

Shoreline Infrastructure Developers Ltd and Others Vs. State and Another.

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Court : Delhi

Decided On : Feb-22-2012

Judge : The Honourable Ms. Justice Mukta Gupta

Appeal No. : Crl. M.C.No. 4264 of 2011 & Crl. M.A. 19640 of 2011 (stay)

Appellant : Shoreline Infrastructure Developers Ltd and Others

Respondent : State and Another.

Judgement :

1. By this petition the Petitioners pray for a direction to the learned Metropolitan Magistrate to decide the application of the Petitioners dated 28th May, 2011 before proceeding with the trial any further.

2. Learned counsel for the Petitioners contends that the Petitioners moved an application challenging the territorial jurisdiction of the learned Trial Court to try the complaint filed under Section 138, Negotiable Instruments Act (in short „NI Act?). The learned Trial Court kept the application pending and ultimately vide order dated 28th May, 2011 held that since the trial is at the fag end, this application will be decided with the main matter at the final stage. Learned counsel contends that the issue of jurisdiction has to be decided in the first instance as and when it is taken. Relying upon Hira Lal Chaudhary and Ors. Vs. State, AIR 1956 Allahabad 619 it is contended that it is open to the accused to raise objections to jurisdiction at any time when he can satisfy the Court on the

evidence which has come upto that time, that the Court has no jurisdiction, and, therefore no further proceedings should be taken. Referring to *Abhay Lalan Vs. Yogendra Madhavlal* 1981 Cr.L.J. 1667 it is contended that the powers of the High Court under Section 482 are not limited. If the question involved is one of jurisdiction and the Magistrate proceeds in the matter despite there being no jurisdiction, the same amounts to an abuse of the process of the Court and for the purpose of securing the ends of justice, interference can be made by the High Court in exercise of its inherent powers under Section 482 Cr.P.C.

3. Learned counsel for the Respondent on the other hand contends that the present petition has been filed by material concealment of facts. The Petitioners entered appearance before the learned Metropolitan Magistrate in the complaint case on 30th June, 2007. Notice was framed on 30th September, 2009. The application for return of the complaint for want of jurisdiction was filed belatedly on 28th May, 2011 when CW-1 had already been examined. On 20th December, 2011 when this petition first came for hearing and this Court stayed the proceedings before the learned Trial Court, the complainant's evidence was complete and the learned counsel for the Petitioners got the matter adjourned for statement of the accused persons and leading defence evidence if any. This Court in *Transgeitz Enterprises and Anr. Vs. Ravi Kumar Zutshi* (Cr.L.M.C. 1937/2010 decided on 2nd June, 2010) refused to entertain any such petition on the ground that the application was filed belatedly. Relying on *M/s Hora Sales Agencies and Ors. Vs. M/s Quest Components (P) Ltd.* (Cr.L.M.C. 6296-98/2005 decided on 20th December, 2005) it is contended that the Court will not enter into an adjudication whether it has territorial jurisdiction or not and will finally decide the matter along with this objection. On a notice being framed under Section 251 Cr.P.C., the Petitioners are required to face trial and give their defence, if any, under Section 254 read with Section 263 Cr.P.C. In view of *Arun Ramachandran Nair Vs. State of Kerala* (Cr.L.Rev.P. 3330/2010 decided on 9th June, 2011) it is contended that an objection to the territorial jurisdiction cannot be raised after commencement of trial. Notice having been framed, the trial had commenced and now this issue can be decided only at the final stage.

4. I have heard learned counsel for the parties. The Respondent filed the complaint titled as M/s. Apollo International Ltd Vs. M/s. Shoreline Infrastructure Developers Ltd. and Ors before the learned Metropolitan Magistrate, Patiala House Courts on 6th February, 2007. Summons were issued to the Petitioners and Petitioner Nos. 1 to 3 entered appearance before the learned Trial Court either personally or through their counsel on 30th June, 2007. Petitioner No.4 entered appearance on 31st October, 2008. On 30th September, 2009 notice was framed on the Petitioners and complainant's evidence started. When the Petitioner filed an application dated 20th May, 2011 for return of the complaint for want of territorial jurisdiction, the Petitioners had attended 19 dates of hearing and complainant evidence has already been recorded. Thus, the trial had commenced.

5. In Harman Electronics (P) Ltd. and Anr. Vs. M/s. National Panasonic India Ltd., 2009 (1) SCC 720 their Lordships while dealing with the complaint under Section 138 of the NI Act held that the jurisdiction of the Court to try a criminal case is governed by the provisions of the Criminal Procedure Code and not by common law principle. A Court derives jurisdiction only when the cause of action arises within its territorial jurisdiction and the same cannot be conferred by an act or omission or commission on the part of the accused.

