

(2007) 10 DEL CK 0264

In the Delhi High Court

Case No : Criminal M.C. No. 746 of 2007

Prabhakar Venkappa Bhat and Others

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 177, 178, 179, 180
Dowry Prohibition Act, 1961 — Section 4
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 302, 304, 324, 34

Citation : (2008) CriLJ 1109 : (2007) 99 DRJ 278

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Ashish Upadhyay, for the Appellant; Lokesh Sawhney, N. Hariharan, M.A. Niyazi and Anamika Ghai, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present petition has been filed u/s 482, Cr. P.C., seeking quashing of complaint case, filed in the Court of Metropolitan Magistrate, New Delhi and consequential FIR No. 705/06 under various sections of Indian Penal Code with P.S. Sarita Vihar.

2. The brief facts of the case, as per the allegations made in the complaint/FIR, are that Vishwanatha Tantri (petitioner No. 3), Branch Manager of the complainant company in October/November, 2000, recommended to the complainant company, house loan of Rs. 3 lacs of petitioner No. 1 and 2 as applicant and co-applicant for the purpose of construction of a house, situated at site No. 153. kh. No. 80/2A, H.L. No. 153, Kolhapur Village, Uttarhalli Hobli, Bangalore South Taluk, Bangalore. It was induced by petitioner No. 1 that the property in question stands in his name. On the assurances given by petitioners 1 & 2 that they have good title over the property and it was a good mortgage, the head office asked the Branch Manager to get executed the relevant documents by them. Accordingly, the documents were executed and petitioner

No. 3 was the guarantor to the loan agreement. The complainant company from Delhi sanctioned and disbursed the loan amount of Rs. 3 lacs. The petitioner No. 1 and 2 had to pay monthly EMI for 15 years but they did not pay the same for more than 2 years.

3. In the midst of 2003, the complainant started scrutinizing its portfolio with ICICI and to the utter shock and surprise of the complainant company, the extent of illegalities and forgeries and fraud committed by the accused, which started unearthing were beyond imagination. In the instant case, the property in question has been taken over by the Government and there exists water tank on the said land. The petitioners 1 & 2 never disclosed this fact to the complainant despite the fact that they mortgaged the same land to the complainant company and thus the present petitioners had dishonest intention from the very beginning for committing the alleged offences.

4. The complaint was filed before the Court of Magistrate and the Magistrate decided to call for an action report from the respondent No. 2. Respondent No. 2, on the directions of the Court, made a preliminary inquiry into the complaint and submitted the report stating that no part of the alleged offences had taken place at Delhi.

5. The complainant/respondent No. 3 herein filed reply of the status report taking exception to the report pleading that the Inquiry Officer had no authority to decide the question of jurisdiction and it was the duty to register a case if complaint discloses commission of a cognizable offence.

6. Vide order dated 29th July, 2006, the Court of Magistrate accepted the plea of respondent No. 3 noting that there was commission of cognizable offence and the respondent No. 3 was not in a position to pursue the complaint by itself and through investigation was required to bring the truth to the surface and directed respondent No. 2 to register the case against the petitioners and other accused in the complaint and investigate the matter thoroughly and file a report.

7. Being aggrieved with the order dated 29th July, 2006, passed by the Magistrate, the present petition has been filed by the petitioner.

8. It has been contended by learned Counsel for petitioner that on the basis of the complaint and the material produced by the respondent No. 3, it is apparent that none of the alleged offences took place at New Delhi and none of the accused resides in New Delhi nor any witness is at Delhi. Further, no specific averment has been made by the complainant in the complaint as to how any part of the offence was committed within the jurisdiction of the Court at New Delhi. The entire acts starting from entertaining the borrowers, receiving applications for grant of loan, verifying and scrutinising, genuineness of the same and preparation of disbursement notes etc. were only allegedly committed in the Bangalore Branch of the complainant. It was only after the entire job was completed in the Bangalore Branch of respondent No. 3 that the loan was sanctioned from Delhi head office. The sanction at the head office and transfer of

money to the Branch for disbursement of loan was purely an internal arrangement between the head office and the Branch and even payment of loans was also made to the borrowers in Bangalore and repayment by way of post dated cheques was also collected at Bangalore. Merely because respondent No. 3 has its head office in New Delhi, it would not mean that the Delhi Court has got the jurisdiction. The procedure adopted in the complaint case is not in accordance with the provisions of Section 156(3) of the Cr. P.C. Moreover there is inordinate and unexplained delay in lodging the FIR as the date of occurrence of the alleged offence is some time of the period from 2001 to 2002 whereas the complaint was made to the Police on 20th September, 2004 and this delay has not been explained. So the order dated 29th July, 2006, passed by the learned Magistrate is illegal and without jurisdiction and the same is liable to be quashed.

