
(2014) 02 RAJ CK 0034

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 841 of 2014

Sou. Alka Anil Janib

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 178(d), 179, 202
Negotiable Instruments Act, 1881 (NI) — Section 138, 3, 72

Citation : (2015) 1 RLW 619

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Anshuman Saxena, Advocates for the Appellant; Narendra Singh Dhakad, P.P, Advocates for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—Heard. The present petition under Section 482 Cr.P.C. has been filed by the petitioner praying that the order dated 30th June, 2009 passed by Additional Chief Judicial Magistrate, Sambher Lake, District Jaipur along with the order dated 6th August, 2013 passed by the revisional court below whereby order dated 30th June, 2009 was affirmed, be set aside.

2. Counsel for the petitioner has made following submissions to fortify the prayer made in this petition:--

"(a) That even though the cheque was presented at Sambher Lake, the Court at Sambher lake has no territorial jurisdiction to try the complaint as petitioner being a resident of Maharashtra issued the cheque from her account at Maharashtra."

3. The controversy raised is no longer res integra. Hon"ble Apex Court in Nishant Aggarwal Vs. Kailash Kumar Sharma, has upheld the ratio of law laid in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . Their Lordships have formulated the following question:--

"2. The question which has to be decided in this appeal is whether the Court,

where a cheque is deposited for collection, would have territorial jurisdiction to try the accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short "the N.I. Act") or would it be only the Court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn?"

4. Thereafter, their Lordship had answered the question as under:--

"8) Inasmuch as the issue in question is directly considered by this Court in K. Bhaskaran (supra), before going into the applicability of other decisions, it is useful to refer the relevant portion of the judgment in paras 10 and 11 of the said case which reads thus:

9) Para 11 of K. Bhaskaran (supra) as quoted above, clarified the place in the context of territorial jurisdiction as per the fifth component, namely, "failure of the drawer to make payment within 15 days of the receipt." As rightly pointed out by learned senior counsel for the respondent, the place of failure to pay the amount has been clearly qualified by this Court as the place where the drawer resides or the place where the payee resides. In view of the same and in the light of the law laid down by this Court in K. Bhaskaran (supra), we are of the view that the learned Magistrate at Bhiwani has territorial jurisdiction to try the complaint filed by the respondent as the respondent is undisputedly a resident of Bhiwani. Further, in K. Bhaskaran (supra), while considering the territorial jurisdiction at great length, this Court has concluded that the amplitude of territorial jurisdiction at great length, this Court has concluded that the amplitude of territorial jurisdiction pertaining to a complaint under the N.I. Act is very wide and expansive and we are in entire agreement with the same.

13) As observed earlier, we must note that in K. Bhaskaran (supra), this Court has held that Section 178 of the Code has widened the scope of jurisdiction of a criminal court and Section 179 of the Code has stretched it to still a wider horizon. Further, for the sake of repetition, we reiterate that the judgment in Ishar Alloy (supra) does not affect the ratio in K. Bhaskaran (supra) which provides jurisdiction at the place of residence of the payer and the payee. We are satisfied that in the facts and circumstances and even on merits, the High Court rightly refused to exercise its extraordinary jurisdiction under Sec. 482 of the Code and dismissed the petition filed by the appellant-accused."

5. I have also, while holding Court of Calcutta High Court taken a view that place where the cheque is presented and is returned will have a territorial jurisdiction to try complaint. It was held in Anu Mehta Vs. Gunmala Sales Private Ltd., as under:--

"7. Shri Shibadas Banerji, learned Senior Counsel, assisted by Shri Mritunjoy Chatterjee, Counsel, appearing for Anu Mehta and Shri Himangshu De, learned Senior Counsel, assisted by Shri Swapan Mallick, Counsel, appearing for Shantilal Mehta, have raised following two arguments for the consideration of this Court:--

(a) That since the cheque was issued by the accused from his account, which is being maintained at Udaipur, the place where the cheque was presented has no territorial jurisdiction to try the complaint for an offence under Section 138 of the Negotiable Instruments Act. It is submitted that merely because complainant had presented the cheque at Canara Bank, Canning Street Branch, Kolkata and it was returned by Canara Bank, Canning Street Branch, Kolkata, will not vest jurisdiction in the courts at Kolkata to try the complaint under Section 138 of the Negotiable Instruments Act.

(b) That the trial Court, before passing the summoning order, has to comply with the provisions of Section 202 of the Code of Criminal Procedure and where the accused is residing beyond the area over which the court has territorial jurisdiction, the court has to enquire into the case. It is stated that this mandatory provision has not been followed. Therefore, summoning order, being bad in law, is liable to be set aside."

Let this Court examine the first argument raised regarding the territorial jurisdiction.

"8. Shri Shibadas Banerji, Senior Counsel, appearing for the petitioner, has relied upon Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., to urge that only bank, which is having account of the person issuing the cheque, has the territorial jurisdiction. In support of this contention, reference has been made to paragraphs 9 and 10 of the judgment rendered in Shri Ishar Alloy Steels Ltd.'s case (supra). It would be apposite here to reproduce these paragraphs:

"9. The use of the words "a bank" and "the bank" in the section is an indicator of the intention of the legislature. The former is an indirect (sic indefinite) article and the latter is prefixed by a direct (sic definite) article. If the legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is prefixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is prefixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote a particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in clause (a) to the proviso to Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

10. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collecting of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to (C) bank. The non-presentation. of the cheque to the drawee bank within the period specified in the section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 3, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee."

