

SUPREME COURT OF INDIA

K.K. Polycolor India Ltd.

Vs.

Global Trade Fin. Ltd.

Crl.A.No. 1914 of 2014

(T.S. Thakur, V. Gopala Gowda and C. Nagappan JJ.)

04.09.2014

ORDER

T.S. THAKUR, J.

Criminal Appeal No. 1914 of 2014 arising out of SLP (Cri.) No. 690 of 2011

1. Leave granted. These appeals arise out of an order dated 15-9-2010 [Global Trade Finance Ltd. v. State of Maharashtra Criminal Application No. 1491 of 2010, order dated 15-9-2010 (Bom.) reported in 2010 (4) Mh. LJ. 367] passed by the High Court of Judicature of Bombay whereby Criminal Applications Nos. 1491, 2759 and 2760 of 2010 have been allowed and the orders passed by the Magistrate set aside and the matter remitted back to the Magistrate with the direction that the criminal complaints filed by the complainants/Respondents herein shall be disposed of expeditiously.

2. The complaints Under Section 138 of the Negotiable Instruments Act, 1881 appear to have been filed by the Respondent Company in the Court of Metropolitan Magistrate, Bandra which were entertained by the Magistrate and process issued against the accused persons. The revision applications were then filed before the Court of Session at Bombay challenging the jurisdiction of the Magistrate to entertain the complaints. The Revisional Court relying upon Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd. (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri.) 610 : 2009 (3) Mh. L.J. (S.C.) 792 held that the Magistrate did not have the jurisdiction to entertain the complaints.

The orders passed by the Magistrate were set aside and the complaints directed to be returned for presentation before the competent Court.

3. Aggrieved by the said orders the complainant preferred Criminal Applications Nos. 1491, 2759 and 2760 of 2010 before the High Court which relying upon the decision of this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (1999) 7 SCC 510: 1999 SCC (Cri.) 1284 : 2000 (1) Mh. L.J. (S.C.) 193 and three other decisions *Rakesh Nemkumar Porwal v. Narayan Dhondu Joglekar* 1993 (1) Mh. L.J. 630 : 1992 SCC OnLine Bom. 285 : (1994) 3 Bom. CR 355; *Crompton Greaves Ltd. v. Shivam Traders* 2010 (3) Mh. L.J. 246 : 2010 (1) Mh. L.J. (Cri.) 546 : (2009) 111 Bom. L.R. 4669 and *Yashomala Engg. (P) Ltd. v. Tata SSL Ltd.* 1998 (3) Mh. L.J. 882 : 1998 SCC OnLine Bom. 370 : 1998 Cri. LJ. 4350 of the Bombay High Court held that the Magistrate had the jurisdiction to entertain the complaint as the cheque had been presented before a bank at Bombay which fact was, according to the High Court, sufficient to confer jurisdiction upon the Magistrate to entertain the complaints and try the cases. The orders passed by the Revisional Court were accordingly set aside and the Magistrate directed to proceed with the trial of the cases expeditiously as already noticed.

4. The present special leave petitions have been filed by the accused persons assailing the view taken by the High Court.

5. A plain reading of the orders passed by the High Court would show that the judgment proceeds entirely on the authority of the decision of this Court in *K. Bhaskaran* case (supra). That decision has been reversed by this Court in *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014) 9 SCC 129 : 2014 (6) Mh. LJ. (S.C.) 404: 2014 (4) Mh. L.J. (Cri.) (S.C.) 1. This Court has, on an elaborate consideration of the provision of Section 138 and the law on the subject, held that presentation of a cheque for collection on the drawee bank or issue of a notice from a place of the choice of the complainant would not by themselves confer jurisdiction upon the Courts where cheque is presented for collection or the default notice issued demanding payment from the drawer of the cheque. Following the said decision we have no hesitation in holding that the High Court was wrong in interfering with the order passed by the Sessions Judge.

6. We accordingly allow these appeals and set aside the order [Global Trade Finance Ltd. v. State of Maharashtra Criminal Application No. 1491 of 2010, order dated 15-9-2010 (Bom.) reported in 2010 (4) Mh. LJ. 367] passed by the High Court and restore those passed by the Revisional Court. The parties are, however, left to bear their own costs.

