

WP(C) 6536/2015

BEFORE

HON'BLE MR JUSTICE MICHAEL ZOTHANKHUMA

Heard Mr. SP Roy, learned counsel for the petitioners. Also heard Mr. B Chakraborty, learned counsel for respondent No.1 and Mr. KK Upadhyay, learned counsel for the respondent No.2.

The issue in question is with regard to presentation of 4 cheques in a Delhi Bank which was dishonoured on the ground of insufficient fund. Thereafter, a case was registered under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as NI Act, 1881), by the respondent No.1 against the petitioner. The petitioner by way of this writ petition is challenging the jurisdiction of the Court of Chief Metropolitan Magistrate, Karkarduma Court, Delhi which is seized of the case filed under section 138 NI Act, on the ground that the case had been filed by not fully following the provisions of Section 138 and Section 142 of the NI Act, 1881. The petitioner in this case has thus prayed to invoke the writ jurisdiction of this Court, for setting aside the cognizance taken by the Court of the Chief Metropolitan Magistrate, Delhi in respect of the case initiated by the respondent No.2 under section 138 and 142 of the NI Act, 1881.

The petitioners' case in brief is that the petitioner had given 4 (four) cheques bearing Nos.393517, 393518, 393519, 393520 for Rs. 25,000/- each, drawn on Punjab National Bank, Fancy Bazar, Guwahati, Assam by keeping the name column and amount in words column blank and handed over those cheques to one Shri Himmat Singh Shekhawat, the employee of Shri M.K. Jain for using those cheques as collateral security for the purpose of business as asked by Shri M.K Jain. The petitioner's counsel submits that the cheques were never issued against discharge of any liability as a collateral security. The petitioner's counsel submits that suddenly the petitioners received legal notice dated 04.07.2015 on 08.07.2015 alleging amongst others, that in discharge of the petitioners' liability, the petitioner No.2 had issued four cheques in favour of M/s Yuvraj Textiles amounting to Rs.1,25,000/-, each which were deposited with his bank, Punjab National Bank, Gandhi Nagar, Delhi, which were returned unpaid with remarks insufficient fund. The petitioners counsel submits that the petitioners were surprised to receive the aforesaid notice as they did not have any business relation with the respondent No.1 (M/S Yuvraj Textiles).

The petitioner's counsel submits that the petitioner sent their reply dated 20.07.2015 to the respondent No.1 stating that the respondent No.1 was not known to the petitioner and that they did not have any business with the respondent No.1.

The petitioner also stated that the respondent No.1 had committed fraud by inserting their names into the cheques mentioned above.

The petitioner's counsel submits that the petitioners have also lodged an ejahar dated 08.09.2015 at Panbazar police station against the respondent No.1, which has been registered as Panbazar Police Station Case No.255/2015 under sections 420/468 IPC. The petitioner's counsel submits that thereafter the petitioners received summons from the Court of Chief Metropolitan Magistrate, Karkarduma Court, Delhi in respect of the complaint filed by the respondent No.1 under Section 138 of the NI Act, 1881. The complaint filed by the respondent No.1 was registered as Complaint Case No.297/2015.

The petitioner's counsel submits that the petitioner is presently out on bail and he has filed the present writ petition, for quashing of the proceedings in Complaint Case No.297/2015, pending in the Court of the Chief Metropolitan Magistrate, Karkarduma Court, Delhi. The petitioner's counsel submits that though the Complaint Case has been rightly instituted in Delhi, this Court has got the territorial jurisdiction to decide the present case, as part of the cause of action arises in Guwahati. The petitioner's further ground of challenge to the Complaint Case No.297/2015 is that the complaint under section 138 NI Act should have been filed by the payee as per section 142 of the NI Act and not by the authorized representative, who is not a party in the Complaint Case.

