(1998) 12 AHC CK 0107

Allahabad High Court

Case No: Criminal Revision No''s. 1229, 1234 and 1235 to 1237 of 1998

Sanjai Makkar and Others		APPELLANT
	Vs	
Saraswati Industrial Syndicate Limited and Others		RESPONDENT

Date of Decision: Dec. 18, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20
- Criminal Procedure Code, 1973 (CrPC) - Section 178, 201
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142, 142(C)

Citation: (1999) CriLJ 1958

Hon'ble Judges: O.P. Jain, J

Bench: Single Bench

Advocate: G.P. Dikshit, for the Appellant; A.G.A. and Arjun Singhal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

O.P. Jain, J.
Criminal Revision No. 1234 of 1998 and four other criminal revisions mentioned above are being disposed of by this common judgment.

2. The brief facts, according to complaint, are that M/s. Saraswati Industrial Syndicate is a Company which has its registered office at Yamuna Nagar (Haryana). The Company has a Steel Mill situated at village Nara in district Muzaffar Nagar (U.P.). The accused is also a Private Limited Company known as Essmay Special Steels Private Limited which has its registered office at New Delhi. The accused purchased some steel ingots from the complainant company and a cheque for Rs. 67,872/- bearing No. 732097 dated 11th February, 1994 drawn on Oriental Bank of Commerce, Barola (NOIDA), Ghaziabad was given by the accused to the

complainant. The complainant gave this cheque to its Bank (State Bank of Patiala) and the cheque was forwarded by the State Bank of Patiala to Oriental Bank of Commerce, Barola (NOIDA), Ghaziabad but its payment was refused on the ground that there are not sufficient funds in the account of drawer of the cheque. When the cheque was dishonoured the complainant sent a notice by post on 1lth July, 1994 and the accused was called upon to make the payment within fifteen days. In spite of receipt of notice the payment was not made by the accused and therefore, a complaint u/s 138 of Negotiable Instruments Act was filed by the complainant at Muzaffar Nagar on 23rd January, 1995.

3. The accused raised an objection that the Court at Muzaffar Nagar lacks the territorial jurisdiction to try the case. This objection was upheld by the learned Chief Judicial Magistrate, Muzaffar Nagar who came to the conclusion that the cause of action did not arise within the jurisdiction of Court at Muzaffar Nagar. In this view of the matter the Court set aside the summoning order and dropped the proceedings against the accused by its order dated 29-5-1996.

4. Being aggrieved against the order passed by the Chief Judicial Magistrate, the complainant filed a revision before the Court of Sessions and the revision was decided on 23rd July, 1998 by VIIth Addl. Sessions Judge, Muzaffar Nagar, who came to the conclusion that the goods were sold at Muzaffar Nagar, the cheque was issued at Muzaffar Nagar and by the notice issued on behalf of the complainant the payment was demanded at Muzaffar Nagar and therefore, the cause of action arose at Muzaffar Nagar. In this view of the matter the learned Addl. Sessions Judge reversed the order of the C.J.M. and directed the parties to appear before C.J.M., Muzaffar Nagar. Being aggrieved against the order dated 23rd July, 1998 passed by VIIth Addl., Sessions Judge, Muzaffar Nagar the present revisions have been filed by the accused persons.

5. I have heard Sri G.P. Dixit, learned counsel for the revisionists, Sri Arjun Singhal counsel for the respondents Nos. 1 and 2 and A.G. A. for the State.

6. It may be mentioned at the out set that a copy of the complaint has not been filed along with the revision but during the course of arguments a copy of the complaint was shown to the Court in which the following averments have been made in paragraph 8 :

YAH KI ABHIYUKTGAN NE YUKT MUBLIG 67 HAZAR 8 SAU 72 RUPAYE KE RAKAM ABHIYOGI KO AADA KARNE KE LIYE YEK CHEQUE SANKHYA 732097 DINANK 11-2-94 TAD ADI MU. 67 HAZAR 8 SAU 72 RUPAYE ORIENTAL BANK OF COMMERCE BAROLA NOIDA GHAZIABAD KA UTTAR PRADESH STEEL ME DIYA AUR ABHIYUKTGAN NE ABHIYOGIGAN KO YAH ZAHIR KIYA KI VAH YUKT CHEQUE MU. 67 HAZAR 8 SAU 72 RUPAYE KE RAKAM ADA KARNE KE LIYE DE RAHE HAL YUKT CHEQUE ABHIYUKTGAN NE UTTAR PRAKSH STEEL KE NAAM SE DIYA.

7. The question of jurisdiction has to be decided on the basis of the averments made in the complaint because the matter has been decided by both the Courts below without recording evidence. Therefore, at this stage the allegations in the complaint will have to be taken as correct and the question of jurisdiction has to be decided on the basis of averments made in the complaint. If any authority is required for this proposition, a reference may be made to Abhay Lalan Vs. Yogendra Madhavlal, in which it has been observed that the decision regarding jurisdiction is to be given on the basis of the allegations made and the averments contained in the complaint, or the charge, as the case may be. It is not the evidence that is yet to be adduced in the case that is going to confer jurisdiction on the Court.