9. In support of his contentions, learned Counsel for the petitioner has cited the following judgments:

(i) S.R. Sharma v. The State of West Bengal 1993 LJ 831. In this case while dealing with the question of territorial jurisdiction, as per Section 181(4) of Cr. P.C. where the offence of criminal breach of trust was committed and the money was received, retained and misappropriated by the accused at place where branch office was situated. It was held that - accused was not liable to account for, at the head office and Court at place of branch office has jurisdiction to try the offence.

(ii) State v. Tavera Naika 1959 LJ 1004.

(iii) Ramnath Sardar v. Rekharani Sardar 1975 LJ 1139.

(iv) Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, . In this case respondent No. 2 (wife of one of the appellants) filed a complaint in the Court of the Magistrate alleging commission of offences punishable under Sections 498-A and 406, IPC and Section 4 of the Dowry Prohibition Act, 1961. The Magistrate directed the police to investigate the case. After investigation, the police filed the charge-sheet. When the matter stood thus, the appellants filed an application u/s 482, Cr. P.C. before the High Court alleging that the Magistrate concerned had no jurisdiction even to entertain the complaint even if the allegations contained therein were accepted in toto as no part of the cause of action arose within the jurisdiction of the Court concerned. The complaint itself disclosed that after 15-4-1997, the respondent left the place N (where she was residing with her appellant husband) and came to the city C. Since all the alleged acts as per the complainant took place at N, the Courts at C did not have the jurisdiction to deal with the matter. On the other hand, respondent 2 submitted that the offences were continuing in terms of Section 178(c) Cr. P.C. and, Therefore, the Court at C. had jurisdiction to deal with the matter.

Allowing the appeal, the Apex Court held that:

Section 177, Cr. P.C. reiterates the well established common law rule referred to

in Halsbury's Laws of England 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 are 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, Cr. P.C. A significant word used in Section 177 is "ordinarily". Use of the word indicates that the provisions is a general one and must be read subject to the special provisions contained in Cr. P.C. No such exception is applicable to the case at hand.

(v) *Rajaram Pattnaik v. India Metal and Ferro Alloys Limited* 1996 LJ 732. In this case while dealing with the principles of Section 181(4) Cr.P.C, it has been laid down that a conditions/requirements prescribed under Sub-section (4) are disjunctive. Court at any one of the places mentioned in said conditions/requirements would have jurisdiction to try such offence.

(vi) *Brahmanand Goyal v. N.C. Chakraborty* 1974 LJ 1079, while dealing with Section 181(2) of Cr. P.C. (1898) it was held that:

An offence of Criminal Breach of Trust is not triable at a place where neither the factum of entrustment nor the positive act of conversion had taken place because such offence always consists in an act and not an omission. Where the complaint and the evidence of the complainant do not disclose when, where and how such an offence has been committed, the Court receiving the complainant has no jurisdiction to proceed, with the case.

10. On the other hand, it has been contended by learned Counsel respondent No. 3 that petitioner being the Branch Manager of respondent No. 3, along with technical executives were responsible for verifying and scrutinising the genuineness of the borrowers and after duly complying with the formalities, they were required to recommend the cases to the head office for approval. The loan was approved and sanctioned from Delhi office of respondent No. 3 which was first transferred to Delhi from Bangalore Branch and the cheques prepared in Bangalore were given to borrowers/accused in their names. In many cases cheques were issued directly from Delhi office. It is further contended that in the present case, the property did not exist at all and all the documents like sale deed etc. are forged and fabricated and the borrowers had given wrong addresses. The technical report, on the basis of which loan was sanctioned and disbursed from Delhi office, is a manufactured document. The alleged issue of territorial jurisdiction is totally misplaced as respondent No. 3 has been cheated/frauded in Delhi of crores of rupees by all the accused including the petitioner and all the money has been disbursed from Delhi head office of the complainant and as such Delhi has territorial jurisdiction to try the offences under various provisions of Indian Penal Code. Thus the present petition is not maintainable and liable to be dismissed. In support of the contentions, learned Counsel for the respondent No. 3 has cited the following Judgments:

