
(1998) 04 KL CK 0014
In the High Court Of Kerala
Case No : Criminal Appeal No. 279 of 1994

Varghese

APPELLANT

Vs

C.K. Ramani

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 94 CompCas 606 : (1998) CriLJ 2755 : (1998) 3 ILR (Ker) 399

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : N.P. Samuel, for the Appellant; P.K. Ashokan, for the Respondent

Final Decision : Allowed

Judgement

K.A. Mohamed Shafi, J.—The complainant in S.T. No. 588 of 1993 on the file of the Judicial First Class Magistrate's Court-II, Thrissur, is the appellant. The judgment dated December 17, 1993, passed by the lower court finding the accused not guilty and acquitting her and setting her at liberty is under challenge.

2. The appellant filed the complaint against the respondent alleging that the respondent issued a cheque for Rs. 8,395 towards the amount due from her in business transaction with the appellant dated December 22, 1992, and when it was sent for collection the cheque bounced and the respondent did not pay the amount in spite of registered notice dated January 2, 1993, intimating her about the dishonour of the cheque and calling upon her to pay the amount and as such the respondent has committed the offence punishable u/s 138 of the Negotiable Instruments Act.

3. The lower court after trial found that the respondent failed to pay the amount due under exhibit P-1 cheque to the appellant within fifteen days of the receipt of the notice intimating about the dishonour of the cheque and as such the appellant has got cause of action against the respondent. After finding that it has no jurisdiction to try the case, the lower court held that the respondent is not

liable to be punished by the lower court and accordingly acquitted the respondent.

4. It is in evidence that on receipt of exhibit P-7 notice sent on behalf of the appellant to the respondent intimating about the dishonour of the cheque and calling upon her to pay the amount, the respondent has caused to send reply notice, exhibit P-10, stating that the respondent had already sent a letter dated December 30, 1992, requesting the appellant to present the cheque for encashment only on January 12, 1993, and by that time she will make arrangement for payment and that she has deposited the amount on January 12, 1993, and as such the appellant can re-present the cheque and encash it.

5. The appellant has contended that as the law then stood the appellant was not entitled to re-present the cheque for encashment once the cheque was dishonoured, as by the subsequent presentation he would have lost his right to prosecute the respondent u/s 138 of the Negotiable Instruments Act. Therefore, he did not re-present the cheque for encashment as mentioned in exhibit P-10, reply notice.

6. Though the law on the point is now changed and the payee or holder in due course of the cheque is entitled to present the cheque for encashment more than once before the expiry of six months from the date of issue of the cheque and on each dishonour of the cheque he gets a fresh cause of action against the drawer of the cheque, as the law then stood the appellant cannot be found fault with for not re-presenting the cheque as stated in exhibit P-10, as it would have deprived him of his right to prosecute the respondent u/s 138 of the Negotiable Instruments Act.

7. It is true that exhibit P-4 extract of the ledger pertaining to the account of the respondent maintained in the bank shows that there was sufficient amount to the credit of the respondent to honour exhibit P-1 cheque on January 12, 1993. But that fact will not absolve the respondent from her liability to pay the amount as provided under Clause (c) of the proviso to Section 138 of the Negotiable Instruments Act, as under that clause the drawer of the cheque is liable to make payment of the amount to the payee or the holder in due course within fifteen days of the receipt of notice and the intimation to the payee or the holder in due course by the drawer that sufficient amount is available in the bank to honour the cheque after it was dishonoured, will not absolve him from his liability to pay the amount.

8. In the decision in M.M. Malik and Others Vs. Prem Kumar Goyal, a single judge of the Punjab and Haryana High Court has observed as follows (page 430) :

"Dishonouring of the cheque was only a part of the cause of action and the offence was completed only when the petitioner-company failed to discharge its liability to the creditors (the complainant herein). For discharging the debt, the petitioners had to find out their creditors and since the creditor has its office at Pehowa, the offence was completed at that place and in this situation, the court

at Kurukshetra had the territorial jurisdiction to try the matter."

9. Therefore, it is clear that it is the duty of the respondent-debtor to find out his creditor and discharge the debt due to him. Hence, the vehement argument advanced by counsel for the respondent that since the respondent was always ready and willing to pay the amount due as per exhibit P-1, cheque, and in fact, the amount was lying to her credit immediately after the cheque was dishonoured and even though that fact was intimated to the appellant by exhibit P-10, reply notice, the appellant was bent upon harassing the respondent by filing the above complaint, is absolutely unsustainable.

10. The finding of the lower court that it has no jurisdiction since the cheque was issued at Cherthala, is also not sustainable. Firstly, no such contention regarding the jurisdiction of the lower court to entertain the complaint and prosecute the respondent for the offence punishable u/s 138 of the Negotiable Instruments Act was raised till the above case came up for hearing after recording the entire evidence. Secondly, it is well-settled that the court within whose jurisdiction the cheque was presented by the payee or holder in due course for encashment has also got jurisdiction to entertain a complaint for the offence punishable u/s 138 of the Negotiable Instruments Act.