9. It is stated that it is the bank pertaining to which the cheque was issued and furthermore, it is the bank, which has refused to encash the cheque is to be considered for purposes of territorial jurisdiction because offence has been committed at the end of that bank. Therefore, complaint shall lie only at the place from where the cheque has been issued or refused. To fortify this submission, further reliance has been placed upon Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., . Two judgments rendered by a Single Judge of Delhi High Court where this point has been specifically answered in favour of the petitioner, have been also relied. A Single Judge of Delhi High Court in Online IT Shoppe India Pvt. Ltd. & Ors. v. State & Anr., reported as 2011 (1) DCR 210 has held as under:

"9. The ratio of the above referred judgment of the Hon''ble Supreme Court is that a cheque is deemed to have been presented to the banker of the drawer irrespective of the fact whether it is deposited by the payee in his own bank. The banker of the payee, after receiving the cheque from him, is required to present it to the banker of the drawer and therefore if the cheque issued from a bank in Ernakulam is deposited in Delhi, the bank in which it is deposited in Delhi, is required to present it to the bank at Ernakulam, for the purpose of encashment. Therefore, it cannot be said that the cheques issued by the petitioners were presented in Delhi, despite the fact that the bank in which the respondent No. 2 had an account was in Delhi, the cheque shall be deemed to have been presented only to the bank at Ernakulam on which they were drawn. Therefore, deposit of cheques in Delhi would not confer jurisdiction of Delhi court to try this

complaint.

10. Since sending of notice from Delhi to Emakular does not confer jurisdiction on Delhi Court in view of the decision of the Hon"ble Supreme Court in the case of Harman Electronics Private Limited (Supra) and the deposit of cheque with the banker of respondent No. 2 in Delhi also does not confer CrI. M.C. 2695 of 2009 Page 5 to 6 jurisdiction of Delhi court when the cheque is presented to a bank outside Delhi, and there is no other ground which would confer jurisdiction on Delhi Court, it cannot be said that the Delhi Court has the jurisdiction to try this complaint."

16. The question, which this Court has to squarely answer, is whether the Court within whose territorial jurisdiction cheque is presented and returned, will have territorial jurisdiction to try a complaint under Section 138 of the Negotiable Instruments Act or not.

17. Hon"ble Apex Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, considered Chapter XIII of Code of Criminal Procedure, 1973, regarding jurisdiction of criminal courts in enquiries and trials and made reference to Sections 177 and 179 and held as under:

"13. The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the Courts to try the offence was sought to be determined.

14. The offence u/Sec. 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (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.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Act. In this context, a reference to Section 178(d) of the Code is useful. It is extracted below:

"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."

16. Thus it is clear, if the 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 under Section 138 of the Act. In other words, the complainant can choose any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened any so expansive it is an idle exercise to raise jurisdictional

question regarding the offence under Section 138 of the Act."

18. Thus, it is apparent that the place where the cheque is presented has a territorial jurisdiction to try the complaint under Section 138 of the Negotiable Instruments Act. Reference made to Shri Ishar Alloy Steels Ltd. (supra) is misplaced. There is a certain distinction between attraction of penal consequence and vesting of territorial jurisdiction. Shri Ishar Alloy Steels Ltd. (supra) specifically states that until the cheque is presented to the drawee bank and is returned due to insufficient funds, penal consequence shall not accrue. To illustrate, as in present case, the person, issuing cheque, is maintaining an account at Udaipur. From that account, he issues a cheque. Until that cheque is presented to the Udaipur Branch and it is returned by Udaipur Branch, due to insufficient funds, penal consequences will not ensue as offence will be completed only when cheque is presented at Udaipur. Non-presentation of the cheque to any other place, where account holder is not having an account, will not attract penal consequences.

Single Judge of Delhi High Court in two judgments in Online IT Shoppe India Pvt. Ltd. & Ors. and Laxmi Vishnu Textile (supra), has not taken note of distinction between as to when offence is complete and where offence has been committed. Offence under Section 138 of the Negotiable Instruments Act shall be only complete when the cheque is presented before the bank which is maintaining account of the issuer of a cheque. This is ratio of law laid in Shri Ishar Alloy Steels Ltd. (supra). To answer where offence has been committed, ratio of law laid in K. Bhaskaran's case (supra), shall prevail. Further, it is to be noticed that the case of Harman Electronics Private Limited & Another (supra) craves an exception to K. Bhaskaran's case (supra) and hold that place wherefrom notice has been issued, will not have a territorial jurisdiction to try the offence."

6. Therefore, the first argument of counsel for the petitioner being against the settled legal position is, rejected.

(b) Counsel for the petitioner has further submitted that in the complaint and in the notice, the complainant has not stated as to what was the lawful consideration for issuance of the cheque.

7. There is a presumption in favour of the drawer to the cheque. Further more, the complaint and notice is not encyclopedia. The complainant, in the statement in the court, is always at a liberty to clarify for what the cheque was issued.

8. No other argument has been raised.

9. Having noticed and answered the legal arguments raised by the counsel for the petitioner, the present petition being devoid of merit is, dismissed. Upon dismissal of the main petition, the stay application filed therewith does not survive and same is also disposed of.