Criminal Appeal No. 1917 of 2014 arising out of SLP (Cri.) No. 7619 of 2011

7. Leave granted. These appeals arise out of an order dated 15-6-2011 [Suku v. Jagdish Cri. MC No. 514 of 2011, order dated 15-6-2011 (Ker.)] passed by the High Court of Kerala at Ernakulam whereby the High Court has held that the presentation of a cheque by the complainant in a bank at Krishnapuram, Kayamkulam, Kerala did not confer jurisdiction upon the Courts at Kayamkulam to entertain a complaint Under Section 138 of the Negotiable Instruments Act and try the accused persons for the offence.

8. It is not in dispute that the cheque in question was issued by the Respondent on Syndicate Bank, Gokaran branch in Karnataka which was presented for collection by the complainant at Krishnapuram, Kayamkulam, Kerala but dishonoured for insufficiency of funds. The complainant then filed complaint at Kayamkulam in the State of Kerala which were returned by the Magistrate to be filed before the proper Court as the Court at Kayamkulam, Kerala, had no territorial jurisdiction to entertain the same.

9. The matter was taken up before the High Court by the complainants in Cri. MCs Nos. 514 and 1653 of 2011 which the High Court has dismissed by the impugned order holding that the presentation of the cheque to a bank in Kerala would not by itself confer jurisdiction upon the Kerala Court. The High Court has in support of that view relied upon the decision of this Court in Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd. (supra) wherein this Court held that the issue of notice to the drawer of the cheque does not by itself give rise to a cause of action to confer jurisdiction upon the Court to take cognizance.

10. The view taken by the High Court based as it is on the decision of this Court in Harman case does not, in our opinion, call for any interference by this Court, in

the light of the pronouncement of this Court in Dashrath Rupsingh Rathod v. State of Maharashtra (supra) wherein this Court has examined the issue at some length and held that presentation of a cheque by the complainant at a place of his choice or issue of notice by him to the accused demanding payment of the cheque amount are not sufficient by themselves to confer jurisdiction upon the Courts where such cheque was presented or notice issued. Following the decision in Dashrath Rupsingh Rathod case (supra), we affirm the order passed by the High Court.

11. These appeals accordingly fail and are, hereby, dismissed but in the circumstances without any orders as to costs.

Criminal Appeal No. 1911 of 2014 arising out of SLP (Cri.) No. 5644 of 2010

12. Leave granted. These three appeals arise out of an order dated 1-2-2010 [Times Business Solution Ltd. v. S. Placement and Services Cri. MC No. 281 of 2010, order dated 1-2-2010 (Del)] passed by the High Court of Delhi whereby Criminal MCs Nos. 281, 282 and 296 of 2010 filed by the Appellants have been dismissed and the orders passed by the Metropolitan Magistrate returning the complaints filed by the Appellants Under Section 138 of the Negotiable Instruments Act, 1881 for presentation before the competent Court upheld.

13. It is common ground that the cheques in all the three cases had been issued on different branches, namely, Bank of India, Ruby Park and ICICI Bank, Kolkata and Punjab National Bank, Chapraula, Gautam Budh Nagar, U.P. which are outside Delhi. The complaints Under Section 138 of the NI Act were all the same filed in Delhi because the cheques had been deposited by the complainants in their Delhi bank accounts for collection and because notice of dishonour was issued to the accused persons from Delhi.

14. Relying upon the decision of this Court in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. (2001) 3 SCC 609 : 2001 SCC (Cri.) 582 : 2001 (3) Mh. LJ. (S.C.) 1 the High Court held that mere presentation of cheques before banks in Delhi when the drawee bank is situated outside Delhi will not confer jurisdiction upon the Delhi Courts nor will the issue of a notice of dishonour from Delhi would do so. That view, in our opinion, is unexceptionable having regard to the decision

of this Court in Dashrath Rupsingh Rathod v. State of Maharashtra (supra). This Court has in that case examined at length the principles underlying Section 138 and held that a unilateral act of presentation of the cheque anywhere in the country or issue of a notice of dishonour from a place chosen by the complainant does not by itself confer jurisdiction upon the Court from within whose jurisdiction such presentation is made or notice issued. Following the view taken by this Court in Dashrath case (supra) we have no hesitation in holding that the High Court was justified in refusing to interfere with the orders passed by the Metropolitan Magistrate.

15. These appeals accordingly fail and are hereby dismissed but in the circumstances without any orders as to costs.

Transfer Petition (Cri.) No. 338 of 2010 and Transferred Case (Cri.) No. 4 of 2012

16. Transfer Petition (Cri.) No. 338 of 2010 and Transferred Case (Cri.) No. 4 of 2012 are delinked and to be posted for hearing separately.