

(2010) 04 KAR CK 0271

In the Karnataka High Court

Case No : Criminal Petit. No. 1034 of 2010

Navinabhai Rasikal Shah

APPELLANT

Vs

Kotak Mahindra Bank Limited

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 38

Citation : (2011) 1 BC 631 : (2010) 4 CivCC 230 : (2010) 3 KCCR 2394 :
(2011) 2 RCR(Criminal) 220 : (2011) 2 RCR(Criminal) 220

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : Satyanarayana Chalke, for Lex Nexus, for the Appellant; Niranjana Ganig, for MGC and Company, for the Respondent

Judgement

Arali Nagaraj, J.—In the instant petition filed u/s 482 of the Code of Criminal Procedure, 1973, the Petitioner, who is accused in CC No. 102097 of 2009 (PCR No. 71921 of 2009), pending on the file of the learned XIV Additional Chief Metropolitan Magistrate, Mayo Hall, Bangalore (hereinafter referred to as to "ACMM" for short) has sought for quashing of the entire proceedings in the said case.

2. Though this matter is listed today for admission, having regard to the nature of relief sought for, it is taken for final disposal by the consent of the learned Advocates for both the sides, and their arguments are heard on merits. Perused the averments in the complaint and also the sworn statement recorded by the learned ACMM while issuing the process against the Petitioner-accused for the offence u/s 138 of Negotiable Instruments Act, 1881.

3. Mr. Satyanarayana Chalke, the learned Counsel for the Petitioner-accused strongly contends that the Petitioner-accused has been residing at Mumbai in the State of Maharashtra, he obtained loan from the complainant's Bank at Mumbai, the cheque in question is said to have been issued by the accused on his account maintained by him at Mumbai, the said cheque came to be dishonoured by the

complainant's Bank at Mumbai and, therefore, the Trial Court at Bangalore has no jurisdiction to entertain the said complaint and issue process against the Petitioner-accused for the offence u/s 138 of the Negotiable Instruments Act.

4. Per contra, Mr. Sudhir B.S., the learned Counsel for the Respondent-complainant strongly contends that though the petitioned accused has been residing at Mumbai, the loan transactions took place at Mumbai, the cheque was issued by the accused to the complainant at Mumbai, since, statutory notice issued by the complainant to the accused demanding payment of amount under cheque came to be issued from Bangalore, the Court of ACMM at Bangalore has jurisdiction to entertain the present complaint and try the accused for the offence and therefore, entire proceedings in the said case cannot be quashed as prayed for by the Petitioner-accused.

5. On careful reading of the complaint filed u/s 200 of Code of Criminal Procedure by the Respondent-complainant, it could be seen that: the Petitioner-accused has been residing at Mumbai, and the loan is sanctioned by the complainant-Bank to the Petitioner-accused from its branch at Mumbai, the accused maintained his account at Indian Bank at Mumbai, the cheque in question was drawn on Indian Bank and it came to be dishonoured by the complainant's Bank at Mumbai.

6. It is not in dispute that except the fact that the statutory notice dated 8.10.2009, came to be issued on behalf of the complainant to the accused from Bangalore for the reason that the Advocate for the complainant has his office at Bangalore, all other transactions took place at Mumbai. Placing reliance on the decision of this Court in the case of M. Vasanth v. Kanoria Industries Limited 2004 (2) KCCR 923, the learned Counsel for the Respondent-complainant strongly contends that since the notice has been issued to the drawer of the cheque, i.e., the Petitioner-accused from Bangalore, the Court of AQMM at Bangalore has jurisdiction to try the instant case. It is observed by the learned Single Judge in the said case (at para Nos. 3, 4, 7 and 8 of the order) as under:

3. The main contention is lack of territorial jurisdiction as none of the acts pertaining to the cheque as held by the Apex Court were complied or had occurred at Bagalkot. Therefore, the proceedings have to be quashed. It is well-settled the complainant can choose any one of the Courts having jurisdiction over any one of the local areas within the territorial limits of which any one of the following acts have occurred:

- (i) Drawing of the cheque.
- (ii) Presentation of the cheque.
- (iii) Returning of the cheque anybody by the drawer Bank.
- (iv) Giving of notice in writing to the drawer of the cheque due payment of the cheque amount.

(v) Failure of the drawer to make payment within fifteen days of the receipt of the notice.

4. Admittedly, all these acts in the present case have either occurred at Uppinangadi or Mangalore. But the complaint is filed in the Court of Bagalkot. No doubt, the Judicial Magistrate First Class, who took cognizance at Bagalkot do not lack inherent jurisdiction to take cognizance of such offence. If it was a situation where one of the five acts narrated above did happen within the local limits or area in which the Court is situated he would have had the jurisdiction to entertain the matter. Now there is lack of territorial jurisdiction only.

...

7. In the present case definitely, the learned Judge at Bagalkot had no territorial jurisdiction to entertain the matter. As already stated above; he did have inherent jurisdiction to entertain the matter.

