

(1979) 11 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 258 of 1978

Upendra Kumar Joshi

APPELLANT

Vs

Manik Lal Chatterjee and Others

RESPONDENT

Date of Decision : 30-11-1979

Acts Referred:

Companies Act, 1956 — Section 207, 630

Criminal Procedure Code, 1973 (CrPC) — Section 179, 187

Citation : (1981) CriLJ 12

Hon'ble Judges : Medini Prasad Singh, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; G.C. Bharuka, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Singh, J.—In this application only a question of jurisdiction arises. A complaint was made on 10th September, 1975, by the petitioner for offences under Sections 207 and 630 of the Companies Act, 1956 (briefly "the Act") against 17 persons including Kesoram Industries and Cotton Mills Ltd., Calcutta (for short, "the company"), before the Chief Judicial Magistrate, Bhagalpur, on the allegation of failure to pay to him his dividend amounting to Rs. 30 on three shares held by him. The dividends were declared by the company on 14th August, 1975, for the year ending on March, 1975. The petitioner, after having come to know about it from the company, instructed the company to send his dividend in cash by money order. But the dividend was not sent to him and hence it was not paid to him within 42 days of the declaration as provided by Section 207 of the Act. Hence this complaint in Bhagalpur Court. The complaint was dismissed on 27th July, 1977, by the Magistrate on the ground that no offence u/s 207 or Section 630 of the Act was committed at Bhagalpur, the registered office of the company being at Calcutta. Relying on H.P. Gupta Vs. Hiralal, , the Magistrate held that the registered office of the. company being in Calcutta, the alleged offences must be held to have been committed in Calcutta and hence the

complaint in question was not maintainable in the Bhagalpur Court and that the Bhagalpur Court had no jurisdiction to try the offences. The Magistrate by the same order discharged the accused, Manik Lal Chatterjee (opposite party No. 16 before this court) from the liability of the bail bond. It will not be out of place to mention here that this revision was dismissed as against the other accused persons due to non-compliance with the order of this court dated 4th July, 1978, regarding the taking of steps for fresh service on them. It was also ordered by the Magistrate that the processes as against the other accused persons of the case be recalled. Being aggrieved by the order dated 27th July, 1977, Mr. U. K. Joshi, an advocate of this court, namely, the complainant, has filed the present revision application. He has appeared in person. His first contention is that the Bhagalpur Court has jurisdiction to try the offences because the dividend had to be paid at his own registered address which was at Bhagalpur and where the consequence of non-posting, that is, wrongful loss ensued. Counsel relied on the provision of Section 179, Cr. PC, which runs as under.

" When an Act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."

2. In my opinion, the argument is devoid of any merit. The offence of non-payment of dividend by non-posting became complete once and for all at Calcutta, and no further question of any consequence ensuing at Bhagalpur arises. The contention is, therefore, rejected. The matter to be noticed is that Section 207 of the Act makes the failure to post and not the non-receipt of the warrant by the shareholder, an offence. Prima facie both the obligations to post the dividend warrant and the failure to satisfy that obligation would occur at the place where the obligation is to be performed and that would be the registered office of the company and not the address at which the warrant is to be posted. Since the obligation to post the warrant in the present case arose at the registered office of the company at Calcutta, failure to discharge that obligation also arose at the registered office of the company at Calcutta and, therefore, the alleged offence must be held to have taken place at the place where the company's registered office is situate and not where the dividend warrant when posted would be received. The controversy in question is set at rest by the decision in the case of H.P. Gupta Vs. Hiralal, which has been relied upon by the Magistrate. In that case, with reference to Section 207 of the Act, it was held that the obligation to pay the dividend arose at the place of the company's registered office and that the alleged offence must be held to have taken place at the place where the company's registered office was situate and hence the court of that place and not the court where the dividend was to be received had jurisdiction to try the offence. In view of this decision of the Supreme Court, the complainant did not seriously press the maintainability of his complaint in respect of the offence u/s 207 but he vehemently contended that his complaint was maintainable in Bhagalpur Court for the offence u/s 630 of the Act. Section 630

