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Shree Krishna Polyester Ltd. Vs. State and ors.

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Court : Delhi

Decided On : Oct-23-2007

Reported in : 2007(99)DRJ167

Judge : Pradeep Nandrajog, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 156(3), 177, 178, 179 to 185, 181(6), 181(7), 182, 182(1), 188, 233 to 239 and 482; Indian Penal Code (IPC), 1860 - Sections 194, 415, 417, 420 and 495; Negotiable Instrument Act - Sections 138 and 141

Appeal No. : Crl. M (C) No. 779/2005

Appellant : Shree Krishna Polyester Ltd.

Respondent : State and ors.

Advocate for Def. : Pawan Sharma, Adv.,; K.K. Sud, Sr. Adv.,; Jayant K. Sud

Advocate for Pet/Ap. : Suruchi Aggarwal, Adv

Judgement :

Pradeep Nandrajog, J.

1. The 6 captioned petitions center around same issue of law and save and except the borrowers and the sum borrowed as also the date on which the sums were

borrowed, factual matrix of all the petitions is the same. Hence, the 6 captioned petitions are being disposed of by a common order.

2. Crl.M(C) 779/05 and Crl.M(C) 2641/05 arise out of a common transaction. Crl.M(C) 848/05 and Crl.M(C) 2642/05 arise out of same transaction. Crl.M(C) 852/05 and Crl.M(C) 2643/05 arise out of the same transaction.

3. The facts are that M/s Shree Krishna Polyester Ltd., petitioner of Crl.M(C) 779/05, Crl.M(C) 848/05 and Crl.M(C) 852/05 had made inter corporate deposits with three group companies, namely, (a) M/s Lottee Holdings Pvt.Ltd., (b) M/s Midopa Holdings Pvt. Ltd. and (C) M/s Lotus Finance and Investment Pvt. Ltd. in sum of Rs. 1.4 crores, Rs. 1 crore and Rs. 1.2 crores respectively. The date of the three inter corporate deposits are 17.9.1997, 23.9.1997 and 17.5.1998 respectively.

4. Three identically worded agreements save and except the amount of deposit and the date were executed when the deposits were made.

5. Vide Clause 16 of each agreement it was stipulated that any dispute relating to the inter corporate deposits would be a subject of adjudication by a court within the jurisdiction of the city of Bombay (Mumbai).

6. The three borrower companies had issued postdated cheques for repayment of the deposit. When presented for encashment, all the cheques were dishonoured by the bankers of the borrowers on whom the cheques were drawn stating the reason ?insufficient funds?.

7. M/s Shree Krishna Polyester Ltd., the holder of the cheques served statutory demand notices required by Section 138 of N.I. Act on payment not being made, criminal complaints were filed before the Chief Metropolitan Magistrate, Mumbai under Section 138 read with Section 141 of N.I. Act.

8. In all the complaints, after recording pre-summoning evidence and being satisfied that their existed a prima facie case against the accused, the learned ACMM Mumbai, to whom the complaints were assigned, proceeded to summon the accused persons to face trial for having committed an offence under Section

138 read with Section 141 of N.I. Act.

9. On or about 19.4.2002, the accused in the said complaints, namely, M/s Lottee Holdings Pvt. Ltd. and its directors, M/s Midopa Holdings Pvt. Ltd. and its directors as also M/s Lotus Finance and Investment Pvt. Ltd. and its directors moved applications before the learned ACMM Mumbai stating that during the pendency of the complaints, on 17.9.1999, agreements were entered into between the complainant and the accused, namely, the three borrower companies, as per which on return of the principle sum borrowed, the complainant was obliged to withdraw the complaints.

10. In the three applications which were filed in the three complaints by M/s Shree Krishna Polyester Pvt.Ltd. against all the borrowing companies and its directors, it was inter alias pointed out that pertaining to the deposit taken by M/s Lottee Holdings Pvt.Ltd. Rs. 12 lacs had already been paid and balance amount of Rs. 1.28 crores was paid vide bankers cheque No. 004568 dated 16.9.1999. Pertaining to M/s Midopa Holdings Pvt. Ltd. it was stated that Rs. 14 lacs had already been paid and balance sum of Rs. 86 lacs was paid by means of bankers cheque No. 004570 dated 16.9.1999. Pertaining to M/s Lotus Finance and Investment Pvt.Ltd. it was stated that a sum of Rs. 14 lacs had already been paid and balance sum of Rs. 1.06 crores was paid vide bankers cheque No. 004569 dated 16.9.1999. Along with the applications, three agreements dated 17.9.1999 were annexed.