8. Under these circumstances, this petition is disposed of quashing the proceedings before the Magistrate at Bagalkot with a direction to the Magistrate to return the complaint to the complainant for presentation to the proper Court. The Court before which such presentation is done will entertain the matter holding that there is limitation to entertain the matter. The complainant shall appear and take back the papers at Bagalkot Court on or before 5.2.2003 and period of 30 days contemplated under the Act shall start running from that day after deducting the period already spent before presenting the complaint at Bagalkot.

7. Per contra, the learned Counsel for the Petitioner-accused relying on the decision of the Hon"ble Supreme Court in the case of Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., , strongly contends that merely because notice to the Petitioner-accused came to be issued from Bangalore, the Court of the learned ACMM at Bangalore would not get the territorial jurisdiction to try the Petitioner-accused for the said offence. The Hon"ble Supreme Court has held as under:

(A) Negotiable Instruments Act (26 of 1881), Section 138 Dishonour of cheque--Trial of offence--Territorial jurisdiction of Court--Issuance of notice--Would not by itself give rise to cause of action--But communication of notice would--Giving of notice have no precedent over service--High Court at place from where notice was given--Has no jurisdiction to try complaint.

8. In the above said decision Harman Electronics (Private) Limited"s case, Hon"ble Supreme Court has referred to its earlier decision in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , wherein at (para Nos. 14, 15 and 16), it has observed as under:

14. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts, which are components of the said offence:

- (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.
- (v) Failure of the drawer to make payment within 15 days of the receipt of notice.

15. 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 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence u/s 138 of the Act. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

16. 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 38 of the Act. In other words, the complainant can choose any one of those Courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence u/s 138 of the Act.

9. After considering its above observations in K. Bhaskaran's case, the Hon'ble Supreme Court has observed at para Nos. 12, 13 and 14 of its judgment in its later decision in M/s. Harman Electronics (Private) Limited's case, relied upon by the learned Counsel for the Petitioner-accused as under:

12. Indisputably, the parties had been carrying on business at Chandigarh. The Head Office of the complainant-Respondent may be at Delhi but it has a branch office at Chandigarh. It is not in dispute that the transactions were carried on only from Chandigarh. It is furthermore not in dispute that the cheque was issued and presented at Chandigarh. The complaint petition is totally silent as to whether the said cheque was presented at Delhi. As indicated hereinbefore, the learned Counsel appearing on behalf of the complainant-Respondent contended that in fact the cheque was put in a drop box but as the payment was to be obtained from the Delhi Bank, it was sent to Delhi. In support of the said contention, a purported certificate issued by the Citi Bank NA has been enclosed with the counter affidavit, which reads as under:

This is to confirm that M/s. National Panasonic India Private Limited (NPI) having registered office at AB-11, Community Centre, Safdarjung Enclave, New Delhi-110 029 are maintaining a Current Account No. 2431009 with our Bank at Jeevan Bharti Building, 3 Parliament Street, New Delhi-110001 only and not at any other place in India including Chandigarh.

Further confirmed that CITI Bank has provided the facility for collection of Cheques/Demand Drafts from Branches of NPI located at various places/cities in India. However, all amounts of cheques/demand drafts so collected on behalf of National Panasonic India Private Limited are forwarded and debited/credited to the aforesaid 11 Current Account No. 2431009 with our Bank at Jeevan Bharti Building, 3, Parliament Street, New Delhi-110 001.

13. The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for collection of the cheque admittedly was available at Chandigarh and he said facility was availed of. The certificate dated 24.6.2003, which was not produced before the learned Court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi Branch of the CITI Bank. We, therefore, have no other option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonour of the cheque also took place at Chandigarh. The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the Negotiable Instruments Act.

(Emphasis supplied)

14. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence u/s 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions, which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

(Emphasis supplied)

10. Respectfully following the above decision of Hon"ble Supreme Court I am of the considered opinion that sending of the notice from Bangalore itself does not confer territorial jurisdiction on the Court of the learned ACMM at Bangalore to entertain the said complaint and to try the Petitioner-accused for the offence u/s 138 of the Negotiable Instruments Act. However, as laid down by this Court in the case of M. Vasanth, the complainant shall have right to return of his complaint from the Court of the learned XIV ACMM, Bangalore for presenting the

same before the proper Court. Therefore, the said complaint shall have to be returned to the complainant so as to enable him to present the same before the proper Court.

11. For the reasons aforesaid, the present petition is allowed. The entire proceedings in CC No. 102097 of 2009 (PCR No. 71921 of 2009), pending on the file of the learned XIV Additional Chief Metropolitan Magistrate, are hereby quashed. The learned XIV ACMM shall return the complaint in the said case to the complainant for its presentation before the proper Court. The complainant shall appear before the learned XTV ACMM on 6.5.2010, for receiving his complaint. The complainant may present the said complaint to the proper Court within a period of two weeks from the date of its return to him by the learned XTV ACMM. If it is so presented before the proper Court within the aforesaid period, the Court to which it is presented may entertain the same and deal with it in accordance with law holding that its presentation is within the period of limitation. No order as to costs.