

(2011) 03 DEL CK 0519

In the Delhi High Court

Case No : Criminal M.C. No. 4140 of 2009

Sh. Ramaswamy S. Iyengar

APPELLANT

Vs

The State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

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

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 3 BC 180

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Vinod Kumar Singh, for the Appellant; Santosh Kohli, APP for the Respondent No. 1, K.P. Gupta and Ankit Kalra for the Respondent No. 2, for the Respondent

Judgement

Ajit Bharihoke, J.—This is a petition u/s 482 Code of Criminal Procedure seeking quashing of Criminal Complaint being CC/32/1/2007 dated 07.02.2007 u/s 138 Negotiable Instruments Act (N.I. Act) pending the court of Metropolitan Magistrate, Rohini and setting aside the order dated 25th November, 2009 by which the Petitioner and his co-accused have been summoned to appear and undergo trial.

2. Short issue involved in the instant case is whether or not, Delhi Courts have jurisdiction to try the complaint u/s 138 N.I. Act.

3. Briefly stated, facts relevant for disposal of this petition are that Respondent No. 2 A.K. Mittal filed a complaint u/s 138 N.I. Act against the Petitioner and others claiming that he is the owner of Flat No. 204, B-Wing, Mohana Building, Doordarshan Employees Cooperative Housing Society Ltd., Gokuldhama, Dindoshi, Goregaon (East), Mumbai. The Petitioner and his co-accused persons, on behalf of self and the society, agreed to purchase aforesaid flat from the complainant for a sum of Rs. 31 lakhs. Against the consideration amount, two cheques; one

bearing No. 826206 for Rs. 15 lakhs dated 3rd November, 2006 and other bearing No. 826209 dated 8th November, 2006 for Rs. 16 lakhs were drawn on M/s. The North Kanara G.S.B. Co-op. Bank Ltd., Branch Dindoshi, Mumbai and delivered to the complainant. The cheques, when presented for encashment, were dishonoured. Complainant served notice of demand u/s 138 N.I. Act in respect of cheque of Rs. 16 lakhs on the Petitioner and his co-accused persons but they failed to pay demanded amount. This led to the filing of the complaint.

4. Learned M.M., on consideration of the complaint and the affidavit evidence led by the complainant vide impugned order dated 24th March, 2007 summoned the Petitioner and his co-accused for appearance and to undergo trial.

5. Learned Counsel for the Petitioner has submitted that aforesaid order of learned M.M. is untenable for the reason that entire cause of action pertaining to offence u/s 138 N.I. Act arose within the territory of Mumbai, as such, Delhi Courts have no jurisdiction to try the matter. In support of this contention, he has submitted that it is undisputed that agreement of sale of the flat in question, which is located in Mumbai was executed in Mumbai- the cheque in question was also given to the complainant in Mumbai-the cheque was drawn at a bank in Mumbai, even the Petitioner is a resident of Mumbai and he was served with the notice u/s 138 N.I. Act at Mumbai address. Learned Counsel for the Petitioner submits that merely by issuing a notice from Delhi, the complainant could not have conferred territorial jurisdiction upon the Delhi Courts. In support of this contention, he has relied upon the judgment of Supreme Court in the matter of Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., .

6. Learned Counsel for the Respondent, on the other hand, has argued that Section 178 of the Code of Criminal Procedure provides that if an offence consists of several acts done in different local areas, then the offence can be tried by a court having jurisdiction of any of such local areas. He argued that in the instant case, part of cause of action has arisen in Delhi because the Respondent is located at Delhi and the payment of the cheque amount was required to be made at Delhi. In support of this contention, learned Counsel for the Respondent has relied upon the judgment of Supreme Court in the matter of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, .

7. The question of territorial jurisdiction of a court to try an offence u/s 138, N.I. Act came up for the consideration of the Supreme Court in M/s Harman Electronics(supra). In the said matter, Supreme Court considered the earlier judgment in K. Bhaskaran's case (supra) and held that Delhi Courts have no jurisdiction to try the case, inter alia, observing thus:

9. Reliance has been placed by both the learned Additional Sessions Judge as also the High Court on a decision of this Court in K. Bhaskaran v. Sankaran Vaidhyan Balan. This Court opined that the offence u/s 138 of the Act can be completed only with the concatenation of a number of acts, namely, (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 demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice. It was opined that if 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 138 of the Act and the complainant would be at liberty to file a complaint petition at any of those places. As regards the requirements of giving a notice as also receipt thereof by the accused, it was stated:

18. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.

The Court, however, refused to give a strict interpretation to the said provisions despite noticing Black's Law Dictionary in regard to the meaning of the terms "giving of notice" and "receiving of the notice" in the following terms:

19. In Black's Law Dictionary "giving of notice" is distinguished from "receiving of the notice": "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it". A person "receives" a notice when it is duly delivered to him or at the place of his business.

