

Vinay Kumar Shailendra Vs. Delhi High Court Legal Ser.Commit.and anr

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Court : Supreme Court of India

Decided On : Sep-04-2014

Judge : T.S. Thakur and V. Gopala Gowda and C. Nagappan

Appellant : Vinay Kumar Shailendra

Respondent : Delhi High Court Legal Ser.Commit.and anr

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.8468 OF2014(Arising out of S.L.P. (C) No.29044 of 2009) Vinay Kumar Shailendra Appellant Versus Delhi High Court Legal Services Committee and Anr. Respondents With CIVIL APPEAL No.8469 OF2014(Arising out of SLP (C) No.35762/2009)

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of a judgment dated 23rd September, 2009 passed by a Division Bench of the High Court of Delhi in W.P. (C) No.11911 of 2009 whereby the High Court has invoked its jurisdiction under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. and directed return of all complaints filed

under Section 138 of the Negotiable Instrument Act, 1881 in which the Metropolitan Magistrates in Delhi have taken cognizance only because the statutory notices in terms of proviso to Section 138 of the Act have been issued to the drawers of the cheque from Delhi. The matter arose out of a writ petition filed by the Delhi High Court Legal Services Committee in public interest pointing out that a very large number of complaints under Section 138 of the Act were pending in Courts of Metropolitan Magistrates in Delhi in which cognizance had been taken although the Courts concerned had no territorial jurisdiction to do so. The Committee's case before the High Court was that such complaints were filed among others by financial institutions and banks only on the ground that the statutory notices demanding payment against the dishonoured cheque had been issued from Delhi. Issue of a notice demanding payment of the dishonoured cheque was not, however, sufficient to confer jurisdiction upon the Courts in Delhi argued the Committee. Reliance in support was placed upon the decision of this Court in *Harman Electronics Private Limited and Anr. v. National Panasonic India Private Limited* (2009) 1 SCC720. The Committee's grievance was that notwithstanding a clear exposition of law on the subject by this Court in *Harmans case* (supra) complaints had been filed and cognizance taken by the Courts in Delhi, relying upon the decision of this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (1999) 7 SCC510. It was in terms contended before the High Court that in the light of the pronouncement of this Court in *Harmans case* (supra) the complaints could not have been entertained nor could the accused persons be summoned for trial in the Courts in Delhi. It was also argued that number of such complaints is so large that the Magistrates in Delhi were unable to handle and effectively manage the docket explosion and attend to what was otherwise within their jurisdiction and called for their immediate attention.

3. The contentions urged by the Committee found favour with the High Court who relying upon the decisions of this Court in *Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur and Anr.* (AIR 1966 SC81 and *Air India Statutory Corporation and Ors. v. United Labour Union and Ors.* (1997) 9 SCC377 held that the Constitution did not place any fetters on the extraordinary jurisdiction exercisable by the High Court in a situation where Courts are flooded with complaints which they had no jurisdiction to entertain. The High Court further held

that a direction for return of the complaints for presentation before the competent Courts was in the circumstances necessary, as Magistrates who had issued the summons were unable to dismiss the complaints suo moto in the light of the decision of this Court in *Adalat Prasad Rooplal v. Jindal & Ors.* (2004) 7 SCC338 The High Court accordingly allowed the writ petition with the following directions:

Consequently, in exercise of power under Article 226 of the Constitution read with Section 482 of Code of Criminal Procedure, we direct return to the complainants for presentation in the Court of competent jurisdiction all those criminal complaints filed under Section 138 of NI Act that are pending in the courts of Metropolitan Magistrates in Delhi in which cognizance has been taken by them without actually having territorial jurisdiction.

4. The appellant who is a practicing Advocate of the High Court of Delhi has, with the permission of this Court, filed this appeal which was referred for hearing to a three-Judge Bench by an order dated 3rd November, 2009. That is precisely how the present appeal alongwith the connected appeal filed by Indiabulls Financial Services Ltd. against the very same order passed by the High Court have come up before us.

5. We have heard learned counsel for the parties at some length. The order passed by the High Court simply directs return of complaints in cases where the same have been filed only because the statutory notices have been issued from Delhi. The direction proceeds on the basis that issue of statutory notices from Delhi by itself is not sufficient to confer jurisdiction on the Delhi Courts to entertain the complaints. Reliance has been placed for that proposition upon the decision of this Court in *Harmans case* (supra). In *Dashrath Rupsingh Rathod v. State of Maharashtra and Anr.* (2014) 9 SCALE97 we have had an occasion to consider whether the view expressed by this Court in *K. Bhaskarans case* (supra) was sound and whether complaints under Section 138 could be maintained at a place other than the place where the drawee bank is situate. Answering the question in the negative this Court held that an offence under Section 138 is committed no sooner the cheque issued on an account maintained by the drawer with a bank and representing discharge of a debt or a liability in full or part is dishonoured on

the ground of insufficiency of funds or on the ground that the same exceeds the arrangements made with the banker. Prosecution of the offender and cognizance of the commission of the offence is, however, deferred by the proviso to Section 138 till such time the complainant has the cause of action to institute such proceedings. This Court found that the proviso to Section 138 does not constitute ingredients of the offence punishable under Section 138. The legal position on the subject was summed up in the following words:

