

(2013) 05 KAR CK 0008
In the Karnataka High Court
Case No : Criminal Petition No. 311 of 2013

M/s. Total Wardrobe Solutions

APPELLANT

Vs

M/s. V.S.R. Fashions Marketing, Sri Surya Narayana Pathy
and Sri. N. Ramachandra Choudhry

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178, 178(d), 179, 200
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 4 AKR 631 : (2013) ILR (Kar) 5107 : (2013) 4 KCCR 2924

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : S. Ramakrishnan, for the Appellant;

Judgement

H.S. Kempanna, J.—Though this matter is listed for admission it is taken up for final disposal as notice to the respondents is not warranted at this stage. This petition is filed challenging the order dt. 22.10.2012 passed in PCR No. 12370/12 by the XV Addl. CMM Bangalore City ordering to return the complaint presented by the petitioner u/s. 200 of Cr.P.C. for presentation before the Jurisdictional Court as he lacks jurisdiction to entertain the same.

2. The brief facts of the case are:-

The petitioner/company filed complaint u/s. 200 Cr.P.C. against the accused alleging that they have committed the offence punishable u/s 138 of N.I. Act. It is the case of the complainant/Company they are carrying on their business having their main office at Mumbai with branches at various places including Bangalore. The accused is a firm carrying on their business at Berhampur, Orissa State. They had issued cheque bearing No. 819643 dated 5.5.2012 drawn on Dena Bank, Bhubaneswar Branch. The said cheque according to the complainant/Company had been issued by the accused/firm in their favour in respect of the claims of the company in terms of the franchise that had been entered between them. The cheque in question drawn in favour of the complainant/Company by

the accused was presented by the complainant to their bankers viz. Bank of India, Bangalore main branch, K.G. Road, Bangalore for realization. The said cheque came to be returned by the bankers of the complainant with an endorsement stating insufficient funds. Thereafter the complainant took steps to issue notice calling upon the accused firm to pay the amount covered under the cheque after complying with the provisions of the N.I. Act. Since the accused did not respond to the request of the complainant, the company filed the complaint against the accused before XV ACMM Bangalore City alleging that the accused/Firm have committed the offence punishable u/s 138 of N.I. Act.

3. After presentation of the complaint the learned Magistrate heard the complainant on the point of territorial jurisdiction. The learned Magistrate relying upon Clause 33 of the Franchise Agreement entered into between the complainant/company and the accused/firm came to the conclusion that the court has no jurisdiction to entertain any dispute as they have agreed unconditionally to submit themselves exclusively to the jurisdiction of the courts at Mumbai. Accordingly, by the impugned order he ordered to return the complaint to the complainant for presentation before the Jurisdictional Court.

The complainant being aggrieved by the said order of the learned Magistrate is before this Court in this petition.

4. Learned counsel for the petitioner submitted it is no doubt true the parties have entered into an Franchise Agreement and Condition No. 33 of the said agreement reveals that the parties have agreed unconditionally to submit themselves exclusively to the jurisdiction of the courts at Mumbai. But the said condition incorporated in the agreement does not come into play in respect of the criminal offence. In this connection he submitted the jurisdiction of the court to try a criminal case is governed by the provisions of the code of criminal procedure and not on common law principle. In support of his submission he relied upon the judgment reported in Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., Therefore, he contended the order of the learned Magistrate holding that he lacks jurisdiction to entertain the complaint cannot be sustained. Hence, it be set aside and the learned Magistrate be directed to dispose of the complaint filed in accordance with law.

5. In the light of the submissions made the point that arises for consideration is:-

Whether the jurisdiction of the court to try a criminal case is governed by the provisions of Criminal Procedure Code or on the basis of an agreement entered into between the parties?

6. It is the case of the complainant/company that they are carrying on their business having their main office at Mumbai with branches at various places including Bangalore. The accused-firm had issued them the cheque bearing No. 819643 dated 5.5.2012 drawn on Dena Bank, Bhubaneswar Branch. The said cheque had been issued by the accused/firm in their favour in respect of the claims of the Company in terms of the franchise that had been entered into

between them. The cheque in question drawn in favour of the complainant/company by the accused was presented by the complainant to their bankers viz. Bank of India, Bangalore main branch, K.G. Road, Bangalore, for realization as they have branch office at Bangalore through which they are carrying on the business. The said cheque has come to be returned by the bankers of the complainant at Bangalore with an endorsement stating insufficient funds. The averments in the complaint would reveal that the complainant/company is carrying on its business having its main branch at Mumbai and branches at various places including Bangalore. The cause title in this petition and the complaint presented before the learned Magistrate would disclose that the complainant/company have a branch office at Bangalore. The complaint averments further disclose that the complainant/company has presented the cheque issued by the accused/company to their bankers viz. The Bank of India, Bangalore main branch, K.G. Road, Bangalore for realization which cheque has been now dishonoured. The offence u/s. 138 of N.I. Act would not be completed with dishonour of cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in Clause (c) of the proviso to Section 138 of the Act. Normally it is difficult to fix up a particular locality as a place of failure to recover the amount covered under the cheque. Therefore, the place for that purpose would depend upon variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Even otherwise the rule that every offence shall be tried by a court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 of Cr.P.C. itself has been framed by the legislature thoughtfully by using the precautionary word "ordinary" to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in the local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. It reads thus;

179. Offence triable where act is done or consequence ensues.

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be enquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.

The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the courts to try the offence was sought to be determined. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are

components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence u/s 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

178. (a) - (c)

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas. Thus, it is clear, if 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 choose any one of those courts having jurisdiction over any of the local areas within the territorial limits of which any one of those five acts was done. This is the dictum of the Apex court as laid down in the decision reported in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another,

7. In this case, as already pointed out, the complainant/company is carrying on its business having its main office at Mumbai and branches at various places including Bangalore. That is fortified from the cause title given in the complaint and also in the petition before this Court. The cheque has been presented to the bankers of the complainant/company situated in Bangalore where they are carrying on their business. Therefore, Bangalore Court also has jurisdiction to entertain the complaint. In this particular case, the learned Magistrate relying upon Clause 33 of the Franchise Agreement entered into between the parties has come to the conclusion that he lacks territorial jurisdiction to entertain the complaint. The Apex Court in the decision reported in Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., in the case of M/s. Harman Electronics (P) Ltd. & Anr. Vs. M/s. National Panasonic India Ltd. has held as follows:-

(C) Negotiable Instruments Act (26 of 1981) S. 138 - Dishonour of cheque - Trial of offence - Jurisdiction of Court - Principle that debtor must seek the creditor - Cannot be applied in criminal case - Jurisdiction of Court to try a criminal case is governed by provisions of Criminal Procedure Code and not on common law principle.

The Apex Court in the aforementioned decision has held the jurisdiction of a court to try a criminal case is governed by the provisions of the Criminal Procedure Code and not on the common law principle.

8. In that view of the matter as the cheque issued by the accused has been

returned by the bankers of the complainant/company at Bangalore where they are carrying on business with an endorsement stating insufficient funds, Bangalore Court also gets jurisdiction to entertain the complaint. Hence, the impugned order of the learned Magistrate ordering to return the complaint to the complainant for being presented before the Jurisdictional Court for want of territorial jurisdiction cannot be sustained. Accordingly, I pass the following order:-

1. The Criminal Petition is allowed;
2. The order 22.10.2010 passed by the XV Addl. CMM, Bangalore, in PCR No. 12370/12 is set aside;
3. The learned Magistrate is directed to take the complaint filed by the complaint in its original number and to dispose of the same in accordance with law.