11. Counsel for the appellant vehemently argued that u/s 462 of the Criminal Procedure Code even if the proceedings were taken in wrong place, the finding or the sentence passed by the criminal court cannot be set aside unless it appears that such error has in fact, occasioned a failure of justice. According to him, even if the lower court had no territorial jurisdiction, since no question of failure of justice is involved in this case, the lower court should have proceeded with finding the respondent guilty and convicting and sentencing her once it found that the cheque issued in discharge of a legally enforceable liability was dishonoured for insufficiency of funds.

Section 462 of the Criminal Procedure Code reads as follows :

"462. Proceedings in wrong place.--No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, Sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

12. In the decision in Smt. Raj Kumari Vijn Vs. Dev Raj Vijn, , where the Supreme Court had been dealing with Section 531 of the old Criminal Procedure Code corresponding to Section 462 of the present Criminal Procedure Code, it has observed as follows (page 1104) :

"The section, therefore, relates to a defect of jurisdiction. As has been stated by this court in Purushottamdas Dalmia Vs. The State of West Bengal, there are two types of jurisdiction of a criminal court, namely, (1) the jurisdiction with respect to the power of the court to try particular kinds of offences, and (2) its territorial

jurisdiction. While the former goes to the root of the matter and any transgression of it makes the entire trial void, the latter is not of a peremptory character and is curable u/s 531 of the Code. Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the court. . . .

So where a Magistrate has the "power" to try a particular application u/s 488, and the controversy relates solely to his territorial jurisdiction, there should, ordinarily, be no reason why Section 531 of the Code should not be applicable to the order made by him."

13. In this case, the respondent has no contention that any failure of justice will be caused by the trial of the case before the lower court. Moreover, the respondent had no contention at all that the court has no jurisdiction till the entire evidence was recorded and the matter was being heard. Therefore, Section 462 of the Criminal Procedure Code is squarely applicable to the facts of this case.

14. Even if the lower court found that it had no jurisdiction to try the case, it is not at all justified in finding the respondent not guilty and acquitting her. If at all the lower court should have followed the procedure provided u/s 201 of the Criminal Procedure Code if it was of the view that the court had no jurisdiction to take cognizance of the offence, in which case the complaint should have been returned for presentation to the proper court with an endorsement to that effect. Therefore, in that view also the lower court was in error in finding the respondent not guilty and acquitting her.

15. In this case, the lower court found that the court has no jurisdiction to take cognizance of the offence since the cheque was issued at Cherthala. The contention of the appellant that the cheque was issued at his residence at Kuriachira, within the jurisdiction of the lower court, is not accepted by the lower court and it found the cheque was issued at Cherthala. It is well settled now that the court has jurisdiction over the area where the cheque was issued or delivered or where the drawer of the cheque fails to make payment of the money or where the cheque was presented for encashment or the area where the payment was to be made. Therefore, the appellant had cause of action to file the complaint before the lower court where the cheque was presented for encashment and the lower court had jurisdiction to take cognizance of the offence. Therefore, the finding of the lower court that it had no jurisdiction to take cognizance of the offence is absolutely unsustainable.

16. Counsel for the appellant submitted that in view of the fact that the lower court has found that the respondent has committed the offence punishable u/s 138 of the Negotiable Instruments Act and that finding is arrived at by the lower court on a proper appreciation of the evidence on record, there is absolutely no

necessity to remit the case to the lower court, only for the purpose of awarding sentence to the respondent and this court itself can award appropriate sentence in this appeal itself.

17. Even though the respondent has contended that technically no offence punishable u/s 138 of the Negotiable Instruments Act is committed by the respondent since there was amount lying to her credit from January 12, 1993, onwards and she intimated that fact to the appellant and as such the respondent is not guilty of the offence punishable u/s 138 of the Negotiable Instruments Act, I have already held that that contention of the respondent is not sustainable since once the cheque was dishonoured for want of sufficient funds and that fact was intimated by the appellant to the respondent, it is the duty of the respondent to pay the amount due as per the cheque under proviso (c) to Section 138 of the Negotiable Instruments Act and it is not sufficient if she intimated the appellant that there is amount available to her credit and the appellant can re-present the cheque and encash the same. Therefore, it is clear that the respondent is guilty of the offence punishable u/s 138 of the Negotiable Instruments Act. I also find that instead of remitting the case to the lower court only for the purpose of awarding the sentence, in the interest of justice this appellate court itself should award the sentence. Therefore, the respondent is found guilty of the offence punishable u/s 138 of the Act and convicted and sentenced her to pay a fine of Rs. 10,000 in default of payment to undergo simple imprisonment for three months. In the event of payment of fine the appellant will be entitled to Rs. 9,000.

The criminal appeal is allowed accordingly.