20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

For the said purpose, a presumption was drawn as regards refusal to accept a notice.

10. We may, before proceeding to advert to the contentions raised by the parties hereto, refer to another decision of this Court in *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.* wherein this Court categorically held:

7. Section 27 of the General Clauses Act deals with the presumption of service of a letter sent by post. The dispatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But as the presumption is a

rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he, in fact, received the notice. It is open to the dispatcher to adopt either of the options. If he opts the former, he can afford to take appropriate steps for the effective service of notice upon the addressee. Such a course appears to have been adopted by the Appellant Company in this case and the complaint filed, admittedly, within limitation from the date of the notice of service conceded to have been served upon the Respondents.

It was furthermore held:

8. ...The payee or holder of the cheque may, therefore, without taking pre-emptory action in exercise of his right under Clause (b) of Section 138 of the Act, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once a notice under Clause (b) of Section 138 of the Act is "received" by the drawer of the cheque, the payee or the holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account. This Court emphasised that "needless to say the period of one month from filing the complaint will be reckoned from the date immediately falling the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires.

13. 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 provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act are 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 that 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.

21. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is,

therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure."

20. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary.

21. In *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, , this Court held:

30. In terms of Section 177 of the Code of Criminal Procedure every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. 178 provides for place of inquiry or trial in the following terms:

"178. (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.

31. A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the district courts of Birbhum and in that view of the matter it is that court which will have jurisdiction to take cognizance of the offence. In fact the jurisdiction of the court of CJM, Suri, Birbhum is not in question. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 of the Code of Criminal Procedure is attracted, the court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter.

32. Sending of cheques from Ernakulam or the Respondents having an offence at that place did not form an integral part of "cause of action" for which the complaint petition was filed by the Appellant and cognizance of the offence u/s 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri.

8. In *Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd.*, , the Supreme Court held that the expression "the bank" occurring in proviso (a) to Section 138 of the N.I. Act means the drawee bank and not the collecting bank. Hence, in order to attract the criminal liability u/s 138, N.I. Act, the cheque must be presented to the drawee bank within the statutory period either personally or through a collecting bank. That being the law, the place of location of collecting bank

through which cheque was sent to some other branch jurisdiction would not confer jurisdiction on the courts having territorial jurisdiction over that place.

9. In the instant case, undisputedly the Petitioner is located at Mumbai. The cheques in question were issued at Mumbai, the cheques were sent for collection to the drawee bank at Mumbai and even the notice of demand u/s 138, N.I. Act was served upon the Petitioner at Mumbai address. Therefore, it is apparent that the entire cause of action for filing a complaint u/s 138 N.I. Act has arisen at Mumbai.

10. Learned Counsel for Respondent No. 2 further contended that the judgment of Supreme Court in the case of M/s Harman Electronics (supra) was pronounced on 12.12.2008 and prior to that judgment, the law enunciated in the matter of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, was holding the turf and at that time the position of law, as enunciated by Supreme Court was that the complaint u/s 138 N.I. Act could be tried by a court within whose territorial jurisdiction the payee's bank, where the cheque was presented for collection, is located or at the place from where the notice of demand u/s 138 N.I. Act was issued.

11. Above contention of learned Counsel for Respondent No. 2 is misconceived. The judgments of Supreme Court in K. Bhaskaran's case(supra) and M/s Harman Electronics case(supra) have only interpreted the true import of Sections 177 and 178 of the Code of Criminal Procedure 1973 relating to territorial jurisdiction of the criminal court to try an offence. The law, however, throughout remained the same. Therefore, it cannot be said that prior to the judgment in M/s Harman Electronics(supra), the claim relating to territorial jurisdiction, as envisaged under Sections 177 and 178 of the Code of Criminal Procedure, was different. Thus, I find no merit in the submissions of learned Counsel for Respondent No. 2.

12. In view of the discussion above, this Court is of the view that the entire cause of action relating to offence u/s 138 N.I. Act has arisen within the territorial jurisdiction of Bombay, as such Delhi courts have no jurisdiction to try the complaint. Accordingly, the petition is allowed and Criminal Complaint being CC/32/1/2007 dated 07.02.2007 u/s 138 N.I. Act titled `Shri Abhay Kumar Mittal v. Doordarshan Employee's Co-op Housing Society and Ors.'" pending in the court of learned M.M. is set aside. Learned Metropolitan Magistrate is directed to return the complaint to Respondent No. 2 for being filed in the court of appropriate jurisdiction.

13. Petition stands disposed of.