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Court : Mumbai Goa

Decided On : Sep-25-2014

Judge : U.V. Bakre

Appeal No. : Criminal Writ Petition Nos. 76 of 2014 & 77 of 2014

Appellant : Sidharth Narayan Siddhapur and Another

Respondent : FLUIDMAC and Another

Advocate for Def. : Mr. Ramani

Advocate for Pet/Ap. : Mr. Menezes

Judgement :

Oral Judgment:

1. Heard Mr. Menezes, learned Counsel for the petitioners and Mr. Ramani, learned Counsel for the respondent No.1.
2. Rule. Rule made returnable forthwith. By consent heard forthwith.
3. By this petition, the petitioners have taken exception to the judgment and order dated 15.7.2014 passed by learned Additional Sessions Judge, FTC-I, South Goa, Margao ("the Appellate Court" for short) in Criminal Revision Application No.62/2013 and the Judgment and order dated 31.7.2013 passed by learned Judicial Magistrate, First Class, Quepem ("the J.M.F.C." for short) in Criminal Case

No.34/NI/2010/A.

4. The petitioners are the accused persons whereas respondent No.1 is the complainant in the said Criminal Case. Parties shall hereinafter be referred to as per their status in the said Criminal Case.

5. Complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 ("the Act" for short) against the accused persons, which has been registered as Criminal Case No.34/NI/2010/A. The case of the complainant, in short, is as follows:-

Towards supply of goods valued at Rs.23,77,536/-, made by the complainant to the accused persons, the accused No.2 issued a cheque dated 15.8.2009 bearing No.030281 for Rs.11,88,768/- drawn on Axis bank Limited Malleswaram, Bangalore (KT) 560003 and the said cheque was encashable at any branch of the said bank. The Axis Bank has a branch at Panaji Goa. The said cheque was sent for realization through the bankers of the complainant namely Central Bank of India, Kakoda branch which was presented by the said bank to the Axis Bank Ltd. Panaji branch but the same was returned dishonoured. As per the cheque return memo the endorsement was "Account closed". Thereafter legal notice under Section 138 of the Act was sent to the accused persons and since the notice was not complied with, the complaint under Section 138 of the Act came to be filed.

6. The accused persons filed an application before the learned J.M.F.C. for dismissal of the complaint on the ground that the said Court has no jurisdiction and that transaction had not take place within the jurisdiction of said Court and, therefore, no cause of action has accrued to the complainant within the jurisdiction of the said Court. The complainant filed reply resisting the application.

7. Upon consideration of the material on record and hearing the learned counsel for the accused persons and the complainant, the learned J.M.F.C., by order dated 31.07.2013, held that it has jurisdiction to decide the said complaint and she dismissed the said application filed by the accused persons. Aggrieved by the said order dated 31.7.2013 passed by learned J.M.F.C., the accused persons filed Criminal Revision Application No.62/2013. By judgment and order dated

15.07.2014, learned Appellate Court concurred with the findings of learned J.M.F.C. and dismissed the said revision application. The said order dated 17.07.2014 of the Appellate Court and the order dated 31/07/2013 of the J.M.F.C. are impugned in the present petition.

8. Mr. Menezes, learned counsel appearing on behalf of the accused persons, relied upon the judgment of the Hon'ble Supreme Court in the case of "Dashrath Rupsingh Rathod Vs. State of Maharashtra and another", (2014 STPL (Web) 499 SC) and contended that the learned J.M.F.C. has no territorial Jurisdiction. He read out paragraph 17 of the said judgment and urged that this paragraph refers to the location of the bank on which cheque has been drawn. According to Mr. Menezes, therefore, the bank on which the cheque is drawn has jurisdiction and even not the place where the cheque is dishonoured. He pointed out that in the present case the cheque was drawn on Axis Bank Ltd., Malleswaram branch at Bangalore and therefore, according to him, it is Bangalore Court which has jurisdiction. He further submitted that in Criminal Writ Petition No.2362/2014, between "Mr. Ramanbhai Mathurbhai Patel Vs. State of Maharashtra and another", learned Single Judge of this Court held that the place where the cheque is dishonoured will have jurisdiction, but the Hon'ble Supreme Court has granted interim stay in respect of the said judgment of the learned Single Judge. He contended that the learned JMFC Quepem does not have territorial jurisdiction and that it is only the Court at Bangalore which would have territorial jurisdiction. He therefore urged that the impugned orders are liable to be quashed and set aside and the complaint deserves to be dismissed.

