
(2006) 09 KL CK 0026

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 236 of 1999 (C)

V.K. Soman Achari

APPELLANT

Vs

Sabu Jacob and Another

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 12, 13, 14, 14(2)
Limitation Act, 1963 — Section 5
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2007) 2 BC 628 : (2007) 2 CivCC 599 : (2007) 1 CivCC 522 : (2007) 135 CompCas 79 : (2007) CriLJ 1042 : (2006) 4 ILR (Ker) 178 : (2007) 1 KLJ 178 : (2007) 2 RCR(Civil) 591 : (2007) 2 RCR(Criminal) 449

Hon'ble Judges : V.K.Bali, C.J

Bench : Single Bench

Advocate : Bechu Kurian Thomas and Prakash Puthiadam, for the Appellant; M.J. Thomas,, P. Raveendra Babu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, C.J.—The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, came into being to amend the Negotiable Instruments Act, 1881, the Bankers' Books Evidence Act, 1891, and the Information Technology Act, 2000, for a purpose. One of the objects in bringing about the new legislation mentioned in the objects and reasons of the Act of 2002, was to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases. The speedy and summary remedy provided was for a purpose to expeditiously deal with matters under the Negotiable Instruments Act in a time bound manner. It is unfortunate that in some cases, as the one in hand, the entire purpose of the legislation has been defeated on procedural wrangles. Before introduction of the case, as a prelude in a drama and preface in a novel would be written, a period of fifteen years have already gone by. The parties to the litigation are at initial stage, as the case has not made any progress from the date of institution of the same.

2. When the petitioner filed a complaint u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "NI Act"), before the Chief Judicial Magistrate, Kottayam, the same was admittedly within limitation. The first respondent entered appearance and contested the jurisdiction of the Kottayam court to entertain the complaint. The objection raised by the first respondent was accepted and vide order dated March 15, 1996, the Chief Judicial Magistrate, Kottayam, directed the parties to appear before the Judicial First Class Magistrate, Ettumanoor, on April 12, 1996. The complainant, however, received the complaint filed at Kottayam on March 28, 1996, and presented it in the court of Judicial First Class Magistrate, Ettumanoor, on April 2, 1996. On presentation of the complaint aforesaid, the first respondent, this time objected to continuance of the complaint on the ground that the same was barred by limitation. This objection was repelled, constraining the first respondent to file a revision, which was accepted, and thus the present revision by the petitioner.

3. Mr. Bechu Kurian Thomas, learned Counsel representing the petitioner vehemently contends that while holding that the petition filed or re-presented before the Ettumanoor court on April 2, 1996, was barred by limitation, the learned Sessions Judge did not notice the basic provisions contained in the Code of Criminal Procedure dealing with jurisdiction to entertain a complaint. On the basis of the provisions of the Code of Criminal Procedure to be referred hereinafter, it is the contention of counsel that the Chief Judicial Magistrate in the district would have jurisdiction to entertain a complaint with regard to any area falling in that district. In view of the aforementioned contention of the learned Counsel, it would be useful to take into consideration the relevant sections, i.e., Sections 6, 11, 12 and 14, which read thus:

6. Classes of criminal courts.--Besides the High Courts and the courts constituted under any law, other than this code, there shall be, in every State, the following classes of criminal courts, namely:

(i) Courts of Sessions;

(ii) Judicial Magistrate of the first class and, in any metropolitan area, Metropolitan Magistrate;

(iii) Judicial Magistrate of the second class; and

(iv) Executive Magistrates.

11. Courts of Judicial Magistrates.--(1) In every district (not being a metropolitan area), there shall be established as many courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more special courts of judicial magistrate of the first class or of the second class to try any particular case or particular class of cases, and where any such special court is established, no other court of

magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such special court of judicial magistrate has been established.

(2) The presiding officers of such courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the judicial service of the State, functioning as a judge in a civil court.

12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.--(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this code or under any other law for the time being in force as the High Court may direct.

(3)(a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-Divisional Judicial Magistrate and relieve him of the responsibilities specified in this Section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-Divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrate (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

14. Local jurisdiction of Judicial Magistrates.--(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the area within which the Magistrates appointed u/s 11 or u/s 13 may exercise all or any of the powers with which they may respectively be invested under this code:

Provided that the court of a special judicial magistrate may hold its sitting at any place within the local area for which it is established.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

(3) Where the local jurisdiction of a Magistrate, appointed u/s 11 or Section 13 or Section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds courts, any reference in this code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said

district or metropolitan area.

4. A perusal of Section 6 reproduced above would show the classes of criminal courts which may be constituted besides the High Courts. Section 11 deals with jurisdiction of judicial magistrates. In every district, there has to be established as many courts of judicial magistrates of the first class and of the second class and at such places, as the State Government may, after consultation with the High Court, specify. Section 12 deals with Chief Judicial Magistrate and Additional Chief Judicial Magistrate. In every district the High Court has to appoint a judicial magistrate of the first class to be the Chief Judicial Magistrate. Section 14, which has a great deal of bearing deals with local jurisdiction of judicial magistrates. A perusal of Sub-section (2) of Section 14 reproduced above would clearly manifest that the jurisdiction and powers of every magistrate shall extend throughout the district except as otherwise provided.

