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Rajiv Aggarwal Vs. State

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Court : Delhi

Decided On : Sep-12-2011

Judge : Suresh Kait, J.

Acts : Negotiable Instruments Act 1881 - Section 138; Code of Criminal Procedure (CrPC) - Sections 251, 482

Appeal No. : CRL.M.C. No. 654/2011

Appellant : Rajiv Aggarwal

Respondent : State

Advocate for Def. : Ms.Rajdipa Behura And Ors.

Advocate for Pet/Ap. : Mr.Avadh B. Kaushik, Adv.

Judgement :

1. Petitioner being aggrieved by order dated 25.01.2011 has preferred the instant petition.

2. The respondent No.2 has filed a complaint against the petitioner No.2 through petitioner No.1 under Section 138 Negotiable Instruments Act 1881 (herein after referred as NI Act) before the court of learned Metropolitan Magistrate, Patiala House Courts, New Delhi, (herein after referred as learned trial court) alleging therein that a cheque bearing No.315266 dated 28.01.2002 for a sum of

Rs.8,44,240.50 (Rupees Eight lacs forty four thousand two hundred forty and fifty paise only) drawn on Oriental Bank of Commerce, Thanesar District, Kurukshetra, Haryana was issued by petitioner No.2 under the signatures of petitioner No.1. The same was dishonoured due to 'insufficient funds' and despite notice, the petitioners did not make payment within the stipulated time and thus committed an offence punishable under Section 138 of NI Act.

3. It was also alleged in the complaint that the goods were supplied by the complainant/respondent No. 2 to the petitioners from Rohtak, Haryana, against which the petitioners had issued the above stated cheque in question in order to discharge their liabilities.

4. In so far as the territorial jurisdiction is concerned, it was stated that the cheque was presented and deposited in Hongkong and Shangai Bank, at Connaught Place Branch, New Delhi which is within the jurisdiction of Delhi Courts.

5. The respondent No. 2 adduced its pre-summoning evidence by way of affidavit and learned trial court vide its order dated 09.04.2002, took the cognizance of the offence and issued summons to the petitioners to face the trail for the offence punishable under Section 138 of NI Act.

6. On 03.01.2006, the petitioner No.1 appeared before the learned trial court, who was admitted to bail, thereafter, notice under Section 251 Cr.P.C. was framed against the petitioner No.1 to which he pleaded not guilty and claimed trial.

7. In post summoning proceedings, during the trial, an affidavit in post summoning evidence was filed on behalf of one Sanjeev Sinha claiming himself as the Authoritative Representative of the complainant/respondent No. 2 along with the letter purported to be an Authority letter.

8. The application for dropping of the proceedings against the petitioners for want of territorial jurisdiction in Delhi was filed on behalf of petitioners. Vide impugned order dated 25.01.2011, the learned trial court, while disposing the application observed that being a summon case, the learned trial court has no power to drop the proceedings at this stage after taking cognizance, as these powers are vested

with High Court only under Section 482 Cr.P.C.

9. The petitioners have claimed that goods were supplied from Rohtak, Haryana to Thanesar, District, Kurukshetra, Haryana. Cheque was returned at Thanesar (Haryana) and it was sent back to Mumbai (Maharashtra) and thus, no cause of action was arisen under the territorial jurisdiction in Delhi and therefore, Delhi court has no territorial jurisdiction to entertain and try the present complaint.

10. On the other hand, the respondent No. 2/complainant has claimed that he has preferred the criminal complaint before the learned trial court on the basis of following cause of actions:-

(a) the Regional office of respondent No.2/ complainant is situated at New Delhi.

(b) the respondent No.2/complaint company presented the aforesaid cheque for encashment with their Bankers at New Delhi.

(c) The respondent No.2/complainant company issued legal notice dated 21.02.2002 from New Delhi calling upon the petitioners/ accused to make the payment of dishonoured cheques.

11. In K. Bhasakaran V. Sankaran Vaidhyan Balan & Anrs. (1999) 7 SCC 510, Hon'ble Supreme Court has taken the view that the offences under Section 138 NI Act can be completed only with the concatenation of five acts. The following are the grounds which are the components of the said offence:-

(i) Drawing of the cheque.

(ii) Presentation of cheque to the Bank. (iii) Returning of the cheque unpaid by the Drawee Bank.

(iv) Giving notice in writing to the Drawer of the cheque demanding payment of the cheque amount.

(v) Failure of Drawer bank to make payment within fifteen days in respect of the notice.

12. Thereafter, in Delhi High Court Legal Services Committee V. GNCT of Delhi 163(2009) DLT 56 (DB) the view was taken in the light of M/s Harman Electronics Pvt. Ltd v. National Panasonic India Pvt. Ltd 2009(1) SCC 720, that mere issuing notice from the place does not make jurisdiction.

13. It is pertinent to mention here that the aforesaid judgment passed by this Court, has been subjected to challenge in Special Leave Petition (C) No.29044/2009 titled Vinay Kumar Shailendra v. Delhi High Court Legal Services Committee & Anr. and the Apex Court vide order dated 03.11.2009, while referring the matter to larger Bench, had directed 'Status quo, as on today, shall be maintained until further orders'.

14. I have recently taken my view in the light of Judgment of Hon'ble Supreme court in K. Bhaskaran (supra) that one out of the five components as stated above make the jurisdiction to try the complaint under Section 138 of NI Act.

15. Therefore, this case is also fully covered as the view taken in Criminal Revision Petition No.170/2010 decided on 09.09.2011 in GE Capital Transportation Financial Services Limited V. Rahisuddin Khan.

16. I, note that in the present case, the cheque was presented at a Bank situated at Delhi and legal notice was also issued to the petitioner from Delhi. Therefore, Courts at Delhi has the territorial jurisdiction to try the present complaint.

17. Keeping the above discussion into view, I find no merit in the case. Accordingly, Criminal M.C. No.654/2011 is dismissed.

18. No order as to costs.

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