To sum up: (i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank. (ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138. (iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if (a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue. (b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and (c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice. (iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act. (v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant. (vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured. (vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with

other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

6. In the light of the above pronouncement of this Court we have no hesitation in holding that the issue of a notice from Delhi or deposit of the cheque in a Delhi bank by the payee or receipt of the notice by the accused demanding payment in Delhi would not confer jurisdiction upon the Courts in Delhi. What is important is whether the drawee bank who dishonoured the cheque is situate within the jurisdiction of the Court taking cognizance. In that view, we see no reason to interfere with the order passed by the High Court which simply requires the Magistrate to examine and return the complaints if they do not have the jurisdiction to entertain the same in the light of the legal position as stated in Harmans case (supra). All that we need to add is that while examining the question of jurisdiction the Metropolitan Magistrates concerned to whom the High Court has issued directions shall also keep in view the decision of this Court in Dashraths case (supra).

7. With the above observations these appeals fail and are hereby dismissed but in the circumstances without any orders as to costs. ...J.

(T.S. THAKUR)J.

(V. GOPALA GOWDA)J.

(C. NAGAPPAN) New Delhi September 4, 2014 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.1911 OF2014(Arising out of S.L.P. (Crl.) No.5644 of 2010) Times Business Solution Limited Appellant Versus Databyte Respondent With CRIMINAL APPEAL No.1912 OF2014(Arising out of S.L.P. (Crl.) No.5645 of 2010) With CRIMINAL APPEAL No.1913 OF2014(Arising out of S.L.P. (Crl.) No.5280 of 2010)

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These three appeals arise out of an order dated 1st February, 2010 passed by the High Court of Bombay whereby Criminal M.C. Nos. 281 of 2010, 282 of 2010 and 296 of 2010 filed by the appellants have been dismissed and the orders passed by the Metropolitan Magistrate returning the complaints filed by the appellants under Section 138 of the Negotiable Instrument Act, 1881 for presentation before the competent Court upheld.

3. It is common ground that the cheques in all the three cases had been issued on different branches namely, Bank of India, Ruby Park and ICICI Bank, Kolkata and Punjab National Bank, Chapraula, Gautam Budh Nagar, U.P. which are outside Delhi. Complaints under Section 138 of the NI Act were all the same filed in Delhi because the cheques had been deposited by the complainants in their Delhi bank accounts for collection and because notice of dishonour was issued to the accused persons from Delhi. Relying upon the decision of this Court in *Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* (2001) 3 SCC609 the High Court held that mere presentation of cheques before banks in Delhi when the drawee bank is situated outside Delhi will not confer jurisdiction upon the Delhi courts nor will the issue of a notice of dishonour from Delhi would do so. That view, in our opinion, is unexceptionable having regard to the decision of this Court in *Dashrath Rupsingh Rathod v. State of Maharashtra and Another* (2014) 9 SCALE97 This Court has in that case examined at length the principles underlying Section 138 and held that a unilateral act of presentation of the cheque anywhere in the country or issue of a notice of dishonour from a place chosen by the complainant does not by itself confer jurisdiction upon the Court from within whose jurisdiction such presentation is made or notice issued. Following the view taken by this Court in *Dashraths case* (supra) we have no hesitation in holding that the High Court was justified in refusing to interfere with the orders passed by the Metropolitan Magistrate. These appeals accordingly fail and are hereby dismissed but in the circumstances without any no orders as to costs.J.

(T.S. THAKUR)J.

(V. GOPALA GOWDA)J.

(C. NAGAPPAN) New Delhi September 4, 2014 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.1914 OF2014(Arising out of S.L.P. (Crl.) No.690 of 2011) M/s K K. Ploycolor India Ltd. & Ors. Appellants Versus Global Trade Finance Ltd. & Anr. Respondents With CRIMINAL APPEAL No.1915 OF2014(Arising out of S.L.P. (Crl.) No.718 of 2011) With CRIMINAL APPEAL No.1916 OF2014(Arising out of S.L.P. (Crl.) No.749 of 2011)

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of an order dated 15th September, 2010 passed by the High Court of Judicature at Bombay whereby Crl. Application Nos.1491, 2759 and 2760 of 2010 have been allowed and the orders passed by the Magistrate set aside and the matter remitted back to the Magistrate with the direction that the criminal complaints filed by the complainants- respondents herein shall be disposed of expeditiously.

