
(2008) 04 BOM CK 0028
In the Bombay High Court
Case No : Criminal A. No. 4349 of 2007

Vilas Kundanmal Lodha

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178
Negotiable Instruments Act, 1881 (NI) — Section 145

Citation : (2009) CriLJ 452 : (2009) 5 RCR(Criminal) 604

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : R.R. Mantri, for the Appellant; B.R. Khekale, Assistant Public Prosecutor and S.D. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

V.R. Kingaonkar, J.—This is an application for quashing of proceedings in a Criminal Case (STC No. 100/2003) pending on the file of learned Judicial Magistrate (F.C.), Kopargaon.

2. The applicant is original accused. He allegedly issued a cheque in favour of complainant/Respondent No. 2 for Rs. 3,00,000/- (Rupees three lacs) on 14-7-2002, in order to discharge liability for re- payment of loan amount obtained by him. The cheque was drawn on Nagar Urban Co- operative Bank, Branch Ahmednagar. The cheque was presented by the complainant in his bank at Kopargaon on 26-11-2002. The cheque, however, bounced. The complainant therefore, issued a demand notice dated 9-12-2002 and called upon the applicant/accused to pay the amount. The applicant (accused) allegedly gave false reply to the notice on 24-12-2002.

3. The present application is filed on the ground that the Court of Judicial Magistrate (F.C.) at Kopargaon has no territorial jurisdiction to try the Criminal case. The applicant would submit that the Complainant/ Respondent No. 2 failed to explain as to how the Judicial Magistrate at Kopargaon has jurisdiction to try

the Criminal case. He would submit that an Insolvency Petition No. 1/2005 is filed by him.

4. The applicant mainly objects maintainability of the Criminal case on the ground of lack of territorial Jurisdiction.

5. Heard learned advocates Mr. R.R. Mantri, Mr. S.D. Kulkarni, for the parties.

6. The recitals of the complaint would show that the applicant resides at Ahmednagar and is proprietor of M/s. Lodha Construction having its place of business at Ahmednagar. The complaint reveals that the cheque was drawn on Nagar Urban Cooperative Bank, Branch at Ahmednagar. In other words, the payment was to be made at Ahmednagar. The complainant deposited the cheque in his bank account of Devyani Bank, branch at Kopargaon. The cheque was sent to the drawee Bank for clearance. However, the cheque was dishonoured. The complaint does not show place of loan transaction. The complaint shows that the parties are inter related. The applicant moved an application before the learned Judicial Magistrate seeking dismissal of the complaint for want of jurisdiction. In his application the applicant asserted that the complainant failed to state anything regarding occurrence of cause of action within the territorial jurisdiction of the Criminal Court at Kopargaon, and, therefore, the complaint was liable to be dismissed. The application is dismissed by the learned Judicial Magistrate for the reason that the affidavit of the complainant indicated that the amount was borrowed at his residence. The learned Magistrate held that the cause of action arose at the residence of the complainant/respondent No. 2. The learned Magistrate further held that the cheque in question was given by the applicant to the Respondent No. 2 at Kopargaon.

7. The fact situation appears to be inconsistent with observations of the learned Judicial Magistrate. One does not know as to on what basis the learned Judicial Magistrate came to the conclusion that the loan transaction took place in the house of the complainant. The affidavit of the complainant, only shows that the applicant is his close relative. The Respondent No. 2 did not state anything about the place where the loan amount was advanced. The affidavit of the complainant is filed instead of the evidence as provided u/s 145 of the Negotiable Instruments Act, 1881. The affidavit of the complainant does not show that the loan was advanced at his residence, nor it purports to show that the amount was to be repaid at Kopargaon. The parties are brothers-in-law inter se. The complainant is a businessman.

8. In "Ahuja Nandkishore Dongre v. State of Maharashtra and Anr." AIR 2006 Bom 201 , A Single Bench of this Court (Hon"ble Shri Justice R.C. Chavan), held that though complainant may have accounts at several places, it does not follow that the complainant could file complaint at a place where he had account, because jurisdiction will have to be gathered from the place where money was intended to be paid. The Court further held that in view of Sections 177 and 178 of the Cr.P.C. the cheque or a negotiable instrument is required to be discharged