11. On behalf of M/s Shree Krishna Polyester Limited, the agreements were purportedly executed by Pravin Tayal, the petitioner of Crl.M(C) 2641/05 to Crl.M(C) 2643/05.

12. Prayer made in the applications made before the learned ACMM was to drop the proceedings in the complaints filed by M/s Shree Krishna Polyester Limited under Section 138 read with Section 141 of N.I. Act.

13. Replies were filed by the complainant denying any settlement and further inter alias pleading that whether or not a settlement was arrived at would have to be decided at the final stage.

14. By a common order dated 6.11.2001, learned ACMM Mumbai dismissed the applications filed by the accused holding that once offence was proved to be committed under Section 138 of N.I. Act, subsequent payment does not wipe away the offence; hence it was held that the complaints had to proceed ahead in accordance with law.

15. The accused persons filed revision petitions against the order dated 6.11.2001 passed by the learned ACMM. The revision petitions were dismissed by the learned Additional Sessions Judge Mumbai on 17.5.2002.

16. The accused filed Criminal Writ Petitions in the High Court of Judicature at Mumbai challenging the orders passed by the learned ACMM and the learned Additional Sessions Judge Mumbai.

17. The three writ petitions, being Crl. W.P. No. 779/02, 780/02 and 1251/02 are currently pending adjudication before Mumbai High Court. Rule has been issued in the writ petitions filed. Proceedings in the criminal complaints filed by M/s Shree Krishna Polyester Limited have been stayed.

18. On or about 19.8.2002, M/s Lottee Holding Pvt. Ltd., M/s Midopa Holdings Pvt. Ltd. and M/s Lotus Finance and Investment Pvt.Ltd. invoked jurisdiction of learned Metropolitan Magistrate at Tis Hazari under Section 156(3) of Cr.P.C. Complaints were filed against M/s Shree Krishna Polyester Limited and Shri Pravin Tayal alleging that the accused had committed offence punishable under Section 420 IPC.

19. In a nutshell, it was stated in the complaints that the complainant was induced to part with money under the agreement(s) dated 17.9.1999. The same was on a clear understanding that on receipt of balance payment, the complaints before the ACMM Mumbai under Section 138 read with Section 141 of N.I. Act would be withdrawn. That the accused had a dishonest intention since inception. The accused never intended to withdraw the complaints. That withdrawal of criminal complaints was the allurement to the complainant to part with valuable money. That the accused had committed an offence punishable under Section 420 IPC.

20. Simultaneously, in the month of September, 2002, the three borrower companies filed suits in Mumbai High Court seeking a declaration that the agreement(s) dated 17.9.1999 was valid, subsisting and binding between the parties. Declarations were prayed for that on receipt of the payment under the three agreements, liability of the borrowers under agreements dated 17.9.1997, 23.9.1997 and 17.5.1998 were satisfied. A decree of permanent injunction was prayed for to restrain the lender from leading any evidence in the criminal complaints pending before the learned ACMM Mumbai.

21. In the present proceedings, a challenge has been laid to the three complaints filed by M/s Lottee Holdings Pvt.Ltd., M/s Midopa Holdings Pvt. Ltd. and M/s Lotus Finance and Investment Pvt.Ltd. invoking jurisdiction under Section 156(3) Cr.P.C. alleging that the petitioners have committed an offence punishable under Section 420 IPC.

22. Whereas Pravin Tayal alleges that he has no concern with M/s Shree Krishna Polyester Limited and has no role to play in the transaction, he additionally pleads that courts at Delhi did not have jurisdiction to entertain the complaint because the entire cause of action accrued at Mumbai, if at all. Lastly, he urges that the dispute between the borrower and the lender is primarily a civil dispute and on said count also the complaints have to be quashed.

23. M/s Shree Krishna Polyester Limited, apart from questioning the validity of the agreements dated 17.9.1999 urged the later two points urged by Pravin Tayal.

