

Shyamapada Murmu Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: April 8, 2013

Citation: (2013) 3 CHN 375

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Shyamal Kumar Pandey, for the Appellant;

Judgement

Joymalya Bagchi, J.

Challenging that no part of cause of action has arisen within the territorial jurisdiction of the learned Metropolitan

Magistrate, Fourth Court at Calcutta in complaint case No. C/32259/08 u/s 138 of the Negotiable Instruments Act, the petitioner has approached

this Court praying for quashing of the impugned criminal proceeding. The allegation in the petition of complaint is to the fact that the petitioner had

applied for financial assistance to the opposite party No. 2/corporation. Such loan was sanctioned and was disbursed to the petitioner. In

repayment of such loan, the petitioner issued a cheque bearing No. 963193 dated August 13, 2008 amounting to Rs. 2,89,378/- (Rupees two

lakh eighty nine thousand three seventy eight) only drawn on UCO Bank Rajagram Branch, Bankura. The cheque was presented for encashment

to the Indian Bank, Bankura Branch. On presentation the cheque returned unpaid with the endorsement ""funds insufficient"". The opposite party

No. 2, through its lawyer, issued a demand notice dated September 18, 2008 upon the petitioner, who received the said notice at village Angaria,

District - Bankura, but failed to make the payment.

2. The learned Chief Metropolitan Magistrate, Calcutta took cognizance of the alleged offence and transferred the case to the learned

Metropolitan Magistrate, Fourth Court at Calcutta for trial and disposal.

3. The petitioner appeared before the learned Magistrate and the matter has been fixed for recording plea. At this stage, the petitioner has

approached this Court praying for quashing of the impugned proceeding on the ground that the learned Magistrate lacks territorial jurisdiction to try

the aforesaid case.

4. Mr. Shyamal Kumar Pandey, learned advocate, appears for the petitioner and submits that in view of the law declared by the Apex Court in the

case of Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., the place of issuance of demand notice cannot constitute

territorial jurisdiction for trying the offence u/s 138 of the Negotiable Instruments Act.

5. In support of his contention, Mr. Pandey also relies on a decision in the case of Philipose P.M. Vs. P.C. Chandy and Another, and an

unreported decision of this Court dated July 29, 2011 in C.R.R. 656 of 2010.

6. In spite of notice, nobody appears for the opposite parties, when the matter is taken up for consideration.

7. Apart from the fact that the head office of the opposite party No. 2/Corporation is situated at Calcutta and that the demand notice had been

issued by the learned lawyer of the opposite party No. 2/Corporation from the territorial jurisdiction of the Trial Magistrate, nothing has occurred

within his jurisdiction.

8. In the case of Harman Electronics Private Limited (supra), the Apex Court had held as follows:-

It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a

cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence u/s 138 of the Negotiable

Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso

appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If

the ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to section 138 of the Negotiable Instruments Act are

intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action

for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the

proviso to section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of

the notice would.

Indisputably all statutes deserve their strict application, but while doing so the cardinal principles therefor cannot be lost sight of. A Court derives a

jurisdiction only when the cause of action arose within its jurisdiction. The same cannot be conferred by any act of omission or commission on the

part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While

issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and

failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, the commission of an offence completes.

Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter that in Dalmia Cement (Bharat) Ltd.

us. Galaxy Traders & Agencies Ltd. emphasis has been laid on service of notice.

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.

9. In the aforesaid cited case, the Apex Court held that although the demand notice had been issued from New Delhi and the Courts at New Delhi

could not be said to have jurisdiction to try the offence relating to dishonour of cheque which occurred at Chandigarh and the demand notice was

also received at the said place inasmuch as the cause of action arose upon failure to pay on receipt of the demand notice, which had occurred

elsewhere.

10. Similar view has been taken by the Kerala High Court in the case of Philipose P.M. (supra) and in the unreported decision of this Court.

11. I respectfully concur with the views expressed in the aforesaid cited decisions. I, however, feel that interest of justice would be served in

transferring the case to the appropriate jurisdiction where the dishonour of the cheque took place and the demand notice was received by the

petitioner, that is, to the Court of the learned Chief Judicial Magistrate at Bankura instead of quashing the said proceeding, as prayed by the

petitioner.

12. I, therefore, direct transfer of the impugned proceeding to the Court of the learned Chief Judicial Magistrate at Bankura, who shall proceed

with the case from the stage at which it has already reached and conclude the same in accordance with law as expeditiously as possible.

13. With the aforesaid direction, the revisional application is disposed of. Office is directed to communicate this order to the Court of the learned

Metropolitan Magistrate, Fourth Court at Calcutta, through a special messenger at the cost of the petitioner and such cost is to be put in by

Wednesday next.