
(2010) 03 KL CK 0026
In the High Court Of Kerala
Case No : Criminal R.P. No. 940 of 2009

Wipro Ltd.

APPELLANT

Vs

Sasi and Another

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407, 410
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 4 BC 237

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : T.K. Shajahan, for the Appellant; K.T. Shymakumar, for 1st Respondent and Rekha C. Nair, for 2nd Respondent, for the Respondent

Judgement

P.S. Gopinathan, J.—The revision Petitioner prosecuted the first Respondent before the Addl. Chief Judicial Magistrate, Ernakulam in C.C. No. 184/03 filed on 16-9-2002, alleging offence u/s 138 of the Negotiable Instruments Act. The learned Magistrate took cognizance and issued process to the first Respondent. On appearance, he pleaded not guilty and it was adjourned from time to time. On 30-11-2007, the revision Petitioner filed chief affidavit and for cross-examination it was posted to 16-1-2008. Then it was adjourned to 12-2-2008, then to 31-3-2008, again to 23-4-2008. On 23-4-2008, the learned Magistrate addressed the Chief Judicial Magistrate to transfer the case to the file of the Judicial Magistrate of the First Class V. It appears that the case was made over to Judicial Magistrate of the First Class V, Ernakulam u/s 410 Code of Criminal Procedure. Thereafter, the learned Magistrate adjourned the case on various occasions. On 3-12-2008, the learned Magistrate noted that in the light of the decision reported in Santhosh Kumar v. Mohanan 2008 (3) KLT 461, he has no jurisdiction to try the case. Consequently, by order dated 3-12-2008, the complaint was ordered to be returned to the revision Petitioner by the order impugned. It is assailing the legality, correctness and propriety of that order, this revision petition was filed.

2. Going by the complaint it is seen that the complaint was filed before the Additional Chief Judicial Magistrate with a pleading that the revision Petitioner's bank is situated within the jurisdiction of that court. It is not disputed that the location of the bank of the complainant would not confer jurisdiction on a court of law. By the pleadings in the complaint, it is not specific as to where exactly the transaction took place or from which place the cheque was issued by the first Respondent. In the above circumstances, what can be safely concluded is that, the cheque was issued by the first Respondent from his place of business and cheque was dishonoured by the bank situated at his place of business. However, no objection was raised by the first Respondent at any time that the court below had no territorial jurisdiction. It is in that circumstance the trial was started and as part of the trial, the chief affidavit was filed. Since the complaint was pending before the trial court from 16-9-2002 and the trial had started without any objection regarding jurisdiction raised by the first Respondent, the learned Magistrate should not have returned the complaint amidst the trial.

3. This Court in *Meenakshi Vs. Udayakumar and State of Kerala*, held that, if an objection regarding territorial jurisdiction is not raised at the earliest opportunity, then it shall not be entertained by the court at a later stage. Here, even without any objection by the accused, the court suo motu ordered to return the complaint. The Addl.Chief Judicial Magistrate without caring to look into the pleadings regarding jurisdiction took cognizance and trial was in progress. In such circumstance also, the lower court should not have returned the complaint. The lower court should have borne in mind the principle of the maxim "*Actus curiae neminem gravabit*"--An act of the court shall prejudice no man. One Magistrate taking cognizance without applying mind on the plea regarding territorial jurisdiction, accused entering appearance not raising dispute regarding territorial jurisdiction, adjourning the case for about six years, recording evidence in part, then asking the Chief Judicial Magistrate to make over the case to Anr. court without disclosing that it is a part heard case, Chief Judicial Magistrate making over the case to Anr. Magistrate, the transferee Magistrate adjourns the case on various occasions and then suo motu returning the complaint stating that the court had no territorial jurisdiction are not only the better interest of the justice but also causes great prejudice to the parties. In the event the revision Petitioner is asked to take back the complaint to file it in the appropriate court, every process has to be taken afresh and then to wait for Anr. five or six years to get it ripe for trial. Suo motu return of complaint, that too, after six years, had in fact caused great prejudice to the revision Petitioner. For that reason also, it may not be appropriate to uphold the order. However, on the basis of the pleadings in the complaint it cannot be said that the cause of action had arisen at Ernakulam.

4. In the above circumstances, though the order impugned is otherwise not justified, it may not be appropriate to proceed with the trial by a Magistrate having no territorial jurisdiction. In the peculiar facts and circumstances of the case, I find that it would be appropriate to set aside the order impugned and to

transfer the case to the Chief Judicial Magistrate, Thiruvananthapuram in exercise of the powers conferred on this Court u/s 407 Code of Criminal Procedure with liberty to the Chief Judicial Magistrate, Thiruvananthapuram to make over the case to any of the courts within his jurisdiction, if so proposed or else to proceed with the trial and dispose it himself. The parties shall appear before the Chief Judicial Magistrate, Thiruvananthapuram on 12-4-2010. In the event the Chief Judicial Magistrate so proposes to make over the case to Anr. Magistrate, it shall be done on the same day itself with direction to the parties to appear before the court concerned on the nearest possible day, which shall be specified in the order. Lower court shall forward the entire records to that court forthwith. At any rate, the case shall be disposed within three months after receipt of records.

5. Before leaving the matter, in think that it would be appropriate to issue following directions to the criminal courts.

(1) Before taking cognizance on complaints, the Magistrate shall see that there is sufficient pleading in the complaint regarding territorial jurisdiction and with the plea on record the court has got territorial jurisdiction.

(2) Dispute regarding territorial jurisdiction shall not be entertained once the trial is started.

(3) Part heard cases shall, normally, be posted on day to day basis and disposed at the earliest. Such cases shall not be adjourned indiscriminately.

(4) Chief Judicial Magistrates, while exercising jurisdiction u/s 410 of the Code of Criminal Procedure, shall not withdraw or recall part heard cases except in special circumstances and in every such case he shall briefly record reasons for so doing.

Criminal Revision Petition is disposed of accordingly.