
(2001) 01 RAJ CK 0027

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 95 of 1999

Ramesh Gattani

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 179, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2001) 2 CivCC 536 : (2001) 3 RCR(Criminal) 691 : (2001) WLC 421

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : G.C. Chatterjee, for the Appellant; Madhav Mitra, Public Prosecutor and Ajay Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—This Misc. Petition u/s 482, Cr.P.C. challenges the order of the learned Additional Chief Judicial Magistrate, Kotputli dated 12.11.1998 passed in complaint case No. 8/98 by which he dismissed the application to drop the proceedings.

2. I have heard learned Counsels for both the parties.

3. Relevant facts are that a complaint was filed against the petitioner and Smt. Gattani for the offence u/s 138 of the Negotiable Instruments Act read with Section 420, IPC. The case of the complainant was that he sold mustard to the firm of petitioner and a cheque of Union Bank of India, Johari Branch for sum of Rs. 1,13,000/- was issued towards the payment. The cheque was deposited with the Syndicate Bank, M.I. Road, Jaipur but the same was dishonoured with the remark that there was insufficient fund. The Bank returned the cheque. Then the complainant made several telephonic contacts with the petitioner and also sent a registered notice through his Advocate but even then the payment was not made. It was alleged that the complainant was cheated. It was prayed that the petitioner as well as Smt. Gattani may be prosecuted for the said offences. The

learned Magistrate, after making inquiry under Chapter XV of the Code of Criminal Procedure, declined to take cognizance against Smt. Gattani but did take cognizance u/s 138 of the Negotiable Instruments Act against the petitioner. Summons were issued for his appearance on 5.8.1998. The petitioner moved an application before the learned Magistrate that he had no jurisdiction to entertain the complaint as the entire cause of action accrued within the territorial jurisdiction of Jaipur City. Some other grounds were also taken but the learned Magistrate rejected the application vide impugned order dated 12.11.1998 holding that since the order taking cognizance was not challenged before any superior-Court, the same had become final and that the Magistrate had no jurisdiction to reconsider the same and that the Court at Kotputli had jurisdiction to entertain the case.

4. Learned Counsel for the petitioner in the case before me had challenged only the point of jurisdiction. He submitted that the cheque was given at Jaipur and the same was deposited with a Bank in Jaipur and that the Bank communicated to the complainant about the paucity of fund at Jaipur and that the notice was issued by an Advocate at Jaipur and hence the Court at Kotputli had no jurisdiction to entertain in the case. The judgment of Hon''ble Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, has been relied upon. Learned Counsel for the petitioner submitted that in paraNo. 14 of this judgment, it has been held that offence u/s 138 of the Negotiable Instruments Act can be completed only with the non-catenation of a number of acts and that following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque of the said offence, (3) Returning the cheque unpaid by the drawer Bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of drawer to make payment within 15 days of the receipt of the notice.

5. According to him, none of these acts happened at Kotputli and as such the Court at Kotputli has no jurisdiction and, therefore, the order of the learned Magistrate should be set aside.

6. I went through the Apex Court judgment cited above. While going through the judgment, I find that para No. 11 of this judgment is very important in which it has been observed that Section 177 of the Code of Criminal Procedure Code provides that every offence shall ordinarily be inquired into and tried in a Court within whose jurisdiction it was committed and that the locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criteria to determine the place of offence. It must be remembered that offence u/s 138 would not be completed with the dishonour of the 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. It is normally difficult to fix up a particular locality as the place of failure to pay the amoun'' cohered by the cheque. A place, for that purpose, would depend upon a variety of factors. Tt 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. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence u/s 138 of the Act.

7. Keeping these observations and para 14 of the judgment in mind, I find that in this case the firm to which cheque was issued was situated at Kotputli. The firm in order to have convenience has an account at Jaipur and in its discretion it deposited the cheque at Jaipur in its account. The goods as per the details in the case mentioned, were sent from Kotputli and the cheque which was issued by the petitioner was in the name of firm M/s. Om Parkash Anup Kumar, Kotputli wherefrom the goods were supplied. A notice Ex. 5 was sent to the petitioner from Jaipur on behalf of the firm of Kotputli in whose favour the cheque was drawn. It is found that the firm of Kotputli had an account at Jaipur and when the cheque was dishonoured, the information was sent to it at Kotputli. The goods were sent from Kotputli to Jaipur and these facts were considered by the learned Magistrate while deciding the application. In view of the observations of the Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (supra), I am of very clear view that the Court at Kotputli has jurisdiction to try case. No other point was argued by the learned Counsel for the petitioner.

8. Consequently, there is no force in this petition and the same is hereby dismissed.