

(2011) 07 CAL CK 0025

Calcutta High Court

Case No: C.R.R. No. 656 of 2010 and C.R.A.N. 2597 of 2010

Bidyut Dutta

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: July 29, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245(2), 482, 483
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: Subrata Ghosh and Somnath Gangopadhyay, for the Appellant; Krishnendu Bhattacharyya, for the Respondent

Judgement

Syamal Kanti Chakrabarti, J.

The present revisional application u/s 482/483 Code of Criminal Procedure has been preferred for quashing the proceeding being complaint case No. C-10286/2007 now pending before the learned 10th Court of Judicial Magistrate, Alipore, South 24 Parganas.

2. The Petitioner contends that he is proprietor of Dutta Agency dealing with supply of biscuit products. In course of such commercial transaction with opposite party No. 2 Messrs. Calcutta Food Products Private Limited there was a supply of biscuits valued at Rs. 1,79,563/- during the period from 01.04.2007 to 03.06.2007. As per information of accounts an account payee cheque bearing No. 991448 dated 11.09.2007 for the said amount was drawn on State Bank of India, Belghoria Branch, Kolkata ? 700 056 in favour of the opposite party No. 2. On 12.09.2007 the opposite party No. 2 deposited the said cheque with his banker State Bank of India, Middleton Row Branch, Kolkata for encashment but on 13.09.2007 the said cheque was dishonoured by the banker with the following remarks "Payment stopped by drawer" and the said cheque was returned on 14.09.2007 under their memo dated

13.09.2007. Thereafter, a statutory notice was issued by registered post with acknowledgement due on 09.10.2007 requesting the defaulting party to make payment within 15 days from the date of receipt of such notice but to no effect. Therefore, the complaint was lodged against the Petitioners herein before the learned Court below who has taken cognizance of the offence having no territorial jurisdiction. Under the circumstances the said proceeding is liable to be quashed.

3. Learned lawyer for the Petitioner has contended that from the said notice u/s 138(b)(c) in question it will appear that the cause of action of the commission of offence lodged u/s 138 Negotiable Instruments Act did take place within the territorial jurisdiction of Barrackpore Sub-division (PS ? Nimta), District North 24 Parganas and not within the jurisdiction of the learned ACJM, Alipore, South 24 Parganas who has wrongly taken cognizance of the offence. He has further submitted that on the said ground the Petitioner has filed an application u/s 245(2) Code of Criminal Procedure praying for his discharge before the learned Trial Judge at Alipore who has not been vested with such power and as such his client will not proceed with the application in the Court below but has sought for appropriate reliefs before this Hon"ble Court u/s 482/483 Code of Criminal Procedure

4. In the case of State of Hariyana ?Vs.- Bhajan Lal, 1992(1) Suppl SC 335 certain guidelines have been set forth by the Hon"ble Apex Court for exercising inherent power u/s 482 Code of Criminal Procedure regarding quashing of FIR and complaints. It is held by the Hon"ble Apex Court that there cannot be any inflexible guideline or rigid formula, nevertheless, some vital guidelines have been formulated by the Hon"ble Apex Court relating to cases where the Court finds that there is express bar engrafted in any of the provisions of the code or concerned Act under which a criminal proceeding is instituted and continuance of proceedings and/or where there is specific provision in the code or concerned Act, providing efficacious remedy for the grievances of the aggrieved party along with the mandates of Section 483 Code of Criminal Procedure which provides that every High Court shall exercise superintendence over the Courts of Judicial Magistrates subordinate to it so as to ensure that there is expeditious and proper disposal of cases by such Magistrate.

5. In the above context if the instant complaint u/s 138 NI Act is looked into, it will appear that the complainant Messrs. Calcutta Food Products Private Limited has impleaded the present Petitioner Bidyut Dutta, proprietor of Messrs. Dutta Agency claiming, inter alia, that on the background of their long standing relation with the accused at whose verbal order the complainant supplied its biscuit products worth Rs. 1,79,563.65 during the period from 01.04.2007 to 03.06.2007 against which the aforesaid cheque was issued but it was dishonoured by the bank with the remarks "Payment stopped by drawer" under their intimation dated 14.09.2007.

6. In paragraph 7 of the complaint it is stated that on 09.10.2007 a lawyer"s notice was sent to the accused by registered post with acknowledgement due calling upon

him to make the payment within 15 days from the date of receipt of the notice. The same was received by the accused on 13.10.2007. Even after receipt of such notice the accused deliberately failed and/or neglected to pay the amount and on the contrary through his advocate's letter dated 22.10.2007 he had taken false and flimsy plea to avoid the payment and thereby committed offence punishable u/s 138/141 NI Act. From the said lawyer's notice (P-3) it will appear that the same was addressed to the accused at 9, Lenin Sarani, Shyamaprasad Nagar, P.O. Nimta, Kolkata ? 700 049. From the acknowledgement receipt (page 35) it appears that the same was received on 18.10.2007 at the above address. Though the learned lawyer for the complainant opposite party has claimed that the learned Court below has rightly taken cognizance having his territorial jurisdiction within Kolkata ? 700 049, learned lawyer for the Petitioner has drawn my attention to the location of the PS ? Nimta which is admittedly within the jurisdiction of Barrackpore Sub-division of the district of North 24 Parganas and not within the district of South 24 Parganas.

7. In a number of cases it has been set at rest that sending of notice from a particular place would not give rise to cause of action but the same will arise at the place of communication of the notice. In the case of Arani Murali ?Vs.- State of West Bengal and Anr. reported in 2010 (1) CHN (Cal) 789 it has been held by this Hon"ble Court that no Court has a territorial jurisdiction to hold a trial of an offence punishable u/s 138 NI Act merely because the notice was sent from a place situated within its territorial limit. In the above case learned 8th Metropolitan Magistrate, Calcutta took cognizance of the offence though he had no such territorial jurisdiction to hold trial and as such the proceeding was quashed. The same principle was followed in the case of Ranjan Sengupta ?Vs.- State of West Bengal and Anr. reported in 2010(1) CHN (Cal) 793 of this Hon"ble Court. In those cases in fact the principles laid down by the Hon"ble Apex Court in Harman Electronics Private Limited and Anr. ?Vs.- National Panasonic India Private Limited [reported in (2009)1 SCC (Cri) 610] was followed. In the said case it has been held by the Hon"ble Apex Court that the accused has committed an offence u/s 138 NI Act the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. Proviso appended thereto emphasizes certain further conditions required to be fulfilled before cognizance of the offence can be taken. Ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to Section 138 NI Act are intended to be applied in favour of the accused. Receipt of a notice would give rise to the cause of action for filing a complaint and Clauses (b) and (c) of the proviso to Section 138 must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

8. In light of the above principle it would appear that in the instant case the learned Magistrate taking cognizance of the offence had no territorial jurisdiction within the district of South 24 Parganas. The acknowledgement receipt prima facie proves that the accused received the notice on 18.10.2007 at Shyamaprasad Nagar within Nimta

PS, Kolkata ? 700 049 which falls within the jurisdiction of Barrackpore Sub-division in which the learned ACJM, Barrackpore, North 24 Parganas had territorial jurisdiction to take cognizance of the offence. Therefore, the action taken by the learned CJM, Alipore, South 24 Parganas is without any jurisdiction and as such not sustainable in law. Without going through further unnecessary details I fully subscribe to the views rendered by the learned lawyer for the Petitioners and hold that the instant proceeding is not sustainable in law and the same is quashed and the Petitioner is discharged and released from his bail bond.

9. In view of the above the connected application being CRAN 2597 of 2010 will also be treated as disposed of.

10. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.