challenged the jurisdiction of JMFC, Court at Gwalior in Revision Petition before ASJ, which has been dismissed vide order dated 11.01.2008, being aggrieved he has preferred this petition.

2. It is submitted by the learned counsel for the petitioner that the petitioner was never in business terms with the Gwalior Office of the non-petitioner firm, petitioner was only engaged in the business with the Agra Office of the non-petitioner, as it is the nearest depot of Sonalika Tractors near to Etah. The petitioner had never given any cheque to the non-petitioner in Gwalior as there was no business transaction between them in Gwalior, hence JMFC, Gwalior does not have jurisdiction to entertain the complaint filed by the non-petitioner. Secondly the cheque in dispute bearing No. 565604 was given by the petitioner to the non-petitioner as security, therefore, no case is made out u/s 138 of Negotiable Instrument Act.

3. The submission of the learned counsel for the petitioner is that the Head Office of the non-petitioner is at 99, Sharda Vihar, City Centre, Gwalior. The notice has been sent by the non-petitioner from Gwalior and the cheque has been received at Gwalior and have been submitted to Bank at Gwalior, therefore, JMFC Court, Gwalior has the jurisdiction.

4. In view of the submissions of the learned counsel for the parties, I have perused the record.

5. Annexure A/2 "challan cum receiving" reveals that it has been issued by Bhopal, Tractors, E-49, Foundry Nagar, Agra-6 to the petitioner firm.

6. Annexure A/3 is the receipt of the cheque received by Bhopal, Tractors, E-49, Foundry Nagar, Agra-6 from the petitioner. The learned counsel for the non-petitioner has filed the statement of the accounts of M/s. Bhopal, Tractors, Pvt. Ltd. 101, Arti Plaza Chetakpuri, Gwalior and copies of ledger account. From the document filed by the non petitioner it appears that account of "Jai Shri Ram Motors, Etah," is being maintained at Head Office of the petitioner at 101, Arti Plaza Chetakpuri, Gwalior (M.P.).

7. So far as jurisdiction of the Criminal Court is concerned it is appropriate to refer Section 177 of the Code of Criminal Procedure which reads as under:-

Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

8. From the perusal of the complaint, it appears that it has specifically been stated that Head Office of the Company is situated at Gwalior and the cheque has been given at Gwalior, which has been submitted for collection at, Gwalior and the disputed cheque has been returned to the petitioner company at Gwalior, therefore, the Court at Gwalior has jurisdiction to entertain the complaint. As

noticed above, ledger account of the petitioner's firm and the Bank Account shows that the account of the petitioner's company is maintained at Head Office, Gwalior and cheques have been submitted for encashment at Gwalior and the disputed cheques have been returned at Gwalior therefore the offence punishable u/s 138 of the Negotiable Instrument Act can be said to have been committed at Gwalior and in view of the provisions of Section 177 of Cr.P.C., learned JMFC Court at Gwalior has the jurisdiction to entertain the complaint filed by the non petitioner.

9. Learned counsel for the petitioner in support of his contention has cited the decision rendered in the case of Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., , The facts of Harman Electronics Pvt. Ltd. (supra) are that the parties had entered into a business transaction. Appellant was a resident of Chandigarh. He was carrying on business in Chandigarh. The cheque in question admittedly was issued at Chandigarh. Complainant also had its Branch Office at Chandigarh, although its Head Office was said to be at Delhi. The cheque was dishonoured at Chandigarh. In these circumstances, it has been held that parties had been carrying its business at Chandigarh. The Head Office of the complainant may be at Delhi but its Branch Office was also at Chandigarh. The cheque was issued at Chandigarh and the complaint is totally silent where it is submitted, therefore, it was held that Court at Delhi has no jurisdiction.

10. The facts of the instant case are distinguishable because in the instant case account of the petitioner is maintained at Head Office, Gwalior, the notice has been sent from Gwalior, the cheque was submitted in Bank and returned at Gwalior, therefore, the case law relied on by the learned counsel for the petitioner is not applicable in the facts of the instant case.

11. The next contention of the learned counsel for the petitioner is that the disputed cheque has been given as a security, in my opinion, it is a question of fact, which has to be decided after recording of the evidence. At this stage, it cannot be said that the disputed cheque was given as security.

12. In view of the above analysis, petition is devoid of merits and deserves to be dismissed. Consequently, the petition is dismissed.