24. I eschew any discussion on the validity or authenticity of the agreement dated 17.9.1999 for the reason, issue would require evidence. I may only note that according to the petitioners, it was strange that an agreement dated 17.9.1999 was relied upon for the first time in the month of April, 2001 when applications were filed before the learned ACMM Mumbai for dropping the proceedings in the complaint under Section 138 r/w Section 141 N.I. Act. It was pointed out by the learned Counsel for the petitioners that Clause 5 of the alleged agreement required filing of joint application and along therewith the agreement within 10 days of 17.9.1999, an act which was never performed by the parties. It was urged that said fact was sufficient to cloud the agreement dated 17.9.1999.

25. Rival version projected by the borrowers was that as the transaction between the parties was a civil transaction, the borrower waited and waited for the lender to join in moving the requisite application. When cooperation did not come, they had no option but to unilaterally filed the applications in question.

26. As held hereinabove, any rival version which requires evidence to be led cannot be summarily accepted or rejected i.e. cannot be adjudicated finally under Section 482 Cr.P.C.

27. On the issue of jurisdiction of the Courts at Delhi, Section 177 and Section 182 of Cr.P.C. are relevant and need to be noted.

28. Section 177 Cr.P.C. reads as under:

177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

29. Section 182 Cr.P.C. reads as under:

182. Offences committed by letters, etc. - (1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under Section 495 or Section 494 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by first marriage has taken up permanent residence after the commission of offence.

30. Section 177 of Cr.P.C. lays down that every offence would ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed.

31. It is a general principle of law that all crimes are local and justiciable only by courts within whose jurisdiction they are committed.

32. The order 'ordinarily' has been advisedly used by the Legislature and since Section 177 embodies the general rule of jurisdiction, the word 'ordinarily' in Section 177 must be taken to mean that?except in the cases provided hereinafter to the contrary?. The reason is that Section 177 as a general rule of jurisdiction has to be read subject to any special provision of law which may modify Section 177.

33. In the decision reported as : 1961 CriLJ728 Purushottamdass Dalmia v. State of West Bengal, in para 15 it was observed as under:

(15) It is further significant to notice the difference in the language of Section 177 and Section 233. Section 177 simply says that ordinarily every offence would be tried by a court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such court except in the cases mentioned in Sections 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open. Its provisions are not peremptory. There is no reason why the provisions of Sections 233 to 239 may not also provide exceptions to Section 177, if they do permit the trial of a particular offence along with others in one court. On the other hand, Section 233, dealing with the trial of offence, reads: For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239. The language is very peremptory. There is a clear direction that there should be a separate charge for every distinct offence and that any deviation from such a course would be only in cases mentioned in Sections 234, 235, 236 and 239.

34. With reference to Section 182 of Cr.P.C., relevant would it be to note that in the 41st Report of the Law Commission it was recommended that Section 182 could be transplanted as Sub-section (6) and (7) of Section 181 of the Code of Criminal Procedure. In para 15.30 to 15.36, the Law Commission had commented thus:

15.30. Controversial questions have frequently arisen in regard to the venue for the offence of cheating where the fraudulent or dishonest misrepresentation is made by post, telegram or long distance telephone and where the property of which the person deceived or cheated is delivered to a common carrier or other agent at one place and received by the cheat at another place. In the absence of special provisions similar to those contained in Section 181, such questions have necessarily to be decided with reference to the general principles laid down in Sections 177, 179 and 182 (now Sections 177, 178, 179). Different views have been expressed by the High Courts applying these principles to the facts of the particular cases before them.

15.36. On the strength of this analysis it might be argued in comparable cases that no part of the offence of cheating and dishonestly inducing delivery of property takes place at the accused person's end. The application of Section 179 (now Section 178) or Section 182 (now Section 179) might be regarded as of doubtful validity. There should, however, be no objection in principle to the person accused of cheating from a distance being triable for the offence not only at the place where his victim was deceived and/or made to part with property, but also at the place where the accused has been carrying on his dishonest practices and reaping the benefits.

35. While dealing with the offence of cheating, Sub-section (1) of Section 182 Cr.P.C. contemplates different jurisdictions in relation to: where deception is practiced and where pursuant to the deception which is practiced, property is delivered and received.