6. However, the issues in the present case are whether the issue of the jurisdiction is to be raised in the first instance by the accused or it can be urged even at a later stage and in case it is urged at a later stage whether the Trial Court is duty bound to decide the same as the first issue as and when it is raised. There are diverse views on this point. In Meenakshi Vs. Udayakumar ILR 2007 (4) KLT 620 it was held that if an objection regarding territorial jurisdiction has not been raised at the earliest opportunity, then the Court will not entertain such a plea. In Arun Ramachandran Nair Vs. State of Kerala 2011 (3) KLJ 161 it was held that the "earliest opportunity" is a question to be decided in the fact of each case. It was held that objections must be raised before commencement of the trial, meaning thereby that such objection must be raised before actual adducing of evidence by examination of witnesses in the Court takes place. In State of Rajasthan Vs. Dr. J.P. Sharma and Ors. 1983 Cr.L.J. 858 it was held

that an objection with regard to jurisdiction should be taken at the earliest opportunity and at any rate before the Trial Court pronounces the judgment. In *Shirin Fazalbhoj and Ors. Vs. State of Bihar (now Jharkhand) and Anr.*, 2004 Cri.L.J. 1916 Jharkhand it was held that it was open to the accused persons to raise objection to the jurisdictional point at any time when he can satisfy a Court concerned that it has no jurisdiction for trial.

7. There is no provision in the Criminal Procedure Code, which is analogous to Section 21 of the Civil Procedure Code. However, Section 462 Cr.P.C. provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice. Thus, it is evident that the issue of territorial jurisdiction if not raised during trial will not vitiate the finding, sentence or order on this count unless the accused is able to show that it has occasioned a failure of justice or that prejudice has been caused to him.

8. The next issue that calls for determination is that in a case where objection as to territorial jurisdiction is not raised at an earliest opportunity, is the Court duty bound to decide the same as and when it is raised? To my mind the answer to this is in the negative. In case the objection as to territorial jurisdiction is taken in the first instance i.e. before the trial commences, the Court should first decide the same if it can be decided on the basis of facts before it. If it comes to the conclusion that it has lack of jurisdiction to try the same, it should return the complaint to be presented to the Court of competent jurisdiction. There may be cases where at the initial stage due to lack of complete facts, the Court cannot take a decision regarding the territorial jurisdiction. In such cases, it can decide the plea by taking affidavits of parties or after recording evidence in this regard. However, in a case where the accused chooses not to agitate this plea at the earliest opportunity, then the Court is not duty bound to decide the same as and when it is raised. In such a case, the Court can defer the decision on the plea of jurisdiction till the end of the trial.

9. Adverting to the facts of the present case it will be noted that in the present case the Petitioners were summoned vide order dated 6th February, 2007. On the next date, Petitioner No.1, 2 and 3 appeared before the Trial Court, however, Petitioner No.4 was not served. Be that as it may, on 31st October, 2008 all the Petitioners were present before the Trial Court. Thereafter, the matter was adjourned on several dates and finally on 30th September, 2009, notice was framed on the Petitioners for offence punishable under Section 138 of the Negotiable Instruments Act. On 13th October, 2011 complainant was examined as CW-1. Subsequent thereto, after 5 dates of hearing, on 28th May, 2011 the Petitioners filed an application for transferring of the case to the Court of competent jurisdiction. On that date, CW-2 was also examined, cross-examined and discharged. Thereafter, the Petitioners again did not press the application on 30th July, 2011 and pressed the same on the next date i.e. 15th September, 2011. On 20th October, 2011 the Petitioners again insisted that their application on the point of jurisdiction be decided first before proceeding with the matter further. By that time on that date the statement of the accused persons under Section 313 Cr.P.C. had also been recorded and they were asked the options to lead the evidence in their defence which they accepted. Thus, the learned Trial Court held that the trial was at the final stage and this issue can be argued at the final stage and can be decided at that time. It may be noted that the Petitioner No.1, 2 and 3 having entered appearance on 30th June, 2007 and Petitioner No.4 on 31st October, 2008 waited till 28th May, 2011 for filing the application. It cannot be held that the Petitioners filed the application taking the plea of jurisdiction in the first instance. Thus, the plea having not been taken in the first instance, the learned Trial Court committed no illegality in directing that this plea of the Petitioners will be decided at the final stage. I find no merit in the present petition.

10. Petition and application are dismissed. Trial Court Record be sent back.