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Court : Punjab and Haryana

Decided On : Jan-10-2012

Judge : Nirmaljit Singh

Appeal No. : Crl. Misc. No. M-22959 of 2011 (O&M)

Appellant : M/S. Perfect Computer Network and Another

Respondent : M/S. I.T. World

Judgement :

Nirmaljit Kaur, J.-

This is a petition under Section 482 Cr.P.C for quashing of ***Complaint no.1475/20.12.2007/01.06.2010 titled as M/s I.T. World v. M/s Perfect Computer Network***" under Sections 138 and 142 of the Negotiable Instruments Act and under Section 420 IPC and all subsequent proceedings arising therefrom.

2. While praying for quashing of the criminal complaint, learned counsel for the petitioners has raised only two fold arguments. Firstly, the trial Court did not have the requisite jurisdiction to entertain and try this impugned complaint. The cheque was issued from a bank at Meerut and, therefore, the complaint was not maintainable at Faridabad. Reliance was placed on the judgment of Hon'ble the Apex Court rendered in the case titled as ***M/s Harman Electronics (P) Ltd. and another v. M/s National Panasonic India Ltd. reported as 2009(1) RCR (Criminal) 458.***

3. There is no merit in the argument raised by the learned counsel. The said judgment does not help the petitioners, in as much as, in that case, the facts as recorded were as under :-

"Appellants and respondent entered into a business transaction. Appellant is a resident of Chandigarh. He carries on business in Chandigarh. The cheque in question admittedly was issued at Chandigarh. Complainant also has a branch office at Chandigarh although his Head Office is said to be at Delhi. It is stated that the cheque was presented at Chandigarh. However, it is in dispute as to whether the said cheque was sent for collection to Delhi. The cheque was dishonoured also at Chandigarh. However, the complainant-respondent issued a notice upon the appellant asking him to pay the amount from New Delhi. Admittedly, the said notice was served upon the respondent at Chandigarh. On failure on the part of the appellant to pay the amount within a period of 15 days from the date of communication of the said letter, a complaint petition was filed at Delhi."

4. While clarifying the situation further, Hon'ble the Supreme Court held in para 25 as under :-

"25. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower cannot only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-a-vis the provisions of the Code of Criminal Procedure."

5. It was in the context as above that the Honble Supreme Court held that the Chandigarh Court had jurisdiction and not the Delhi Court as sending of notice from Delhi alone will not give Delhi Court a jurisdiction. Therefore, Hon'ble the Supreme Court came to the conclusion that the notice was issued from Delhi only to harass the accused.

6. The issue, at hand, with respect to territorial jurisdiction of Courts relating to offence under Section 138 of the Negotiable Instruments Act was the subject matter in the case of ***K. Bhaskaran v. Sankarana Vaidhyan Balan and another reported as 1999(7) Supreme Court Cases 510***. The precise question raised is evident from para 11 of the said judgment :-

11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed." The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act."

7. The same was necessarily answered in paras 14, 15 and 16 of the said judgment :-

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence; (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five

different localities. But a concatenation of all the above five in a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"178.(a)-(c)

(d) where the offence consists of several acts done in different local areas, It may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

8. In the facts of the present case, it is admitted that the respondent-complaint resides at Faridabad. It is admitted that he has an account at Faridabad. It is also admitted that the cheque was deposited at Faridabad. As such, the Courts at Faridabad have the jurisdiction.

9. This Court in the case of **Satish Chandra v. Aggarwal Earth Movers Pvt. Ltd. bearing Crl. Misc. No.M-2456 of 2011, decided on 31.01.2011** had taken the view that in case, such an argument of learned counsel for the petitioner is accepted that the only place that has the jurisdiction is where the drawee bank is situated, it would lead to erroneous situation. The aggrieved party, who is the complainant, besides facing harassment of cheque having been dishonoured, will have to go through a legal and other communication and physical travel hazards of filing a case at a place where the drawee bank is situated and held thus ;

"The judgments as relied on by the learned counsel for the petitioner in the cases of Shri Ishar Alloys Steels Ltd. (supra) and M/s Harman Electronics (P) Ltd. (supra), no doubt, have held that the Courts, where the drawee bank is situated,

has the jurisdiction but at the same time it has nowhere held that it is only the said place where the drawee bank is situated that has the jurisdiction and no other place. At the same time, it is also evident that sending of notice from a particular place alone shall not give that place a jurisdiction. However, the said observation nowhere excludes the place where the bank of the drawer is situated. Thus, a balance has to be struck in the facts of each case. Applying the test laid down in the case of K. Bhaskaran, the Courts at Faridabad also have the jurisdiction to decide the complaint under Section 138 of the Negotiable Instruments Act."

10. In the present case also, the cheques were presented at Faridabad. The respondent-complainant resides at Faridabad. It is not the case of the petitioners that the cheque was deposited at Faridabad to harass them. Thus, the Courts at Faridabad has the jurisdiction.

11. The second argument of learned counsel for the petitioners was that the cheque was towards security and therefore, the petition under Section 138 of the Negotiable Instruments Act is not maintainable also has no merit. The fact as to whether the said amount is towards security or not, is a matter of evidence to be led at the time of trial and cannot be given into under Section 482 of the Cr.P.C.

12. No other argument was raised.

13. Dismissed being devoid of merit.

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