(2010) 01 DEL CK 0018

In the Delhi High Court

Case No : Criminal M.C. No. 2876 of 2009

Surjeet Singh	APPELLANT
Vs	
G.E. Capital Transport Financial Services and Another	RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Citation : (2011) 1 CivCC 595 : (2010) 4 Crimes 471 : (2010) 167 DLT 449 : (2010) 7 RCR(Criminal) 747

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Sunil Kumar Kalra, for the Appellant; Divjot Singh and Gurpreet Singh for R-1, for the Respondent

Judgement

V.K. Jain, J.—This is a petition u/s 482 of the Code of Criminal Proceedings for quashing the criminal complaint filed by respondent No. 1, against the petitioner, u/s 138 of the Negotiable Instruments Act. Quashing of the complaint has been sought on the ground that Delhi Court has no jurisdiction to entertain and try the complaint.

2. A perusal of the complaint would show that jurisdiction of Delhi Court was claimed on the ground that notice demanding payment was issued from New Delhi, the petitioner was required to make payment to the complainant/ respondent No. 1 at Delhi and the bank of the complainant/respondent No. 1 is situated in New Delhi.

3. There are five essential ingredients of offence u/s 138 of the Negotiable Instruments Act, as held by the Supreme Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , (i) drawing of the cheque, (ii) presentation of the cheque to the bank of the payee, (iii) return of the cheque unpaid by the drawee bank, (iv) giving of notice to the drawer of the cheque demanding payment of the cheque amount and (v) failure of the drawer to make payment within 15 days of the receipt of the notice.

4. This is not the case of the complainant that the cheque in question was issued and delivered to it in Delhi. There is no allegation to this effect in the complaint. On the other hand, the petitioner has specifically stated that cheques in question was issued in Raipur. It is also not disputed that the cheque in question was drawn on a bank in Raipur and was dishonoured by that bank at Raipur. It is also not in dispute that the notice of demand, though issued from Delhi, was sent to the petitioner at Raipur and, therefore, this is not the case of the complainant/ respondent No. 1 that the notice was served upon the petitioner in Delhi.

5. It was held by the Hon''ble Supreme Court in the case of Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., :

A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, the commission of an offence completes.

6. The only plea taken by the learned Counsel for the complainant/respondent No. 1 was that the cheque in question having been deposited with the bank of the complainant in Delhi and presentation of the cheque being an essential component of the offence u/s 138 of Negotiable Instruments Act, Delhi Court would have jurisdiction to entertain and try the complaint.

7. As regards presentation of the cheque, the Hon''ble Supreme Court in Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., , inter-alia, held that "The bank" referred to in Clause (a) to the proviso of Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all the banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

It was further observed that "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 para 10 of the judgment the Hon''ble Supreme Court further observed that "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."

8. 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 Raipur is deposited in Delhi, the bank in which it is deposited in Delhi, is required to present it to the bank at Raipur, for the purpose of encashment. Therefore, it cannot be said that the cheque issued by the petitioner was 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 Raipur on which it was drawn. Therefore, deposit of cheque in Delhi would not confer jurisdiction on Delhi court to try this complaint.

9. Since sending of notice from Delhi to Raipur 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 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.

10. The learned Counsel for the respondent, in support of his contention, has relied upon the decision of this Court in Lok Housing and Constructions Ltd. Vs. Raghupati Leasing and Finance Ltd. and Another, , where a Single Judge of this Court relied upon the decision of the Hon''ble Supreme Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . No doubt, presentation of the cheque to the bank is an essential ingredient of the offence punishable u/s 138 of the Negotiable Instruments Act but, in view of the authoritative pronouncement of the Hon''ble Supreme Court in the case of Shri Ishar Alloy Steels Ltd. (supra), it is not possible for this Court to say that the cheque even if deposited with the bank of the complainant situated in Delhi was presented to the ''bank'' in Delhi. The expression ''bank'' used in Section 138 of the Negotiable Instruments Act would always mean the bank of the drawer and not the bank of the payee. The payee may have multiple accounts and may deposit the cheque in any of the accounts maintained by it. In fact, if the payee is a large company or organization, it is likely to have multiple accounts in different places. If it is held that the expression ''bank'' in Section 138 of the Negotiable Instruments Act mean the bank of the payee, it will be possible for the complainant to institute the complain in any city where he may be having a bank account and, thereby harass the drawer of the cheque by filing complaints at the place where the cheque is deposited by him. On the other hand, if the expression ''bank'' is taken to mean the bank on which the cheque is drawn, the place of presentation of the cheque would always be a fixed place and will not change depending upon the place at which the cheque is presented by the payee to its bank. Even if two interpretations of the expression ''bank'' are possible, the Court would take the interpretation which is favourable to the accused, the provisions of the Negotiable Instruments Act being penal provisions requiring strict interpretation of law.

11. For the reasons given in the preceding paragraphs, I am of the view that

Delhi Court has no jurisdiction to entertain and try this complaint. It is, therefore, directed that the complaint filed by respondent No. 1 be returned to it within four weeks for presenting it before a competent court having jurisdiction in the matter.

