

Mala Bansal Vs. State of U.P. and Another

Mala Bansal Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/1182047

Court : Allahabad

Decided On : Dec-22-2014

Judge : Om Prakash-Vii

Appeal No. : Application No. 49119 of 2014

Appellant : Mala Bansal

Respondent : State of U.P. and Another

Judgement :

Heard learned counsel for the applicant and learned A.G.A.

This Criminal Misc. Application under Section 482 Cr. P.C. has been filed by the applicant with the prayer to quash the further proceeding of criminal case no. 53 of 2014 pending before Special Judicial Magistrate, Firozabad as well as further proceeding in pursuance of the summoning order dated 29.10.2014 under Section 138 of N.I. Act. Further prayer has been made to stay the further proceedings of the aforesaid case.

It appears that respondent no. 2 Manoj Kumar Jain had issued a cheque no. 409405 ACB/SV No. 1409405 on 14.3.2013 in favour of the applicant for an amount of Rs. 20 lacs in connection with the business transaction being done between them. The cheque was issued from the account maintained in the Amanath Co-operative Bank Limited, Bangalore. The said cheque was presented for encashment before the UCO Bank at Firozabad. The aforesaid cheque was

returned back unpaid and the applicant's bank i.e. UCO Bank sent an intimation to him in this regard. In turn the applicant sent a notice to the drawer demanding an amount of Rs. 20 lacs. The amount was never paid by the respondent no. 2 to the applicant. The respondent no. 2 filed a complaint before the court situated at District Firozabad, Uttar Pradesh. The accused respondent was summoned and he appeared and obtained bail from the court concerned. During the pendency of the trial an application was moved by the accused respondent with the prayer that since the cheque has been dishonoured at Bangalore, therefore, in view of the law laid down in *Dashrath Rupsingh Rathod Vs. State of Maharashtra and another reported in 2014 (86) ACC 882 (SC)* the court situated at Bangalore has only jurisdiction to try the matter. Objection was filed by the applicant before the court below.

After hearing the parties, by order dated 29.10.2014 the court below directed that the complaint be returned to the complainant for its presentation before the competent court at Bangalore within one month. Operative portion of the order is quoted below for ready reference :

Sri Nirmal Kumar Jain, counsel for the accused placed reliance on ruling of Hon'ble Apex Court *Dashrath Rupsingh Rathod Vs. State of Maharashtra and another 2014 (86) A.C.C. 882*. The three Judges bench of Hon'ble Supreme Court has ruled that Sec 177 of Cr. P.C. applies to cases under Sec. 138 Negotiable Instrument Act. Prosecution in such case 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 u/s 138 is committed along with other offences in a single transaction within the meaning of Sec. 220 (1) read with Sec. 184 of the Code of Criminal Procedure or is covered by the provisions of Sec. 182 (1) read with Sec. 184 and 220 thereof.

In the case, in hand the cheque was certainly dishonoured at Bangalore. Therefore competent court at Bangalore has jurisdiction to try this case under Section 138 N. I. Act.

Feeling aggrieved by the impugned order the applicant has filed the present application. Learned counsel for the applicant submits that the law laid down in Dashrath Rupsingh Rathod (Supra) is not applicable to the pending cases. Accused has been summoned and trial is going on, therefore, impugned order passed by the learned court below is illegal. Reference was also made at this stage to the law laid down in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and another reported in 1999 (39) A.C.C. 844 (SC) and the law laid down in the case of Dashrath Rupsingh Rathod (Supra).

Learned A.G.A. argued that since the Hon'ble Supreme Court has clearly laid down that the place of suing is the place where the cheque is dishonoured, therefore, learned trial court has rightly returned the complaint and there is no illegality in the impugned order.

I have considered the rival submissions of the counsel for the parties.

Para no. 31 and 32 of the judgment Dashrath Rupsingh Rathod (Supra) are quoted for ready reference :

31. 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.

32. Before parting with this aspect of the matter, we need to remind ourselves that an avalanche of cases involving dishonour of cheques has come upon the Magistracy of this country. The number of such cases as of October 2008 were estimated to be more than 38 lakhs by the Law Commission of India in its 213th Report. The result is that cases involving dishonour of cheque is in all major cities

choking the criminal justice system at the Magistrate's level. Courts in the four metropolitan cities and other commercially important centres are particularly burdened as the filing of such cases is in very large numbers. More than five lakh such cases were pending in criminal courts in Delhi alone as of 1st June 2008. The position is no different in other cities where large number of complaints are filed under S.138 not necessarily because the offence is committed in such cities but because multinational and other companies and commercial entities and agencies choose these places for filing the complaints for no better reason than the fact that notices demanding payment of cheque amounts were issued from such cities or the cheques were deposited for collection in their banks in those cities. Reliance is often placed on Bhaskaran's case to justify institution of such cases far away from where the transaction forming basis of the dishonoured cheque had taken place. It is not uncommon to find complaints filed in different jurisdiction for cheques dishonoured in the same transaction and at the same place.

This procedure is more often than not intended to use such oppressive litigation to achieve the collateral purpose of extracting money from the accused by denying him a fair opportunity to contest the claim by dragging him to a distant place. Bhaskaran's case could never have intended to give to the complainant/payee of the cheque such an advantage. Even so, experience has shown that the view taken in Bhaskaran's case permitting prosecution at any one of the five different places indicated therein has failed not only to meet the approval of other benches dealing with the question but also resulted in hardship, harassment and inconvenience to the accused persons. While anyone issuing a cheque is and ought to be made responsible if the same is dishonoured despite compliance with the provisions stipulated in the proviso, the Court ought to avoid an interpretation that can be used as an instrument of oppression by one of the parties. The unilateral acts of a complainant in presenting a cheque at a place of his choice or issuing a notice for payment of the dishonoured amount cannot in our view arm the complainant with the power to choose the place of trial. Suffice it to say, that not only on the Principles of Interpretation of Statutes but also the potential mischief which an erroneous interpretation can cause in terms of injustice and harassment to the accused the view taken in the Bhaskaran's case needs to be

revisited as we have done in foregoing paragraphs.

In the present case the applicant carries his business at Firozabad, Uttar Pradesh and at Bangalore also and the respondent no. 2 carries business at Bangalore. The cheque was issued by the accused respondent in favour of the applicant which was drawn on the Bank situate at Bangalore.

The cheque was presented for encashment at Firozabad by the applicant and was sent for clearance to the bank at Bangalore which was ultimately dishonoured. The Hon'ble Supreme Court in the case of Dashrath Rupsingh Rathod (Supra) has held that the jurisdiction of the court to try the case will be determined by the reference to the place where the cheque is dishonoured. In this matter, said cheque was dishonoured at Bangalore, therefore, impugned order passed by the learned court below does not suffer from any illegality or infirmity. As far as the contention raised by the learned counsel for the applicant that the law laid down in the case of Dashrath Rupsingh Rathod (Supra) is not applicable to the pending cases is not acceptable as no distinction between the pending cases and cases to be instituted in future has been drawn by the Hon'ble Supreme Court in the case of Dashrath Rupsingh Rathod (Supra).

In view of the aforesaid, this Court is of the opinion that there is no infirmity or illegality in the impugned order which requires interference.

The application lacks merits and is liable to be dismissed.

The application is accordingly dismissed at the stage of admission.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com