

(2013) 06 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No. 318 of 2012

Sagar Ravan Pujari

APPELLANT

Vs

Vasuda Nandan Sarmalkar and Another

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3441 : (2014) 2 BC 90 : (2014) 2 MhLj 83

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Kunal Bhanage instructed by Mr. Nilufer B. Gadiwalla, for the Appellant; Chetan Akerkar, for the Respondent No. 1 and Mrs. G.P. Mulelar, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—Rule. By consent, Rule made returnable forthwith.

2. By consent, heard finally.

3. The petitioner is the complainant in C.C. No. 1351/SS/2011 which has been filed before the Metropolitan Magistrate, 21st Court, at Bandra. The respondent No. 1 herein is the accused in the said case, which is in respect of the offence punishable u/s 138 of the Negotiable Instruments Act (N.I. Act). The learned Magistrate, after examining the matter issued process against the respondent No. 1. Being aggrieved by the said order of process, the respondent No. 1 approached the court of Sessions for Brihan Mumbai, by filing an application for revision. The Additional Sessions Judge, who heard the revision application, allowed it partly, by an order dated 6.1.2012, setting aside the order issuing process on the reasoning that the Metropolitan Magistrate's 21st Court, Bandra, had no territorial jurisdiction to entertain the complaint and try the offence. The Additional Sessions Judge directed that the Metropolitan Magistrate should hand over the complaint to the complainant for filing it in the court of Judicial Magistrate, First Class, (JMFC) at Palghar. The petitioner being aggrieved by the

said order, has approached this court invoking its constitutional jurisdiction.

4. I have heard Mr. Kunal Bhanage, the learned counsel for the petitioner, Mr. Chetan Akerkar, the learned counsel for respondent No. 1, and Mrs. G.P. Mulekar, the learned APP for the State.

5. The main contention advanced by the learned counsel for the complainant, [the petitioner shall hereinafter be referred to as "the complainant", and the respondent No. 1 as the "accused" for the sake of convenience and clarity], is that the point of territorial jurisdiction was never raised before the revisional court. He submitted that the challenge to the order of process was totally on different ground, and in the revision memo. the ground that the learned Magistrate lacked territorial jurisdiction was never taken. He submitted that it was, therefore, not open for the revisional court to have considered the issue of territorial jurisdiction, which had not been raised by the accused. The learned counsel for the accused, in reply, submitted that though such point was not taken in the revision memo, still, orally it was argued before the learned Additional Sessions Judge.

6. I find that in paragraph eight of the impugned order, the learned Additional Sessions Judge has observed that there was a challenge to the territorial jurisdiction of the Magistrate, and that, the counsel for the accused had argued that the averments made in the complaint for showing jurisdiction of the court at Bandra were "non-sustainable."

7. In my opinion, once the matter was before the Additional Sessions Judge, who was exercising the powers of revision, it was not necessary for him to have decided the matter only on the contentions raised by the parties. He could examine the legality of the proceedings and the only requirement would be that an opportunity was required to be given to the parties, to make submissions with respect to the new point which had appealed to him. It is apparent that the counsel for the complainant was heard with respect to the issue of jurisdiction. Therefore, merely because the ground of lack of territorial jurisdiction in the Metropolitan Magistrate's 21st court was not specifically taken in the memo of revision, it cannot be said that the Additional Sessions Judge was not entitled to consider this aspect in accordance with law.

8. The only question, therefore, is of the correctness of this finding recorded by the Additional Sessions Judge.

9. I have gone through the complaint, a copy of which is annexed to the petition. It is clear from the complaint that the jurisdiction in the Metropolitan Magistrate's 21st court is claimed on the basis that the cheque in question was presented for payment at Maharashtra State Co-operative Bank Ltd., Santacruz (West) Branch, Mumbai, and hence the Magistrate had jurisdiction to decide the present case. It would be appropriate in this context to reproduce paragraph 8 of the complaint here:

8. The said cheque was drawn upon Saraswat Co-operative Bank Ltd. (Palghar Branch), and presented for payment at "Maharashtra State Co-operative Bank Ltd." (Santacruz West Branch), Mumbai and hence this Hon"ble Court has the jurisdiction to decide the present case.

10. The learned counsel for the complainant attempted to wriggle out from this position by saying that there are other averments in the complaint which indicate that the court at Mumbai had jurisdiction. I am not impressed by this submission, primarily because, it is apparent from the complaint that paragraph 8 reproduced above has been specifically mentioned as the factor conferring jurisdiction on the Metropolitan Magistrate's 21st Court. It is the "jurisdiction clause" - so to say. But apart from that, there are no averments which would show that the Metropolitan Magistrate's 21st court had jurisdiction to entertain the complaint and try the offence in question. The emphasis is only on one aspect, namely, that the cheque was "presented" for payment at the Santacruz (West) branch of the Maharashtra State Cooperative Bank Ltd., where the complainant holds an account.

11. It is not unusual to find claims having been made with respect to the existence of territorial jurisdiction on the ground that the cheque in question is deposited for receiving payment by the complainant with his own banker, located at a particular place. The observations made by the Supreme Court of India in paragraph 14 of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, are often emphasized to make such a claim. However, these observations have been interpreted by various High courts and a number of reported decisions in that regard are available. A search of the case law in that regard would indicate that a consistent view has been taken by the various High courts that the act No. 2 mentioned in paragraph 14 of K. Bhaskaran's case, namely, "presentation of the cheque to the bank" means the presentation of the cheque to the drawee bank. It has been consistently held that mere deposit of the cheque by the complainant with his own banker for releasing the payment of the cheque would not amount to presenting the cheque as contemplated under the N.I. Act.

12. This court had an occasion to deal with the same legal issue extensively in Criminal Writ Petition No. 1159 of 2012, decided on 14.6.2013, after referring to the following reported judgments:-

- i) Jinraj Paper Udyog Vs. Dinesh Associates and Another, .
- ii) Dipti Kumar Mohanty, (Proprietor - Monisha Agency) Vs. Videocon Industries Ltd.,
- iii) Crompton Greaves Ltd. vs. Kantibhai, 2011 ALL MR (Cri) 3032
- iv) Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd.,
- v) Shri Prabhu Dayal Modi Vs. Euro Developers Pvt. Ltd. and The State of Maharashtra,

- vi) Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another,
- vii) Mahalaxmi Embroidery Vs. Shivam Devansh Fab. Pvt. Ltd. and Others
- viii) Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd.,
- ix) Raj Travels and Tours Ltd. vs. Destination of the World (Sub Continent) Private Ltd., LAWS (DLH)-2011-9-79/ILRDLH-2011-21-4170

13. On consideration of the legal position, which appears to be well settled, it cannot be doubted that the complaint could not have been entertained by the Metropolitan Magistrate's 21st court, on the ground that the cheque was deposited in the complainant's account held in a bank which is situate within the jurisdiction of the said Magistrate.

14. Under these circumstances, the order passed by the Additional Sessions Judge directing the Magistrate to return the complaint to the complainant for filing it before the JMFC at Palghar, cannot be said to be suffering from any illegality.

15. As such, no interference therewith, in exercise of the constitutional jurisdiction of this court, which is of extraordinary nature, is called for.

16. The petition is dismissed. Rule is discharged.