

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 2015 of 2019

CRAN 2/2019 (Old CRAN 4454/2019)

CRAN 3/2020 (Old CRAN 1050/2020)

Mahendra Kumar Agarwal

Versus

The State of West Bengal & Anr.

For the petitioner

: Mr. Ayan Bhattacharjee

Mr. Abhijit Sarkar

Mr. Apalak Basu

Mr. Abhik C Kundu

....Advocates

For the Opposite Party No. 2

: Mr. Sabyasachi Banerjee

Mr. Minal Palana

Mr. Cedric Fernandez

..... Advocates

Lastly heard on

: 15.07.2021

Judgment on

: 30.07.2021

JAY SENGUPTA, J:

1. This is an application for quashing of a proceeding in Case No. C/1386 of 2019 pending before the Learned Judicial Magistrate, 5th Court, Alipore, South 24-Parganas under Section 138 read with Section 141 of the

Negotiable Instruments Act and all orders passed therein including the orders dated 26.02.2019, 28.03.2019 and 09.07.2019.

2. While the petitioner is the accused No. 3 before the learned Trial Court, the opposite party No. 2 is the complainant. It was alleged in the petition of complaint that two post dated cheques for Rs. 32,486/- and Rs. 25,00,000/-, respectively, both dated 01.10.2018 and drawn on the ICICI Bank, Hyderabad Branch, duly signed by the present petitioner, were issued in favour of the complainant/opposite party in due discharge of liability. The instant case relates to the cheque of Rs. 25, 00,000/-. According to the complainant, the company deposited the cheque within the validity period with its banker, namely, the Kotak Mahindra Bank for encashment. But, the same was dishonoured. This led to the initiation of the present proceeding.

3. On 26.02.2019 the learned Chief Judicial Magistrate, Alipore, South 24 Parganas was pleased to take cognizance of the alleged offences and transfer the case to the file of the learned Judicial Magistrate, 5th Court, Alipore, South 24 Parganas. On 28.03.2019 the complainant was examined under Section 200 of the Code. An affidavit was filed by the complainant. After perusing the petition of complaint, the documents filed, the initial deposition and the written affidavit, the learned Trial Court was pleased to issue process against the accused. On 09.07.2019, after being satisfied with the service of summons, the learned Trial Court was pleased to issue warrant of arrest against the accused Nos. 2 and 3.

4. Mr. Ayan Bhattacharjee, learned Counsel appearing on behalf of the petitioner, submitted as follows. The challenge to the impugned proceeding and the orders passed therein are restricted mainly to two issues. One, the learned Trial Court did not have any territorial jurisdiction to try the offence. Two, no enquiry, as contemplated under Section 202 of the Code, was undertaken although the accused resided beyond the territorial jurisdiction of the learned Trial Court. By the Amendment Act 26 of 2015, Chapter XVII of the Negotiable Instruments Act was virtually redrafted and Sections 142 and 143 of the said Act were re-structured. According to the said amendment, if a cheque was delivered for collection through an account, the branch of the bank where the payee or the holder in due course maintained the account, attracted the territorial jurisdiction. But, if a cheque was presented for payment by the payee or the holder in due course “otherwise through an account”, the branch of the drawee bank derived such jurisdiction. As per the present facts, the only banker which was mentioned in the petition of complaint was the Kotak Mohindra Bank situated at the Ground Floor, 5 Gorky Terrace, Kolkata 700017 and the same fell beyond the territorial jurisdiction of the learned Trial Court. The most distinctive part in this litigation was that the cheque in question was purportedly deposited at a kiosk situated at the Ground Floor of 5 Gorky Terrace, Kolkata 700017. A kiosk, by no stretch of imagination, can be inextricably connected with banking affairs and therefore, the same did not satisfy the test of a ‘branch’ as defined under the Banking Regulation Act, 1949. Since the cheque was presented at the kiosk, which was clearly not a branch of a

bank, the same could not be said to have been presented for payment through an account and therefore, the original bank of the drawer attracted the jurisdiction. Any other interpretation would dilute the Clause (b) of Sub-section (2) of Section 142 of the Negotiable Instruments Act. It was not permissible to omit any part of the provision and the whole section had to be read together and an attempt was to be made to reconcile both the parts. On this, reliance was placed on *State of Bihar vs. Harilal Kejwarilal*, AIR 1960 SC 47. In *Premier Roller Flour Mills & Ors. vs. ICICI Bank Limited and Ors.*, (2009) 1 Gau LR 413, the Hon'ble Gujarat High Court held that when a cheque was presented for payment over the counter the complaint was to be filed before the Court where the drawer maintained his account. Moreover, the learned Trial Court erred in issuing warrant of arrest without exercising sufficient caution. This went against the principle laid down by the Hon'ble Apex Court in *Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Anr.*, (2007) 12 SCC 1. Secondly, on the issue of non-compliance of Section 202 of the Code, the law was well settled that even in a proceeding under the Negotiable Instruments Act, an enquiry as contemplated under Section 202 of the Code was mandatory if the accused resided beyond the territorial jurisdiction of the learned Trial Court. On this, reliance was placed on the decision of a Constitution Bench of the Hon'ble Apex Court in *Re: expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881*, AIR 2021 SC 1957. Reliance was also placed on a decision of this Court in *Sheetal Amit Patil & Ors. vs. The State of West Bengal*, MANU/WB/0397/2021. According to the decision in *Sheetal Amit Patil*