3. Complaints under Section 138 of the Negotiable Instrument Act, 1880 appear to have been filed by the respondent-company in the Court of Metropolitan Magistrate, Bandra which were entertained by the Magistrate and process issued against the accused persons. Revision applications were then filed before the Court of Sessions at Bombay challenging the jurisdiction of the Magistrate to entertain the complaints. The Revisional Court relying upon Harman Electronics Private Limited and Anr. v. National Panasonic India Private Limited (2009) 1 SCC720 held that the Magistrate did not have the jurisdiction to entertain the complaints. The orders passed by the Magistrate were set aside and the complaints directed to be returned for presentation before the competent Court. Aggrieved by the said orders the complainant preferred Criminal Applications No.1491, 2759 and 2760 of 2010 before the High Court who relying upon the

decision of this Court in K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC510 and three other decisions of the Bombay High Court held that the Magistrate had the jurisdiction to entertain the complaint as the cheque had been presented before a bank at Bombay which fact was, according to the High Court, sufficient to confer jurisdiction upon the Magistrate to entertain the complaints and try the cases. The orders passed by the Revisional Court were accordingly set aside and the Magistrate directed to proceed with the trial of the cases expeditiously as already noticed. The present special leave petitions have been filed by the accused persons assailing the view taken by the High Court.

4. A plain reading of the orders passed by the High Court would show that the judgment proceeds entirely on the authority of the decision of this Court in K. Bhaskaran's case (supra). That decision has been reversed by this Court in Dashrath Rupsingh Rathod v. State of Maharashtra and Anr. (2014) 9 SCALE97. This Court has, on an elaborate consideration of the provision of Section 138 and the law on the subject, held that presentation of a cheque for collection on the drawee bank or issue of a notice from a place of the choice of the complainant would not by themselves confer jurisdiction upon the Courts where cheque is presented for collection or the default notice issued demanding payment from the drawer of the cheque. Following the said decision we have no hesitation in holding that the High Court was wrong in interfering with the order passed by the Sessions Judge.

5. We accordingly allow these appeals and set aside the order passed by the High Court and restore those passed by the Revisional Court. The parties are, however, left to bear their own costs.J.

(T.S. THAKUR)J.

(V. GOPALA GOWDA)J.

(C. NAGAPPAN) New Delhi September 4, 2014 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.1917 OF 2014 (Arising out of S.L.P. (Crl.) No.7619 of 2011) Suku Appellant Versus Jagdish and Anr. Respondents With CRIMINAL APPEAL

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of an order dated 15th June, 2011 passed by the High Court of Kerala at Ernakulam whereby the High Court has held that the presentation of a cheque by the complainant in a bank at Krishnapuram, Kayamkulam, Kerala did not confer jurisdiction upon Courts at Kayamkulam to entertain a complaint under Section 138 of the Negotiable Instruments Act and try the accused persons for the offence.

3. It is not in dispute that the cheque in question was issued by the respondent on Syndicate Bank, Gokaran branch in Karnataka which was presented for collection by the complainant at Krishnapuram, Kayamkulam, Kerala but dishonoured for insufficiency of funds. The complainant then filed complaint at Kayamkulam in the State of Kerala which were returned by the Magistrate to be filed before the proper Court as the Court at Kayamkulam, Kerala, had no territorial jurisdiction to entertain the same. The matter was taken up before the High Court by the complainants in Crl. M.C. Nos.514 of 2011 and 1653 of 2011 which the High Court has dismissed by the impugned order holding that the presentation of the cheque to a Bank in Kerala would not by itself confer jurisdiction upon the Kerala Court. The High Court has in support of that view relied upon the decision of this Court in Harman Electronics Private Limited and Anr. v. National Panasonic India Private Limited (2009) 1 SCC720 where this Court held that the issue of notice to the drawer of the cheque does not by itself give rise to a cause of action to confer jurisdiction upon the Court to take cognizance.

4. The view taken by the Magistrate based as it is on the decision of this Court in Harman's case (supra) does not, in our opinion, call for any interference by this Court, in the light of the pronouncement of this Court in Dashrath Rupsingh Rathod v. State of Maharashtra and Another (2014) 9 SCALE97 where this Court

has examined the issue at some length and held that presentation of a cheque by the complainant at a place of his choice or issue of notice by him to the accused demanding payment of the cheque amount are not sufficient by themselves to confer jurisdiction upon the courts where such cheque was presented or notice issued. Following the decision in Dashrath Rupsingh Rathods case (supra), we affirm the order passed by the High Court.

5. These appeals accordingly fail and are, hereby, dismissed but in the circumstances without any orders as to costs. ...J.

(T.S. THAKUR)J.

(V. GOPALA GOWDA)J.

(C. NAGAPPAN) New Delhi September 4, 2014 REPPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL ORIGINAL JURISDICTION TRANSFER PETITION (CRL.)No.338 OF2010T.A.M.A. Jawahar Appellant Versus Arun Kumar Gupta Respondent AND TRANSFERRED CASE (CRL.) NO.4 OF2012

JUDGMENT

T.S. THAKUR, J.

Transfer Petition (Crl.) No.338 of 2010 and Transferred Case (Crl.) No.4 of 2012 are delinked and to be posted for hearing separately. ...J.

(T.S. THAKUR)J.

(V. GOPALA GOWDA)J.

(C. NAGAPPAN) New Delhi September 4, 2014

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