

Raj Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Dec-17-2012

Judge : Manoj Misra

Appeal No. : Criminal Misc. Writ Petition No. 16701 of 2012

Appellant : Raj Singh

Respondent : State of U.P. and Another

Judgement :

Manoj Misra, J.

Heard learned counsel for the petitioner and the learned AGA for the State.

By this writ petition, the petitioner has challenged the order dated 3.10.2012 passed by the Additional District and Sessions Judge, Court No.12, Ghaziabad in Criminal Revision No. 239 of 2012 as also the order dated 24.4.2012 passed by the Judicial Magistrate / Additional Civil Judge (Junior Division) Court No.2, Ghaziabad in Complaint Case No.849 of 2011 whereby the application of the petitioner, seeking discharge on ground of lack of territorial jurisdiction of the Court, has been rejected.

The facts, as they appear on the record, are that opposite party no.2 filed a complaint at Ghaziabad alleging therein that three cheques drawn on Oriental Bank of Commerce, Shah Satnamji Nagar, Sirsa were issued by the accused (the

petitioner herein) in favour of the complainant for discharge of his liability, which were deposited by the complainant at Oriental Bank of Commerce, Extension Counter, Diwakar Model School, Shyam Park Extension at Sahibabad, Ghaziabad for collection. They returned unpaid vide bank memo dated 13.5.2008 for insufficient fund in the drawer's account. When the complainant contacted the accused with regards to the dishonour of the cheques, the accused requested the complainant to re-present the cheques. Consequently, the cheques were re-presented for collection in the aforesaid bank and they again returned unpaid vide bank memo dated 10.6.2008 with remark of there being insufficient funds in the account. Consequently, on 17.6.2008, a notice of demand was given to the accused under registered post but the accused failed to make the payment and, as such, the complaint was filed with a prayer to punish the accused under Section 138 of the N.I. Act as also under Sections 406 and 420 IPC.

The Court took the statement of the complainant on affidavit and after considering the allegations made in the complaint, which were supported by the statement of the complainant as well as the documents on record, summoned the petitioner, under section 138 of the N.I. Act, by its order dated 16.9.2008.

The petitioner filed an objection to the summoning order claiming, inter alia, that the cheque was drawn on a bank at Sirsa (State of Haryana) and was delivered to the complainant at Sirsa, therefore, the court at Ghaziabad had no jurisdiction to proceed with the case.

The learned Magistrate rejected the objection of the accused (the petitioner) on two grounds: (a) that the proceedings under section 138 of the Negotiable Instruments Act are to be tried as a summons-case, which is to be carried out in accordance with provisions of Chapter XX of the Code wherein there is no provision of discharge, particularly for a case instituted otherwise than on a police report; and (b) that in view of the decision of the Apex Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and another reported in (1999) 7, SCC Page 510 which was followed by the Apex Court in the case of Shamshad Begum (Smt.) Vs. P. Mohammed, reported in (2008) 13, SCC page 77, the court would have jurisdiction to try the case under Section 138 N.I. Act from where legal notice

has been issued to the drawer demanding payment of the dishonoured cheque apart from the place where the other components of the offence has taken place namely, (a) drawing of the cheque; (b) presentation of cheque to the bank; (c) returning of the cheque unpaid by the drawee bank; and (d) failure of drawer to make payment within 15 days of the receipt of the notice. In the instant case, the cheque concerned was presented for collection within the territorial jurisdiction of Ghaziabad, it also returned unpaid at Ghaziabad and the information of which was also given to the complainant at Ghaziabad. The learned Magistrate, therefore, in the light of the apex court decisions, held that the Court at Ghaziabad had territorial jurisdiction to proceed with the case.

The order passed by the learned Magistrate was subjected to challenge before the revisional court. The revisional court upheld its validity and dismissed the revision.

Challenging both the orders, the learned counsel for the petitioner contended that the courts below failed to take into consideration the subsequent decision of the Apex Court in the case of *Harman Electronics Private Limited and another Vs. National Panasonic Private Limited* reported in (2009) 1, SCC (Cri) 610 wherein the Apex Court took the view that the Court would not be conferred with jurisdiction to try an offence punishable under Section 138 of the N.I. Act on mere fact that the notice of demand was issued from within its jurisdiction inasmuch as the offence is committed only when the drawer does not pay within 15 days from the date of receipt of notice.