9. Mr. Ramani, learned counsel appearing on behalf of the complainant invited my attention to paragraphs No.19 and 20 of the judgment of the Apex Court in the case of "Dashrath Rupsingh Rathod" (supra), and submitted that territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence is committed and that the offence is committed where the cheque is dishonoured by the bank on which it is drawn. He submitted that by virtue of the judgment of the Apex Court in the case of "Dashrath Rupsingh Rathod" (supra), Panaji Court will have jurisdiction. He, therefore, urged that the complaint may be returned back to the complainant for presentation before the learned J.M.F.C., Panaji.

10. I have gone through the material on record and considered the submission advanced by learned counsel for the parties and as also the judgments relied upon by the parties.

11. In the present case, the subject cheque has been issued on Axis Bank Limited, Malleswaram, branch at Bangalore. However, in the complaint, it is specifically averred that the cheque was encashable at any branch of the said bank. There is a branch of Axis Bank at Panaji. The complaint as well as the documents on record reveal that when the said cheque was presented by the complainant to its banker i.e. Central Bank of India Kakoda Branch, the same was sent by Central Bank of India, Kakoda branch for clearance to the Axis Bank Limited, Panaji and from there the cheque was dishonoured with the endorsement "Account closed". In paragraph 19 of the judgment of "Dashrath Rupsingh Rathod" (supra), the Hon'ble Supreme Court has observed thus:-

"The interpretation of Section 138 of the NI Act which commends itself to us is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly the JMFC at the place where this occurs is ordinarily where the Complaint must be filed, entertained and tried. The cognizance of the crime by the JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the Section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the Complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the Complaints even though non-compliance thereof will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall decide by this Judgment. We clarify that the Complainant is statutorily bound to comply with Section 177 etc. of the Cr PC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the

bank on which it is drawn."

12. From the above, it is clear, in terms of section 177 of Cr.P.C., the territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence is committed. The offence, in the present case, is committed where the cheque is dishonoured i.e. at Panaji. In this regard, I am also supported by the judgment of the learned Single Judge dated 25.8.2014 in Criminal Writ Petition No.2362/2014 between "Mr. Ramanbhai Mathurbhai Patel Vs. State of Maharashtra", in which learned Single Judge of this Court has held that in view of the judgment of the Hon'ble Supreme Court in the case of "Dashrath Rupsingh Rathod" (supra), the Court where the cheque has been dishonoured has jurisdiction. No doubt as pointed out by the learned counsel for the respondents, in special Leave to Appeal (Criminal) No.7251/2014, filed before the Hon'ble Supreme Court against the said judgment dated 25.08.2014, an interim stay of the operation of the impugned judgment has been granted. However, the finding of the learned Single Judge has not been set aside as yet.

13. Be that as it may, in view of the judgment of the Apex Court in the case of "Dashrath Rupsingh Rathod" (supra), I am of the considered view that territorial jurisdiction in the present case will be with Panaji Court where as per the complaint, the subject cheque was dishonoured.

14. In the result, Petition is partly allowed.

(a) The impugned judgment and order dated 15.7.2014 passed by the Appellate Court in Criminal Revision Application No.62/2013 and by the learned JMFC dated 31.7.2013 in Criminal Case No.34/NI/2010/A are quashed and set aside.

(b) It is held that the Quepem Court has no jurisdiction and that the territorial jurisdiction is with Panaji Court.

(c) Complaint shall therefore be returned back to the complainant with liberty to present the same before the Panaji Court. Complainant to present the complaint before the Panaji Court within a period of 30 days from the date the complaint is returned back by the learned J.M.F.C.

15. Rule is made absolute in the aforesaid terms, with no order as to costs.

16. Petition stands disposed of.

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