36. It would be interesting to note that cheating is defined generally in Section 415 of the Indian Penal Code and is punishable under Section 417 thereof. Section 420 IPC deals with certain specified cases of cheating and includes where property is delivered pursuant to cheating. A higher punishment is prescribed under Section 420 IPC, treating the same to be an offence distinct from the offence punishable under Section 417 IPC.

37. Offence of cheating under Section 420 does not consist merely in a fraudulent or dishonest representation but also requires the delivery of property by the victim.

In other words, to sustain a conviction under Section 420 IPC, it has to be not only established that the accused has cheated the victim but also that by doing so, the accused has dishonestly induced the victim who was cheated to deliver the property or do any other act mentioned in Section 420 IPC. Thus, where cheating is unaccompanied by delivery of property etc. as mentioned in Section 420 IPC, it would be an offence punishable only under Section 417 IPC. But where the property has come to be parted with, offence of cheating becomes an offence punishable under Section 420 IPC.

38. The later part of Sub-section (1) of Section 182 creates the local jurisdiction relating to offence of cheating and dishonesty inducement of property in the courts within local jurisdiction whereof the property was delivered by the person deceived or was received by the accused person. The first limb of Sub-section (1) of Section 182 relates to offence of cheating where property is not delivered nor received.

39. To put it pithly, first limb of Sub-section (1) of Section 182 Cr.P.C. would relate to offence of cheating punishable under Section 417 of IPC and the second limb thereof would be referable to offence punishable under Section 420 IPC.

40. With aforesaid understanding of law, fact pertaining to jurisdiction in Delhi as alleged in the complaint is holding of negotiations between Pravin Tayal and a Director of the complainant i.e. the borrower at Delhi. Neither of the three pay orders in sum of Rs. 86 lacs, Rs. 1.28 crores and Rs. 1.6 crores respectively stated to have been parted possession of pursuant to the inducement are alleged to have been delivered by the person deceived or received by the accused person at Delhi.

41. On the contrary, as pointed out by the learned Counsel for the petitioners, the purported agreements dated 17.9.1999 record that they were executed at Mumbai and that the pay orders in question were received at Mumbai.

42. A fact not stated in the purported agreements dated 17.9.1999 but on which parties are not at variance may be noted. The three pay orders were issued by ANZ Grindlays Bank, Mumbai branch.

43. According to the petitioners, the three pay orders were received towards payment of the principle sum. It was not pursuant to any agreement.

44. Be that as it may, since the complainants have relied upon the three purported agreements dated 17.9.1999 for the purpose of jurisdiction, since the complainants have invoked the jurisdiction at Delhi, said agreements can be relied upon to adjudicate on the issue of jurisdiction.

45. thereforee, the factual scenario would be that the three pay orders stand delivered by the complainant to the accused persons at Mumbai.

The complainant relies upon the agreements dated 17.9.1999 recording that they have been executed at Mumbai. The bald version that certain negotiations took place at Delhi would, in my opinion, not confer jurisdiction on the courts at Delhi in view of the legal position that where offence of cheating and dishonest inducement results in delivery of property, courts within local jurisdiction whereof property was delivered by the person deceived or was received by accused persons would be the courts which would have territorial jurisdiction to entertain the complaint.

46. In the instant case, the pay orders have been drawn at ANZ Grindlays Bank, Mumbai. They have been delivered and received at Mumbai. Evidence pertaining to handing over and taking over is as per the agreement dated 17.9.1999 executed at Mumbai. Thus, courts at Delhi would lack territorial jurisdiction to entertain the complaint.

47. As I have held that courts at Delhi lack territorial jurisdiction to entertain the complaints, I refrain from expressing any opinion on the second question which was argued as it does not relate to territorial jurisdiction and relates to substratum of the dispute. In my opinion, the said issue needs to be decided by the court of competent territorial jurisdiction.

48. Since lack of territorial jurisdiction relates not to the substantive jurisdiction of the court and proceedings in a court lacking territorial jurisdiction are treated by law as an irregularity and not an illegality (see Section 482 Cr.P.C.), I dispose of the petitions directing the learned ACMM, before whom complaints have been filed

by respondent No. 2, to return the complaints to the respective complainants who would be at liberty to file the same in the court of competent jurisdiction at Mumbai.

49. No costs.

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