Before examining the strength of the submission made by the learned counsel for the petitioner, it would be useful to recapitulate the law laid down by the apex court in *K. Bhaskaran's case* (supra). In paragraphs 14, 15 and 16 of the judgement in *K. Bhaskaran's case*, the apex court observed as follows:

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the

receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"178. (a)- (c) * * *

(d) where the offence consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus, it is clear, if five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

In the case of Harman Electronics (Supra) the facts were that the cheque concerned was issued at Chandigarh and it was also deposited for collection at Chandigarh and the dishonour of the cheque also took place at Chandigarh whereas the notice of demand was issued from Delhi. In that context, the Apex Court took the view that since the offence would be complete only on the expiry of 15 days from the date of service of notice of demand, mere issuance of the notice from Delhi would not confer jurisdiction on the Court at Delhi to try the case. In fact, in paragraph 11 of the judgement in Harman Electronics (supra), the Apex Court had observed: "The complaint petition is totally silent as to whether the said cheque was presented at Delhi." Whereas in the instant case, as per the complaint allegations, the cheque was deposited for collection at Oriental Bank of Commerce, Extension Counter, Diwakar Model School, Shyam Park Extension,

Sahibabad, Ghaziabad, where the complainant had his account, and it was at Ghaziabad that the bank returned the cheque unpaid and gave information of it to the payee. Thus, on the principles laid in the decision of the Apex Court in the case of K. Bhaskaran (supra), the Court at Ghaziabad would also have jurisdiction to try the case. It would be useful to note that the Apex Court, while deciding the case of Harman Electronics (supra), had noticed the decision rendered by it in the case of K. Bhaskaran (Supra). The correctness of the decision in K. Bhaskaran's case was neither questioned nor doubted. Accordingly, the law laid in K. Bhaskaran's case would still be binding and, as such, the court, within whose territorial jurisdiction the cheque has been presented for collection, would have jurisdiction to try an offence punishable under Section 138 of the Act. I, therefore, do not find any illegality in the order passed by the courts below.

At this stage, the learned counsel for the petitioner raised another plea with regards to the validity of the summoning order. It has been submitted that although the petitioner has been summoned under Section 138 of the N.I. Act only but as the complaint was filed with a prayer to punish the petitioner under sections 406 and 420 IPC as well, the court by deciding to proceed on the complaint would be deemed to have taken cognizance of an offence punishable under sections 406 and 420 IPC, therefore, it was under a legal obligation to examine the complainant on oath under section 200 Cr PC before proceeding to issue process and in such circumstances the enabling provisions of section 145 of the N.I. Act to act on an affidavit of the complainant would not be attracted as they are limited to a case where the complaint is for an offence punishable under section 138 of the N.I. Act only. It has been contended that as the court did not examine the complainant on oath and relied only on the statement made in an affidavit, the summoning order stood vitiated.

The above contention of the learned counsel for the petitioner is wholly misconceived. The court under sub section (1) of section 190 of the Code of Criminal Procedure is entitled to take cognizance of "any offence" upon receiving a complaint of facts which constitute such offence. It is not obligatory for the Court to take cognizance of the offences which the complainant alleges to have been committed, particularly when the facts in the complaint do not make out

such an offence. In the instant case even though the complainant may have made a prayer for prosecution of the accused for offences punishable under Sections 406 and 420 IPC apart from the one punishable under Section 138 of the N.I. Act, the court found commission of offence punishable under section 138 of the N.I. Act only. As is clear from the fact that summons were issued under Section 138 of the N.I. Act only. In the circumstances, by virtue of section 145 of the N.I. Act, the court was empowered to take complainant's evidence on affidavit. Accordingly, the issuance of process, by relying on complainant's affidavit, cannot be faulted.

No other point was pressed.

For the reasons recorded above, the writ petition has no merit and is, accordingly, dismissed.

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