(supra), a mandatory enquiry, whether by taking evidence on affidavit or by restricting the enquiry to examination of the documents or not, had to be undertaken in clear terms under Section 202 of the Code before process could be issued as the accused resided beyond the territorial jurisdiction of the learned Trial Court. A non-compliance of such provision would render the proceeding bad, at least from the stage of issuance of process.

5. Mr. Sabyasachi Banerjee, learned Counsel appearing on behalf of the complainant/opposite party, submitted as follows. The explanation provided with Section 144(2) of the Negotiable Instruments Act conceptualised a position where if a cheque was delivered for collection at a branch of the bank of the payee or the holder in due course, then the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or the holder in due course, as the case may be, maintained the account. The phrase “where a cheque is delivered for collection at any branch of the Bank of the payee...” indicated that the cheques could be collected by the payee’s bank for the purpose of its encashment. The moot point was that after its collection, the presentment/encashment shall be deemed to have happened at the branch where the account of the payee was situated. For example, a cheque might be collected at any place/collection point/branch of the payee. But, for the purpose of the jurisdiction of the Court with respect to penal consequences as envisaged under Section 138 of the Act, the branch of the bank in which the payee had an account shall become the determining factor. On this, one had to revert to the Statements of Objects and Reasons which clearly envisaged the concept of “payable at par”

cheques and “Cheque Truncation System (CTS)”. The same process of CTS for clearance of cheques was undertaken when the accounted cheque was deposited at a kiosk of a bank in which the payee or the holder in due course maintained an account. Therefore, in such cases the territorial jurisdiction of the Court ought to be covered by Clause (a) of Sub-section (2) of Section 142 of the Negotiable Instruments Act. To give an example, a bearer cheque presented for payment over the counter would be governed by Clause (b) of Sub-section (2) of Section 142 of the Act. It was pertinent to submit that although a kiosk was not a branch of a bank or a banking outlet, it was, nevertheless, a customer service point which produced all services of a bank and therefore, a cheque could be deposited at a kiosk which would go through the counter of the payee where the payment was made. Rationalisation of Branch Authorisation Policy- Revision of Guidelines dated 18.05.2017 of the Reserve Bank of India specifically defined a banking outlet and also excluded kiosks from the meaning of a banking outlet. Even a literal interpretation of statute would not militate against the proposition that presentment of cheque before a bank kiosk would be considered to be a delivery for collection through an account as per Clause (b) of Section 142(2) of the Negotiable Instruments Act. In the present case, the Golden Rule of interpretation could also be invoked. If the Literal Rule produced an absurdity, then the Court should look for another meaning of the words to avoid an absurd result. Therefore, the learned Trial Magistrate was well within its jurisdiction to take cognizance of the offence and proceed with the matter. Now, so far as the question of enquiry under Section 202 of the Code

was concerned, the learned Trial Magistrate had clearly gone through the evidence and other documents before issuing process. Therefore, there was a substantial compliance of the mandate of an enquiry as contemplated under Section 202 of the Code.

6. I heard the learned counsels appearing on behalf of the parties and perused the revision petition, the affidavits and the written notes filed.

Whether depositing a cheque at a kiosk of a bank amounts to delivery through an account:

7. Sub-section (2) of Section 142 of the Negotiable Instruments Act defines the territorial jurisdiction in respect of an offence under Section 138 of the said Act as under:

“.....

(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.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

8. A bearer cheque is an example of a cheque presented for payment by a payee or a holder in due course, otherwise through an account.

9. As is evident from the Rationalisation of Branch Authorisation Policy-Revision of Guidelines dated 18.05.2017 of the Reserve Bank of India, a kiosk does not fall within the meaning of a banking outlet.

10. However, delivery of a cheque at a kiosk of a bank for collection is quite clearly not the same as presentation of a cheque over the counter or otherwise than through an account. A particular procedure is followed if a cheque is presented for payment otherwise through an account. But, in the event a cheque is presented at a kiosk of a bank, the same is sent to the concerned branch and undergoes the same process that a cheque presented through an account would undergo. A kiosk is, thus, more like an intermediate means of transmission by which a cheque is sent to the account of the payee for further processing. The only difference is that in such cases, the payee or the holder in due course, is not carrying the cheque physically to the branch of the bank and is presenting it for payment through the said account, but the movement of the payee or the holder in due course, physically to the bank branch is dispensed with. Instead, once

the cheque is deposited at a kiosk, the bank authorities themselves arrange to have it brought to the branch for processing through the account itself.