Mr. Chakraborty, learned counsel for respondent No.1, on the other hand, submits that the respondent No.1 and the petitioner did business in the matter of sale and supply of fabrics/clothes. It was only after great persuasion that the peti

tioner paid part of his dues vide the above four cheques, each amounting to Rs. 1,25,000/-, drawn on Punjab National Bank, Fancy Bazar, Guwahati. However, the cheques were presented in a Bank in New Delhi, were returned due to insufficient funds vide memo No. 30.06.2015. The legal notices dated 04.07.2015 under section 138 was also not complied with. The counsel for the respondent No.1 submits that in view of the amendment to section 142 of the NI Act, 1881, this Court does not have the jurisdiction to interfere with the proceedings of the complaint Case No.297/2015 pending in the Court of the Chief Metropolitan Magistrate, Karkarduma Court, Delhi.

I have heard the learned counsel for the parties.

In the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and another reported in (1997) 7 SCC 510, the Apex Court has held that

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 is 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.

In the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra and another reported in (2014) 9 SCC 129, the Apex Court has held that :

58. To sum up:

58.1. An offence under section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

58.2. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date of cause of action accrues to such payee or holder under clause (c) of proviso to section 138.

58.3. The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

a) The dishonoured cheque is presented to the drawee bank with a period of six months from the date of its issue,

b) if the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque, and

c) if the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

58.4. The facts constituting cause of action do not constitute the ingredients of the offence under section 138 of the Act.

58.5. The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of the proviso accrues to the complainant.

58.6. Once the clause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

58.7. The general rule stipulated under Section 177 Cr.P.C applies to cases under section 138 of the Negotiable Instrument Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof. Sub-section 2 of Section 142 of the NI Act, 1881 was inserted by Act 26 of 2015 with retrospective effect from 15.06.2015. Section 142 is reproduced below:

[142. Cognizance of offences - [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) No Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee of, as the case may be, the holder in due course of the cheque;

(b) Such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction, -

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

The dishonoured cheques in question were issued on 28.05.2015, 30.05.2015, 30.06.2015 and 20.07.2015. The dishonoured cheques had been returned by the bank with the remark insufficient funds vide memo dated 30.06.2015. A perusal of section 142(2) of the NI Act, 1881 clearly shows that the Court which has got the jurisdiction to try an offence/case under section 138 NI Act is a place where the cheque is delivered for collection through an account, the branch of the bank where the payee maintains the account. The respondent No.1 having presented his cheque in bank in New Delhi and the same being dishonoured in Delhi, the cause of action has arisen wholly at New Delhi. The place of issuance of the cheques has no relevance as per Section 142(2) of the NI Act, 1881.

The petitioner's counsel has admitted to the fact that legal notice dated 04.07.2015 issued by the respondent No.1 had been received on 08.07.2015. No payment was made by the petitioner to the respondent No.1 as was demanded by the legal notice dated 04.07.2015, due to the reasons submitted by the petitioner's counsel. The above facts show that the cause of action had arisen in Delhi and were continuing after Section 142(2) of the NI Act, 1881 came into force. A reading of section 142(2) of the NI Act, 1881 leaves no room for doubt that the Chief Metropolitan Court at Delhi had the local jurisdiction to try the offence under Section 138 of NI Act, as the cheque was presented and dishonoured in Delhi. Though the petitioner has submitted numerous judgments of the Apex Court and this Court in support of his argument that the writ petition is maintainable, as a part of the cause of action had arisen in Guwahati, where the cheque was issued, this Court finds that the case laws cited by the petitioner is not applicable, as the

se judgments cited by him had been passed prior to the insertion of sub-section (2) of section 142 in the NI Act, 1881, and as such, had not taken into consideration section 142(2) of the NI Act, 1881.

With regard to the petitioner's counsel's contention that the complaint filed against the petitioner is not in consonance with Section 138 and 142 of the NI Act, 1881 this Court finds that the same can be contested by the petitioner by way of a revision or other appropriate petition before the Courts in Delhi.

In view of the reasons stated above, this Court finds no merit in the writ petition and accordingly, the writ petition is dismissed.