
(2008) 05 P&H CK 0104
In the Punjab And Haryana At Chandigarh

Navneet Kapoor

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 186, 482

Negotiable Instruments Act, 1881 (NI) — Section 138

Penal Code, 1860 (IPC) — Section 323, 34, 406, 420, 498A

Citation : (2008) 151 PLR 288

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This petition u/s 482 of the Code of Criminal Procedure has been moved for quashing the complaint filed under Sections 420/406/34 of the Indian Penal Code and u/s 138 of the Negotiable Instruments Act as well as the summoning order dated 27-03-2006, attached as Annexure P-2 to this petition.

The complainant-respondent Bank filed a complaint u/s 138 of the Negotiable Instruments Act (for short "the Act") against the petitioner on the allegation that cheques issued by the petitioner against the payment of outstanding amount were dishonoured for want of sufficient funds.

2. On cheques being dishonoured, a legal notice was issued, but as the payment was not made within 7 days as directed, the complaint was filed. The offence under Sections 420 and 406 read with Section 34 IPC was not made out on the allegations leveled in the complaint. However, vide order dated 27-03-2006 passed by the Judicial Magistrate 1st Class, Bathinda, the petitioner was summoned u/s 138 of the Act, as he failed to make the payment in spite of receipt of notice.

3. The petitioner seeks the quashing of the complaint on the ground that the Courts "at Bathinda, had no jurisdiction to entertain and try the present

complaint.

4. It is the case of the petitioner that he is permanent resident of Moga and he has approached the ICICI Bank at Moga for grant of personal loan which was sanctioned. The petitioner gave 12 cheques of Rs. 4,581/- each drawn on Dena Bank, Branch Moga. These cheques were said to have been given as a security.

5. The reading of the complaint transpires that the cheques given by the petitioners were dishonoured at Moga, i.e. Bank Branch, where the cheques were given by the complainant.

Learned counsel for the respondent-Bank opposes this plea that offence u/s 138 of the Act can be completed only with the concatenation of number of acts i.e. (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 unpaid by the drawee Bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and (5) Failure of the drawer to make payment within 15 days of the receipt of notice.

6. The contention of the learned Counsel for the respondent-Bank by placing reliance on the judgment of the Hon"ble Supreme Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, is that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts is a sine qua non for completion of an offence u/s 138 of the Act. A reliance in this regard was also placed on Section 178(d) of the Code of Criminal Procedure, which reads as under:

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.

7. The contention of the learned Counsel for the respondent-Bank is that as the notice was issued from Bathinda, therefore the Court at Bathinda would have the jurisdiction to try the present case.

Learned counsel for the respondent also placed reliance on the judgment of this Court in the case of M/s A.K. Desai v. State of Punjab and Anr. (2008) 151 P.L.R. 282, wherein this Court has been pleased to lay down that "when a notice after dishonour of cheque is issued from Hoshiarpur, then the Court at Hoshiarpur, from where the cheque was issued, would have the jurisdiction to try the offence."

8. Learned counsel for the respondent-Bank also placed reliance on the judgment of the Hon"ble Supreme Court in the case of D. Vinod Shivappa Vs. Nanda Belliappa, , to contend that failure on the part of a drawer to pay the amount should be within 15 days of the receipt of the said notice. It was clear that giving of notice in the context was not the same as receipt of notice. Giving was the process of which the receipt was the accomplishment and, therefore, it was held that time has to commence from the date of receipt and not date of issuance.

However, on a consideration of matter, I find force in the contentions raised by the learned Counsel for the petitioner.

9. In view of the law laid down by the Hon''ble Supreme Court in the case of D. Vinod Shivappa (supra), it is the receipt which will have to be taken into consideration and not issuance of the notice. If this principle is applied to the facts of the present case, it would be seen that even the notice issued by the complaint-Bank was in fact received at Moga. Thus in the present case, all the acts, which are components of offence u/s 138 of the Act have taken place at Moga and, therefore, the Court at Bathinda would have no jurisdiction to entertain and try the present complaint.

10. The Hon''ble Supreme Court in the case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, has dealt with the jurisdiction of the Court to entertain and try the offence, wherein the Hon''ble Supreme Court has been pleased to lay down as under:

Section 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common law rule referred to in Halsbury's Laws of England (VoUX para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which read follows:

Section 178 Place of Inquiry or Trial.

(a) When it is uncertain in which of several local areas an offence was committed, or (b) where an offence is committed partly in one local area and partly in another, or (c) where an offence is continuing one, and continues to be committed in more local areas than one, or (d) where it 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.

"All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in Purushottamdas Dalmia Vs. The State of West Bengal, , L.N. Mukherjee Vs. The State of Madras, , Banwari Lal Jhunhunwala and Others Vs. Union of India (UOI) and Another, and Mohan Baitha and Others Vs. State of Bihar and Another, , exception implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on consideration or may be implied from the provisions of law" permitting joint trial of offences by the same Court. No such exception is applicable to the case at hand.

11. As observed by this Court in State of Bihar Vs. Deokaran Nenshi and Another,

continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

12. A similar plea relating to continuance of the offence was examined by this Court in *Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee*, . There the allegations related to commission of alleged offence punishable u/s 498A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that Clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178(c) of the Code relating to continuance of the offences cannot be applied."

13. The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

14. Where in civil cases, normally the expression "cause of action" is issued, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is to committed. The expression "cause of action" is therefore not a stranger to criminal cases. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right of the immediate occasion for the action. In the wider sense, it means "the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Consequently, the expression means every fact, which it would be necessary for the complainant to prove, it traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action". The expression "cause of action"

has sometimes been employed to convey the restricted idea of facts and circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

16. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

Cause of action has been defined as meaning simply a factual position the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse.

Cause of action has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.

When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned Magistrate had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to respondent No. 2 who, if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. The appeal is accordingly allowed.

17. In view of the authoritative pronouncements, the Court at Bathinda would have no jurisdiction to entertain and try the present case.

18. Consequently, this petition is allowed. The complaint and subsequent proceedings are ordered to be quashed.

19. The learned trial Court is directed to return the complaint to the respondent-Bank, who may, if it so advised, choose to file the same in the appropriate Court in accordance with law.