5. The crucial question in this case is as to whether in the complaint filed on June 26, 1991, the terminus a quo for computing limitation has to be from June 26, 1991, when the complaint was initially filed in the Chief Judicial Magistrate Court at Kottayam or when it was presented before the Judicial Magistrate of First Class Court at Ettumanoor on April 2, 1996. If, once it is held that not only the Chief Judicial Magistrate, but the Judicial Magistrate of the first class or the Judicial Magistrate second class would have jurisdiction to entertain a matter pertaining to any place in the district, the presentation of complaint on April 2, 1996, at Ettumanoor, has to be held in continuation of the complaint presented at Kottayam on June 26, 1991. These relevant and crucial aspects depending upon the basic provisions of the Code of Criminal Procedure dealing with constitution of courts, various classes of Magistrates and the jurisdiction to entertain a complaint by a Judicial Magistrate or Chief Judicial Magistrate were not taken into consideration at all. The view that every Magistrate would have jurisdiction to entertain a complaint in a particular district, be it Chief Judicial Magistrate or some other Judicial Magistrate, would be fortified from a Full Bench decision of the Rajasthan High Court in Mahesh Chand v. State of Rajasthan 1985 Cri LJ 301. In that case, in the context of Sections 14, 15(2) and 190 of the Code of Criminal Procedure, it has been held that:

The Chief Judicial Magistrate is competent to take cognizance of any offence, committed any where in his district, notwithstanding the fact that the area in which the offence was committed, happens to fall within the local limits of the area assigned by the Chief Judicial Magistrate to some other Judicial Magistrate, subordinate to him, in accordance with the provisions of Sections 14 and 15 of the Code of Criminal Procedure.

6. It is conceded position that Ettumanoor is within the district of Kottayam and the complaint was presented initially at Kottayam on June 26, 1991.

7. Learned Counsel for the first respondent, however, relied on the decision of this Court in Parameswara Kurup v. Vasudeva Kurup 1964 KLJ 294. This

precedent pertains to civil cases. Surely, while dealing with the civil matter, there would be no occasion for considering the applicability of the provisions of the Code of Criminal Procedure as mentioned above. Learned Counsel also relied upon a decision of this Court in Kunhimammed v. Khadeeja 1995 1 KLT 350. The facts of the case aforesaid would, however, reveal that the petitioner in that case filed a complaint u/s 138 of the Negotiable Instruments Act beyond the period of limitation and sought to condone the delay of 15 days to file the same on the ground that he was hospitalised at the relevant time and could not file the same within the period prescribed. He produced a certificate from the doctor who treated him and prayed that the delay may be condoned. The concerned court refused to condone the delay and dismissed the petition. While dealing with the revision filed by the petitioner challenging the order refusing to condone the delay, the learned single judge of this Court held thus:

Generally, every motion before a criminal court has to be in the form of a complaint, application or petition. It seems to be clear that the words application, complaint and petition are neither interchangeable nor have the same meaning or import. A complaint u/s 142 of the Negotiable Instruments Act is not the same as an application. It is neither a petition nor the person making it a petitioner. The period prescribed for filing a complaint under the Act is a period of limitation within which it has to be filed and can neither be extended u/s 473 of the Code of Criminal Procedure nor the delay condoned u/s 5 of the Limitation Act. Even otherwise in regard to original proceedings by way of a complaint the period prescribed therefore has to be adhered to. A complaint made beyond one of the date on which the cause of action had arisen under Clause (c) of the proviso to Section 138 will, in my view, be barred and the Magistrate will get no jurisdiction to take cognizance of the offence alleged in the complaint.

8. This judgment, in the considered view of this Court, would not be applicable to the facts of this case. The present case is not a case where the complaint might have been filed beyond the period of limitation when it was presented on June 26, 1991, before the Chief Judicial Magistrate, Kottayam.

9. The other contention of learned Counsel for the first respondent that once the plea of the first respondent with regard to lack of jurisdiction of the court at Kottayam was upheld, the court at Ettumanoor alone would have jurisdiction to entertain the petition and, therefore the terminus a quo for computing limitation would commence only when the complaint was presented at Ettumanoor is also devoid of merit. There is a distinction between jurisdiction to entertain and try a complaint. From the provisions of Section 14 of the Code of Criminal Procedure reproduced above, it is clear that every Magistrate has jurisdiction to entertain a complaint throughout the district, but because of division of work that court may not try a complaint and, therefore, it may order presentation of the complaint at a place so earmarked. Once, the court at Kottayam had jurisdiction to entertain the complaint, the period provided for limitation would stop running from the day it was presented in the said court.

10. In view of the discussion as made above based upon the provisions of the Code of Criminal Procedure, there may not arise any occasion to further discuss the matter. However, it would be appropriate to mention that by virtue of the provisions contained in Sub-section (e) of Section 460 if any Magistrate not empowered by law to do any other thing including to take cognizance of an offence, but may have erroneously in good faith done that thing, his proceedings shall not be set aside merely on the ground that he was not empowered. That being so, even if it is assumed that the Magistrate at Kottayam was not empowered to take cognizance of an offence u/s 190 of the Code of Criminal Procedure, but had done so in good faith, the proceedings initiated by him would not be set aside on the ground that he was not empowered to do so. The initiation of proceedings on a complaint filed on June 26, 1991, at Kottayam cannot, thus, be held to be illegal.

11. In view of the discussion as made above, the order dated October 31, 1998, passed by the Sessions Judge, Kottayam, is set aside and the one passed by the Judicial First Class Magistrate, Ettumanoor, dated November 8, 1996, is restored. The revision is accordingly allowed. The parties through their counsel are directed to appear before the Judicial First Class Magistrate, Ettumanoor on October 30, 2006. In the facts and circumstances of the case and while also considering that already a period of fifteen years has gone by and the complaint has not made any substantial progress, I direct the learned Magistrate to deal with the matter as expeditiously as possible and preferably within a period of six months from the date the parties enter appearance before him. It is made clear that the parties to the litigation would not be given more than two opportunities to lead evidence. For so doing, they may seek assistance of the court in summoning the witnesses, but it is their responsibility to make available the witnesses sought to be examined by them.