8. In the case of P.K. Muraleedharan Vs. C.K. Pareed and Another, on the basis of Lachhman Dass v. Chuhra Mal AIR 1952 Pepsu 5 and Horsburg v. Chandroji AIR 1957 Madhya Bharat 90, the Court came to the following conclusion :

In the two decisions aforementioned the Court within whose jurisdiction the cheque was issued or delivered was found to have jurisdiction. I am in respectful agreement with the views expressed in those decisions. In a case of payment of money by issue of cheque the Court within whose jurisdiction the cheque was issued or delivered has therefore jurisdiction. In those cases money was advanced by issue of cheque and the claim was for return of that money. The position cannot be different in a case where cheque was issued in repayment of any amount for the discharge of any debt or other liability. In other words, the principles enunciated in those decisions are to be applied in the case of an offence coming u/s 138 of Negotiable Instruments Act.

9. It is true that the two cases relied upon in the case of P.K. Muraleedharan (supra) were civil cases but the principle was applied to a case u/s 138 of Negotiable Instruments Act.

10. In (1992) 1 Crimes 973 (Cal) Indmark Finance and Investment Co. Pvt. Ltd. v. The Learned Metropolitan Magistrate 28th Court, it was held that the cheques were drawn on the Bank in Calcutta, although sent to Bombay, and the cheques were presented in Calcutta for encashment where they were dishonoured and therefore, Calcutta Court is the competent Court to try the offence.

11. In a recent case Sadanandan Bhadran Vs. Madhavan Sunil Kumar, the question of cause of action for prosecution u/s 138 of the Act came up for consideration by the Apex Court and it was held in paragraph 7 as under :

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) cause of action means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence u/s 138 of the Act;

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

If we were to proceed on the basis of the generic meaning of the term ''cause of action'' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b) Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (C) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint u/s 142 is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of Action within the meaning of Section 142(c) arises - and can arise - only once.

12. However, the Apex Court was dealing with the cause of action in relation to the starting point of limitation of 30 days for launching prosecution u/s 138 of the Act. The Court was not dealing with the question of territorial jurisdiction. Therefore, it appears that so far as territorial jurisdiction is concerned, the cause of action arises at a place where the cheque was drawn, or a place where the cheque was presented, or a place where the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period and at a place where the drawer failed to make the payment within 15 days of the receipt of notice.

13. So far as the question of territorial jurisdiction is concerned, Section 178 of the code of Criminal Procedure may usefully be reproduced as under:

Place of inquiry or trial- (a) When it is uncertain in which of several local areas an offence was committed, or

(b) Where an offence is committed partly in one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

14. Therefore, the complaint may be filed in a Court within the jurisdiction of which the cheque has been drawn or place where the cheque is presented for collection and where an endorsement about dishonour was made or the place where the cheque was dishonoured.

15. In the impugned judgment the learned Sessions Judge has rightly placed reliance on the case of Gautham T. V. Centre v. Apex Agencies (1993) 1 Crimes 723 (Andh Pra) in which it has been held that the Court within whose jurisdiction the cheque is given, or where the information of dishonour is received or where the office of the payee is situate, will have jurisdiction to try the offence.

16. Applying the principles of the above cases to the facts of the instant case, it is found that in paragraph 8 of the complaint which has been reproduced above it has been clearly alleged that the cheque was given in the office of Uttar Pradesh Steel ("UTTAR PRADESH STEEL ME DIYA"). It is further mentioned in the complaint that the Steel Mill known as Uttar Pradesh Steel is situated at village Nara in district Muzaffar Nagar, U.P. Therefore the Court at Muzaffar Nagar had the jurisdiction to try the case. The learned C.J.M. was wrong in dropping the proceedings. He wrongly relied on the case of Indmark Finance and Investment Co. Pvt. Ltd. 1992 (1) Crimes 973) (Cal) (supra) because in that case the cheques were present in Calcutta for encashment and the dishonour was also made at Calcutta and therefore, the case was obviously triable at Calcutta. It was not held in the cited case that no other Court was competent to try the offence.

17. It may also be mentioned that the learned C.J.M. was wrong in dropping the proceedings on the ground of lack of territorial jurisdiction because u/s 201, Cr. P.C. a Court which lacks territorial jurisdiction is required to return the complaint for presentation to proper Court.

18. In view of the above discussion, all the five revisions are dismissed and the orders passed by learned Addl. Sessions Judge are upheld. The parties are directed to appear before C.J.M., Muzaffar Nagar on 25th January, 1999. The Chief Judicial Magistrate is directed to expedite the hearing of the cases which has already been delayed.