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Court : Mumbai

Decided On : Sep-09-2014

Judge : Abhay M. Thipsay

Appeal No. : Criminal Writ Petition No. 4421 of 2013

Appellant : Peter Devid Xavier Pinto

Respondent : Dinesh M. Ranawat and Another

Judgement :

Oral Order:

1. Rule.
2. By consent, rule made returnable forthwith.
3. Respondents waive service.
4. By consent, heard finally.
5. The petitioner is the sole accused in C.C.No.1117 of 2009, pending before the Judicial Magistrate First Class at Pune. The case is in respect of an offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the N.I. Act'), and arises on a complaint filed by the respondent No.1 (hereinafter referred to as 'the complainant', for the sake of clarity) herein. The petitioner had made an application before the learned Magistrate contending

that the learned Magistrate had no territorial jurisdiction to entertain the complaint and try the alleged offence, and praying that the complaint be returned to the complainant for presenting it before proper Court. However, on the ground that 'the collecting Bank was situated within the area where the learned Magistrate exercised his jurisdiction', the learned Magistrate did not accept the contention of the applicant and rejected his prayer. Aggrieved by the order of the Magistrate, the petitioner approached the Court of Sessions by filing an application for revision, but the learned Additional Sessions Judge who heard the revision was of the view that the Judicial Magistrate, Pune had the territorial jurisdiction to entertain the complaint and try the offence. As such, the revision application was dismissed. It is under these circumstances that the petitioner has approached this Court by invoking its jurisdiction under Article 227 of the Constitution of India, and its inherent powers saved Section 482 of the Code of Criminal Procedure.

6. Admittedly, the cheque in question was drawn on Bank of Maharashtra, Vasco-da-Gama Branch, Goa. From the tenor of the complaint, it is clear that the existence of jurisdiction to try the offence, in the Judicial Magistrate First Class at Pune, was claimed on the basis that 'the cheque in question was presented by the complainant for collection to his bankers at Pune'.

7. The legal position with respect to the jurisdiction of a Court in whose territorial jurisdiction the collecting bank would be situated, was not very clear. It was a matter of controversy and dispute even after the decision of the Hon'ble Supreme Court of India in the case of K.Bhaskaran Vs. Sankaran Vaidhyan Balan, (1999) 7 SCC 510. However, the controversy in that regard is now been settled by the Apex Court by its decision in the case of Deshrath Rupsingh Rathod V/s. State of Maharashtra and Anr., 2014(9) Scale, page no.97. It cannot be doubted now that neither the Court exercising local jurisdiction over the area where the collecting Bank is situated, nor the Court exercising jurisdiction over the area from where the notice of demand would be issued, would have jurisdiction to inquire into and/or try an offence punishable under Section 138 of the Negotiable Instruments Act, only by that reason.

8. It is, therefore, clear that the learned Judicial Magistrate First Class, Pune, would have no territorial jurisdiction to entertain the complaint and try the offence in question.

9. The learned counsel for the petitioner, however, submitted that in this case the affidavit of evidence of the respondent has already been filed. He submitted that this affidavit of evidence had been filed much before an objection to the territorial jurisdiction of the Judicial Magistrate First Class, Pune, was taken by the petitioner. He submitted that in view of the observations made by Their Lordships of the Supreme Court of India in the aforesaid case of Deshrath Rathod (Supra), the proceedings before the Magistrate were not liable to be transferred to any other Court.

10. I have carefully gone through paragraph 20 of the Judgment in Dashrath Rathod case to which my attention has been drawn by the learned counsel for the respondent. It would be appropriate to reproduce the said paragraph here.

"20. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e. applicability to Complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced 'as envisaged in Section 145(2)' of the Negotiable Instruments act, 1881, will proceedings continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to

the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred." (Emphasis supplied)

Their Lordships have referred to the stage contemplated by Section 145(2) of the Negotiable Instrument Act. It is made clear that cases where proceedings have gone to the stage of Section 145(2), or beyond, shall not be affected by the issue of jurisdiction.

11. It would be appropriate to reproduce Section 145 of the Negotiable Instrument Act here:

"145. Evidence on affidavit -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

It is clear that mere filing of an affidavit as contemplated under Sub Section (1) cannot be construed as having reached the stage contemplated by Sub-section (2) of Section 145 of the Negotiable Instrument Act. Sub Section (2) of Section 145 refers to the Court summoning and examining any person who has given evidence on affidavit. In other words, Sub-Section (2) would come in picture only after the Court would feel a necessity of summoning a person whose evidence has already been given on affidavit and after the Court actually summonses such a person.

Such a stage would arise when the person concerned is called and is examined/cross-examined. Mere filing of an 'affidavit of evidence' by the complainant in a given case would not save the proceedings from the operation of the law laid down in the said Judgment.

12. It is not disputed before me that no summons had been issued to any person for examining or cross-examining him as a witness in accordance with Sub-section (2) of Section 145 of the Negotiable Instrument Act. In any case, no such person has been examined or cross-examined.

13. Clearly the Judicial Magistrate First Class, Pune, does not have territorial jurisdiction to entertain the complaint and try the alleged offence. It, therefore, follows that the complaint should be returned to the complainant so that it may be presented by him before the proper Court.

14. The petition is allowed.

15. The impugned orders are set aside.

16. The learned Magistrate shall return the complaint to the complainant (respondent no.1 herein), for presentation before proper Court.

17. Rule is made absolute accordingly.

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