

(2014) 02 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No. 5379 of 2013 with Criminal Appln/93 of 2014

Naveen Luthra and Arun Luthra

APPELLANT

Vs

AVR Logistic Pvt. Ltd., State of Maharashtra, Luthra Water
System Pvt. Ltd. and Mrs. Mala

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 178(d)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 2 BomCR(Cri) 650

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : P.K. Lakhotiya, for the Appellant; A.S. Gandhi Advocate for
Respondent No. 1 and Mr. S.B. Pulkundwar APP, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—Both these applications can be conveniently disposed of by this common order as the parties are the same and the question needing determination is one and the same. Heard Mr. P.K. Lakhotiya, the learned counsel for the applicants. Heard Mr. A.S. Gandhi, the learned counsel for respondent No. 1. Heard Mr. S.B. Pulkundwar the learned APP for the respondent no. 2-State.

2. RULE. By consent, rule made returnable forthwith. By consent, heard finally.

3. The applicants are the accused in two cases filed against them by the respondent no. 1 herein. The cases are in respect of offences punishable u/s 138 of the Negotiable Instruments Act. They are pending before the Judicial Magistrate First Class, Aurangabad. By the present application, the applicants have challenged the territorial jurisdiction of the learned Magistrate to entertain the complaints and deal with the alleged offences.

4. That, the Judicial Magistrate First Class, Aurangabad has territorial jurisdiction

has been claimed on the basis that the cheques in question were deposited for collection in the Aurangabad branch of Vijaya Bank. It is submitted that, the learned Magistrate, before whom the complaints have been filed exercises territorial jurisdiction over the area within which the said branch of the Vijaya Bank, is situated. Thus, admittedly, territorial jurisdiction has been claimed only on the basis that the cheques in question were deposited, for collecting the amount of the cheques, with a particular branch of particular bank which is located within the territorial jurisdiction of the Magistrate to whom the complaints were made.

5. Admittedly, the cheques were drawn on Oriental Bank of Commerce, Kalbadevi Branch, Mumbai.

6. That the Court having territorial jurisdiction over the place where the collecting bank i.e. the bank with which the payee would deposit the cheque in question for collection-would have territorial jurisdiction to entertain a complaint in respect of an offence punishable u/s 138 of the Negotiable Instruments Act, as is often claimed, is based on the observations made by Their Lordships of the Supreme Court of India in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . In their judgment in K. Bhaskaran's case, Their Lordships referred to five acts as the components of the offence punishable u/s 138 of the Negotiable Instruments Act. They may be reproduced below:-

- i) drawing of the cheque;
- ii) presentation of the cheque to the bank;
- iii) returning the cheque unpaid by the drawee bank;
- iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and
- v) failure of the drawer to make payment within 15 days of the receipt of the notice.

7. Disputes are often raised before the Courts as to the interpretation of the act mentioned at serial no. ii) viz.:- "presentation of the cheque to the Bank." A view was taken by a number of High Courts that the "presentation of the cheque" contemplated therein, would mean the "presentation of the cheque to the drawee bank." In several decisions of the High Courts, while arriving at this conclusion, the decision of the Supreme Court of India in the case of Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., was referred to and relied upon.

8. I had an occasion to deal with this issue in the case of Sharda Polycolours Private Limited and Others Vs. State of Maharashtra and Another, . In that case, by noticing that observations made by Their Lordships in their Judgment in case of K. Bhaskaran (supra), were based on the provisions of Section 178(d) of the Code of Criminal Procedure, and that, that the "acts" contemplated by the said provision could be the acts of the accused persons and that, therefore, "the act

of presentation of the cheque to the collecting bank" which would be the act of the payee who is not the offender, but victim of the act, and that, therefore, the "presentation" contemplated by Their Lordships in the relevant observations in Bhaskaran's Case (supra) could not be the lodging or depositing of the cheque by the payee in his own account, I had held that, the place where the collecting bank is situated would not confer territorial jurisdiction to the Magistrate exercising his jurisdiction over that area.

9. However, thereafter the Supreme Court of India has delivered a judgment directly covering this point. In Nishant Aggarwal Vs. Kailash Kumar Sharma, , Their Lordships, in paragraph No. 2 of the reported judgment, specifically formulated the following question:-

Whether the Court, where a cheque is deposited for collection, would have territorial jurisdiction to try the accused for an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 or would it be only the Court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn?

Their Lordships answered the same by laying down that the Court having territorial jurisdiction over the place where the payee would deposit the cheque in question would have territorial jurisdiction to entertain the complaint in respect of an offence punishable u/s 138 of the Negotiable Instruments Act.

10. The legal position, therefore, seems to be settled by the aforesaid pronouncement.

11. The learned counsel for the applicants wanted to place reliance on some of the observations made in the decision of the Supreme Court of India in case of Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd. (cited supra). However, the conclusion in Nishant Agrawal's case (cited supra) has been arrived at by Their Lordships after keeping in mind the decision in case of Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd. (cited supra).

12. Article 141 of the Constitution of India makes it clear that, the law declared by the Supreme Court of India shall be binding on all the Courts and Tribunals within the territory of India. Once the Supreme Court of India has specifically formulated a question of Law, and answered it, it becomes the law of the Land and no other Court in the country, can take a contrary view.

13. Going by the observations and law laid down in Nishant Agarwal's case, it cannot be said that the learned Magistrate had no jurisdiction to entertain the complaint and try the alleged offence.

14. Since there is no other contention raised in the applications, they deserve to be dismissed. The applications are dismissed. Rule discharged.