(i) *Mohd. Yousuf Vs. Smt. Afaq Jahan and Another*, . In this case the Apex Court

has held that:

any Judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3) Cr. P.C. But if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station. Even if a Magistrate does not say in so many words while directing investigation u/s 156(3) Cr. P.C. that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII, Cr. P.C. only thereafter.

(ii) *Hamida v. Rashid alias Rasheed* 2007 III AD SC 185 : 2007 LJ 3422.

(iii) *State Rep. by the C.B.I. Vs. Anil Sharma*, .

11. The relevant portion of status report filed by the Police before the Court of Magistrate of P.S. Sarita Vihar read as under:

As per contents of the complaint and physical enquiry it revealed that the alleged persons managed to get loan amount from Maharishi Housing Development Finance Corporation Ltd. Branch at Bangalore, Karnataka. Alleged persons submitted application for loan at the said branch at Bangalore along with required documents and completing all the formalities. The guarantor was also produced by the alleged persons at the above said office of the company and the land against which the loan was sanctioned also falls at Bangalore, which the site was got inspected by the technical executive of the said company. The papers were received at the head office of the company at A/14, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi for the final orders. Thereafter the loan was sanctioned and the cheques were sent to the branch office at Bangalore for disbursement to the party and the party/alleged persons managed to get the cheques and got them encased at Bangalore.

Hence, all the formalities were completed at Bangalore. So, offence of criminal/civil nature or u/s 138 of Negotiable Instrument Act is committed in the jurisdiction of Bangalore.

12. The relevant portion of impugned order dated 29th July, 2006, passed by the Magistrate, read as under:

It is alleged in the complaint that the accused persons have obtained a loan from the complainant on the basis of forged and fabricated documents with the connivance of Branch Manager. The accused have succeeded in their Criminal Conspiracy and cheated the complainant. The complaint was made to the police but no action was taken. Ld. Counsel for the complainant relied on R.S.

Raghunath Vs. State of Karnataka and another, , Shri G.C. Nautiyal and Others Vs. State and Others, , Smt. Shanti Devi and Another Vs. The State, and in Amar Singh and Others Vs. Union of India, .

In view of the above discussion I am of the considered view that there is commission of cognizable offences and the complainant is not in a position to pursue the present complaint himself as a thorough investigation required to bring the truth on the surface Therefore relying on the above said authorities SHO Sarita Vihar is directed to register the case against the accused person for the offences u/s 403, 405, 408, 409, 415, 416, 418, 420, 422, 423, 463, 464, 465, 468, 470, 471, 120-B etc. of IPC and investigate the matter thoroughly and file the report.

The question to be seen is that in view of the averments made by the complainant in its complaint, whether Delhi Court has got jurisdiction to try the present offences or not when admittedly the loan has been disbursed from the head office which is admittedly situated in Delhi.

13. Relevant provisions of Code of Criminal Procedure which deal with jurisdiction of the criminal Courts in inquiries and trials have been enumerated in Chapter XIII and for purpose of the point in controversy, relevant provisions are Sections 177, 178, 180 and 181(4). These provisions read as under:

177. 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.

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 a 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.

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 inquired into or tried by a Court within whose local jurisdiction such thing has been done, or such consequence has ensued.

180. Place of trial where act is an offence by reason of relation to other offence - When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

181. Place of trial in case of certain offences - (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be re-turned or accounted for, by the accused person.