at place mentioned therein. The cheque was issued at Bhandara in respect of loan transaction which occurred at Bhandara. It was noticed by the Court that complainant was not residing in the territorial jurisdiction of the Court and was not working for gain within the territorial jurisdiction of that Court. The learned Single Judge of this Court was, therefore, pleased to allow the application. Mr. Kulkarni, would submit that the Respondent No. 2 (complainant) will be able to establish the fact regarding loan transaction when the matter will be finally heard. He would submit that the above referred authority of Hon''ble Single Bench is Per incuriam in view of Division Bench authority rendered in Rakesh Nemkumar Porwal Vs. Narayan Dhondu Joglekar, . A Division Bench of this Court held that the complaint could be filed at the place where the drawer of the cheque was residing. Mr. Kulkarni, would further submit that the Magistrate could exercise the jurisdiction because final payment was to be made at Kopargaon. Mr. Kulkarni, would also rely on certain observations in Goutham Television Centre and Another Vs. Apex Agencies and Another, . A single Bench of Andhra Pradesh High Court held that the Court having jurisdiction to try the case may be competent to do so when part of cause of action arise at the place where the cheque is presented for collection. It is observed:

Cause of action is bundle of facts. Issuance of cheque, presentation of the cheque, endorsement of dishonour, issuance of a statutory notice and the location of the office of the person in whose favour the cheque was issued are all the factors which are to be taken into account for deciding the cause of action.

9. One cannot be oblivious of the fact that the complainant filed his affidavit during the trial. He cannot now turn volte-face. If the accused can demonstrate, from the recitals of the complaint and the affidavit of the complainant that no cause of action arose within the territorial jurisdiction of the Criminal Court at Kopargaon, then it will have to be said that the complaint cannot be entertained by the said Court. There cannot be two opinion about the legal proposition that even where a part of cause of action arose, there will be availability of territorial jurisdiction to the Court at such a place. The clinching question is as to whether even a part of cause of action arose within the territorial jurisdiction of the Court of Judicial Magistrate (F.C.) at Kopargaon.

10. The complaint and the affidavit of the complainant is totally silent as regards the place where the money was lent. I am told by the learned Members of the Bar that the applicant is brother of the wife of the Respondent No. 2 (complainant). Considering such close relationship, there is nothing wrong if the complainant gave the loan amount at Ahmednagar during his, private or business visit. The complainant has not stated, specifically, that he gave loan amount to the applicant (accused) at Kopargaon. The cheque was drawn on the Bank at Ahmednagar. There is nothing on record to show that the repayment was agreed to be made at Kopargaon. The learned Judicial Magistrate committed patent error while holding that the cheque was handed over to the complainant at Kopargaon. So also, incorrect statement of fact is made by the learned Judicial Magistrate, in

the impugned order dated 17-11-2007, that the amount was borrowed at residence of the complainant. There appears no such statement made in the affidavit of the complainant, yet, the learned Magistrate assumed that the amount was lent at residence of the complainant. There is apparent factual inaccuracy in the said statement made in the impugned order. Merely because the complainant deposited the said cheque in his bank account at Kopargaon, the Court of Judicial Magistrate (F.C), Kopargaon will not be clothed with territorial jurisdiction to try such case. It appears that in case of "Rakesh Nemkumar Porwal v. Narayan Dhondu Joglekar and Anr." (supra), the final nonpayment took place at Kolhapur and, therefore, it was held that the Court at said place will have jurisdiction to entertain the complaint. There was clear evidence to show that the payment was to be made at Kolhapur, though the accused was inhabitant of Nagpur. In the present case, however, the complainant has not brought on surface of record the place agreed between the parties for the purpose of making repayment. The learned Single Judge in case of "Ahuja Nandkishore Dongre v. State of Maharashtra and Anr." (supra), considered view of the Apex Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . After analysing the facts of the said case, the learned Single Judge explained the area of its applicability. The learned Single Judge observed:

The Apex Court must be understood to have held that ordinarily the place of suing must have a nexus to the lis. But upon making out a case for deviating from this rule, action could be initiated even at some other place. It is not that the word "ordinarily" gives an unbridled freedom to a complainant to choose his forum for hauling up an accused.

11. Considering the foregoing discussion, it is manifest that the complainant failed to prove occurrence of any part of cause of action within the territorial jurisdiction of the Criminal Court at Kopargaon. The complaint filed by the Respondent No. 2 could be returned to him for presentation to the proper Court. The learned Judicial Magistrate (F.C), Kopargaon, committed patent error while rejecting the application filed by the applicant (accused). The impugned order is, therefore, unsustainable.

12. In the result, the application is allowed. The impugned order is quashed. The learned Judicial Magistrate (F.C.), Kopargaon is directed to return the complaint to the Respondent No. 2 (complainant) for presentation to the appropriate Court having territorial jurisdiction. No costs.