11. Therefore, depositing a cheque at the kiosk of the bank has all the traits of presentation of a cheque by a payee or the holder in due course, through his bank account and, therefore, is to be governed by Clause (a) of Sub-section (2) of Section 142 of the Negotiable Instruments Act. Any other interpretation would be utterly fallacious and would result in absurdity.

12. This is a case where a literal construction of the relevant statutory provision is sufficient and there is no need to invoke the Golden Rule.

13. As would be evident from the evidence on affidavit filed on behalf of the complainant, the payee held an account with the Kotak Mahindra Bank, Ideal Plaza Branch, Kolkata-700020. The cheque purportedly went to the said account after delivery at the kiosk. This imparted the jurisdiction to the learned Trial Court to try the case.

14. Since the payee's bank, in the present case, falls within the territorial jurisdiction of the learned Trial Court, there is no illegality in the impugned proceeding at least so far as the question of territorial jurisdiction is concerned.

15. Thus, the challenge to the impugned proceeding on the ground of lack of territorial jurisdiction is rejected.

Compliance of mandatory enquiry under Section 202 of the Code:

16. By an order dated 28.03.2019, the learned Trial Court held as under:

“Today is fixed for S.A. The complainant is present.

The complainant is examined on S.A. He files written affidavit in support of the solemn affirmation. Relevant documents are filed on behalf of the complainant in form of Xerox.

Perused the petition of the complaint, the documents filed herein, the evidence on S.A. and the written affidavit. It appears to me that there is sufficient ground to proceed against the accused person for the offence u/s 138/141 of N.I. Act. Hence I am inclined to issue process against the accused person.

Issue summons against the accused person. Requisites at once.

To 09.07.2019 for S/R and appearance.”

17. At the time this order was passed by the learned Trial Court, the law here regarding conducting enquiry under Section 202 of the Code if the accused resided beyond the territorial jurisdiction in respect of cases under the Negotiable Instruments Act was governed by the ratio laid down by a Division Bench of this Court in S.S. Binu vs. State of West Bengal & Anr., 2018 CrLJ 3769. In that case, among other things, this Court had held that conducting such enquiry under Section 202 of the Code was not mandatory in respect of a proceeding under the Negotiable Instruments Act.

18. Thus, it was sufficient then if the learned Trial Court did not conduct an enquiry as contemplated under Section 202 of the Code or simply went through the initial deposition and the documents submitted in order to

proceed further by issuance of process without keeping the requirement of an inquiry in mind.

19. However, the law regarding mandatory enquiry under Section 202 of the Code even in a proceeding under the Negotiable Instruments Act has undergone a sea change. In *Re: expeditious trial of cases under Section 138 of the Negotiable Instruments Act*, AIR 2021 SC 1957, a Constitution Bench of the Hon'ble Supreme Court, *inter alia*, held as follows:

“24. The upshot of the above discussion leads us to the following conclusions:

.....

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the Court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

.....”

20. In view of this decision, this Court in *Sheetal Amit Patil vs. The State of West Bengal*, MANU/WB/0397/2021 held as follows:

“Therefore, as the law requires that an enquiry be held under Section 202 of the Code if the accused stayed outside the Court’s jurisdiction, such enquiry has to be undertaken in clear terms and the Learned Trial Court, after making such enquiry whether by taking evidence on affidavit or by restricting the enquiry to examination of documents or not, is required to decide whether there are sufficient grounds to issue process against the accused. In the present case, the learned Trial Court did not do so. In view of the same, the order issuing process and the subsequent orders passed by the learned Trial Court in the present case ought to be set aside and the matter remanded back so that the learned Trial Court can proceed afresh from the stage of enquiry under Section 202 of the Code.”

21. Mere perusal of initial evidence and documents without doing so for undertaking an enquiry in terms of Section 202 of the Code does not satisfy the requirement of law as laid down by the Hon’ble Apex Court in *Re: expeditious trial of cases under Section 138 of the Negotiable Instruments Act*(supra).

22. In the present case, as is apparent from the order dated 28.03.2019 passed by the learned Trial Court, there is no indication that the learned Trial Court was conducting an enquiry as contemplated under Section 202 of the Code as the accused resided beyond its territorial jurisdiction.

23. Therefore, the order of the learned Trial Court issuing process and the order/s passed thereafter, if any, are set aside. The matter is remanded

back to the learned Trial Court for proceeding afresh from the stage of enquiry as contemplated under Section 202 of the Code.

24. As the proceeding has remained pending for quite long, the learned Trial Court is requested to conduct the enquiry under Section 202 of the Code and decide on the issuance of process at the earliest, preferably within two months from the date of communication of this order and thereafter, to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

25. With these observations, the revisional application and the connected applications disposed of.

26. However, there shall be no order as to costs.

27. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)