14. Section 179 applies when the act (or omission) is an offence by reason of anything which has been done and of any consequence which has ensued. But where the act (or omission) is a complete offence irrespective of any consequence which has ensued, this section does not apply, and the offence is to be inquired into and tried only by the Court within whose jurisdiction the act was committed (Section 177). This section contemplates two things. The first is that the offender has done an act and the second is that a consequence has followed from such act and the offender is being tried for the offence as a result of both the act and the consequence, or, in other words, the act by him does not by itself render him liable for the offence and that it is the act coupled with the consequence which constitutes the offence and makes him liable for it. That being so, there is hardly any scope for argument that the consequence referred to in this section does not mean the consequence which is one of the ingredients of the offence.. The provisions of Sections 179 and 180 are wide enough to enable cognizable to be taken either by a Court where anything was done within the local limits of its jurisdiction, or a Court, where the consequence ensued. And if the offence was completed by the act followed by the consequence, then the Court where the act was committed and the Court where the consequence ensued will both have jurisdiction to try the offence.

It has been laid down in *Girdhar Das Vs. Emperor*, that:

the offence of cheating may be tried either at the place where the cheating was committed (where the accused resided or at the place where the loss ensued to the complainant i.e. where the complainant resides or his firm is situated).

15. Here in the present case, admittedly the registered office of the complainant company is situated at Delhi and admittedly the loans were finally sanctioned and disbursed from the head office i.e. from Delhi itself. So under these circumstances, Delhi Court has got the jurisdiction to try the present complainant and it cannot be said under these circumstances, the Magistrate was bound to accept the status report submitted by the Police.

The next question for consideration is as to whether the present petition u/s 482, Cr. P.C. under these circumstances is maintainable or not.

16. Scope of Section 482, Cr. P.C. has been discussed in great detail in the decision of *Hamida* 2007 LJ 3422 (supra) cited by the learned Counsel for the respondent. It has been laid down by the Apex Court that:

It is well established principle that inherent power conferred on the High Courts u/s 482, Cr. P.C. has to be exercised sparingly with circumspection and in rare

cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power u/s 482, Cr. P.C. were examined in considerable detail in *Madhu Limaye Vs. The State of Maharashtra*, and it was held as under:

The following principles may be stated in relation to the exercise of the inherent power of the High Court:

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, , after a review of large number of earlier decisions, it was held as under:

29. ...The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express provision in some other enactment.

17. In *Arun Shankar Shukla Vs. State of Uttar Pradesh and Others*, the High Court had entertained a petition u/s 482, Cr. P.C. after an order of conviction had been passed by the Sessions Judge and before the sentence had been awarded and further proceedings in the case had been stayed. In appeal this Court set aside the order of the High Court after reiterating the principle that it is well settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. It was further observed that the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence and intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial. The order of the High Court was accordingly set aside on the ground that a petition u/s 482, Cr. P.C. could not have been entertained as the accused had an alternative remedy of an appeal as provided in the Code. It is not necessary to burden this

judgment will other decisions of this Court as the consistent view throughout has been that a petition u/s 482, Cr. P.C. cannot be entertained if there is any other specific provision in the Code of Criminal Procedure for redress of the grievance of the aggrieved party.

18. Before parting with the case, we feel constrained to observe that in spite of repeated pronouncements of this Court that inherent power u/s 482, Cr. P.C. should be exercised sparingly with circumspection in rare cases and that too when miscarriage of justice is done, the High Court entertained the petition u/s 482, Cr. P.C. the ultimate result whereof was that the order of bail granted in favor of the accused for an offence under Sections 324, 352 and 506, IPC enured to their benefit even after the offence had been converted into one u/s 304, IPC and also subsequently when charge had been framed against them u/s 302 read with Section 34, IPC. The accused did not remain in custody even for a single day nor did they approach the Court of Chief Judicial Magistrate or Sessions Judge for being granted bail under Sections 304 or 302, IPC yet they got the privilege of bail under the aforesaid offences by virtue of the order passed by the High Court. The dockets of the High Courts are full and there is a long pendency of murder appeals in the High Court from which this case has arisen. Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions u/s 482, Cr. P.C. at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as is the case here, or to delay the trial which will enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice.

19. Similarly in the present Case since Delhi Court has jurisdiction to try the present criminal complaint/FIR and the case is at very initial stage and investigations are yet to be completed, I do not find that there is any illegality or infirmity in the impugned order, passed by the learned Magistrate and the present petition u/s 482, Cr. P.C. under these circumstances, is not maintainable and the same is hereby dismissed.