provides for penalty for the wrongful withholding of the property of a company by its officer or employee. Counsel appearing for opposite party No. 16 urged that there is absolutely no allegation in the complaint for establishing any ingredient of this offence. He further argued that even if such offence is assumed to be committed, it must be held to have been committed in Calcutta and not at Bhagalpur. In my opinion, the argument is well founded and must be accepted as correct. I am of the view that even if this offence is assumed to have been committed, it was committed in Calcutta and not at Bhagalpur on the principles laid down in the aforesaid Supreme Court case.

3. The complainant further relied on *Banwari Lal Jhunjunwala and Others Vs. Union of India (UOI) and Another*, but that was a case of a conspiracy. It was held in that case that a court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of the fact that any or all the other offences were not committed within its territorial jurisdiction. That is not the case here. That case, therefore, does not help him.

4. It was next contended by the complainant-petitioner that the offences in the present case were committed by letters and hence the provisions of Section 182, Cr. PC, will apply and, therefore, the Court at Bhagalpur where the petitioner received the notice from the company concerning the declaration of the dividend will have jurisdiction to try the offence. Section 182 is as follows :

"Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any court within whose local jurisdiction such letters or messages were sent or were received ; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person..... "

5. In my opinion, the contention is without any substance. By no stretch of imagination it can be said in the instant case that the offence was committed by any letter or by the notice sent by the company to the complainant informing him about the annual general meeting to be held on 14th August, 1976, at the company's registered office to declare a dividend for the year ending 31st March, 1975. The contention, therefore, must be repelled.

6. It was next canvassed that the principle underlying Section 187, Cr. PC, would apply to the present case and in view of these principles the Bhagalpur Court will have jurisdiction to try the offence. In my opinion, the contention is not sound. This section will apply only to a case where the accused is a person residing within the local jurisdiction of the court. In the instant case not a single person lives within the jurisdiction of any of the courts at Bhagalpur. They are all of Calcutta.

7. Another contention raised by the complainant is that in any view of the matter

his complaint should not have been dismissed and should have been returned to the Chief Judicial Magistrate under the provisions of Section 322 of the Cr, PC. In my opinion, this contention is equally without substance. The complaint could be returned to the Chief Judicial Magistrate only if any court in Bhagalpur would have jurisdiction to try. In the instant case, no court in Bhagalpur could try the alleged offence because the offences, if any, were committed in Calcutta. Section 322, therefore, would not apply to the facts of this case.

8. The complainant next attacked the validity of the order passed by S. S. Hassan J. on 4th July, 1978, for the non-compliance of which the present revision stood dismissed as against the accused other than opposite party No. 16, Shri Manik Lal Chatterjee. In my opinion, the contention requires to be stated only to be rejected. The High Court had full jurisdiction to ask the petitioner to take steps for fresh service of notices on opposite parties Nos. 1 to 15. The contention must, therefore, be rejected as untenable.

9. The last matter to be considered is whether the Magistrate, after giving a finding that the Bhagalpur Court had no jurisdiction to try the offence, was justified in dismissing the complaint and discharging the accused, Manik Lal Chatterjee, and recalling the processes which had been issued against the other accused persons. In my opinion, the dismissal of the complaint is not on the merits of the case. It was dismissed as not being maintainable and hence the Magistrate had not committed any illegality in doing so. The petitioner has not been able to show any provision of law in the Criminal Procedure Code under which the complaint can be returned to-him in a situation like this. I think that the complainant is competent to file a fresh complaint, if he so chooses, in a court at Calcutta.

10. There is also a prayer to transfer the case from the court below to the High Court, Patna, but that can be considered only if the case is in the proper court. That question, therefore, does not arise.

11. For the foregoing, I do not find any merit in this application. It is accordingly dismissed.