Supreme Court of India
K. Bhaskaran vs Sankaran Vaidhyan Balan And Anr on 29 September, 1999
Bench: K.T. Thomas, M.B. Shah

CASE NO.:
Appeal (crl.) 1015 of 1999

PETITIONER:
K. BHASKARAN

RESPONDENT:
SANKARAN VAIDHYAN BALAN AND ANR.

DATE OF JUDGMENT: 29/09/1999

BENCH:
K.T. THOMAS & M.B. SHAH

JUDGMENT:

JUDGMENT 1999 Supp(3) SCR 271 The Judgment of the Court was delivered by THOMAS, J. Leave granted.

This is a case where the complainant and the accused are siblings, being sons of the same parents. They are fighting over a dishonoured cheque. Both must have experienced a roller-coaster ride in this criminal litigation. Fortune favoured the accused in the first round as he scored an acquittal from the Trial Court, but it favoured the complainant in the next round when the High Court reversed the acquittal and convicted his brother of the offence under Section 138 of the Negotiable Instruments Act (for short `the Act'). Perhaps the accused would have remained quiet by then, but for the sentence of imprisonment (six months) which he has now to undergo besides a fine of rupees one lakh which the High Court has imposed on him. So this time it is the turn of the accused to move and hence he has filed this appeal.

We thought that the two brothers would settle their disputes over this cheque case and we granted sufficient opportunity to both . But the battle is destined to continue as the expected settlement eludes like a mirage. We do not know at whose fault the parleys went away. We cannot but proceed with the case and so we heard the counsel for both.

Before dealing with the two main points on which the counsel argued in this Court we may set out the facts in brief. The respondent (who will hereinafter be referred to as the `complainant') presented a cheque which bears the signature of the appellant (hereinafter referred to as the `accused') before the Syndicate Bank's branch office at Kayamkulam (Kerala) on 29.1.1993 for encashment. The cheque was for an amount of rupees one lakh. The bank bounced the cheque due to insufficiency of funds in the account of the accused. Complainant then issued a notice by registered post in the address of the accused on 2.2.1993. The notice was returned to the complainant on 15.2.1993 with the following endorsements inscribed thereon:

3.2.1993 Addressee absent

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4.2.1993       Addressee absent

5.2.1993       Addressee absent

6.2.1993       Intimation served on addressee's house
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As the postal article remained unclaimed till 15.2.1993 it was returned to the sender with a further endorsement `unclaimed.' A complaint was filed by the complainant on 4.3.1993 before the Court of the Judicial Magistrate, 1st Class, Adoor (in Pathanamthitta District in Kerala) against the accused under Section 138 of the Act. Among the contentions which the accused raised, one was regarding the territorial jurisdiction of the said magistrate Court to try the case as the cheque was dishonoured at the Syndicate Bank's Branch office at Kayam-kulam (it is situate in another district in Kerala). Accused denied having issued the cheque although he owned his signature therein. According to the accused, his brother (the complainant) had snatched away some signed blank cheque" leaves from his possession and utilised one such cheque leaf for the present case. He also contended that he did not receive any notice from the complainant regarding dishonour of the cheque and hence no cause of action would have arisen in this case. The complaint, according to him, is not maintainable on that score also.

The complainant examined himself as PW-1 and two more witnesses for the prosecution. (PW-2 is the Manager of Syndicate Bank's branch office and PW-3 Devarajan who claimed to have seen the accused issuing the cheque at his shop). Accused examined his wife as DW-1.

The trial magistrate repelled the defence contention that the cheque leaf was stolen by the complainant. It was held that the cheque Was actually issued by the accused to the complainant. However, the magistrate upheld the contention that his Court had no territorial jurisdiction to try the case as the cheque was dishonoured by the Branch office of the bank situated in a different district. The magistrate further held that as the accused did not receive the notice no cause of action has arisen. As a corollary thereof the Magistrate acquitted the accused.

The High Court of Kerala, on the appeal preferred by the complainant, set aside the order of acquittal and convicted him and sentenced him as aforesaid. Learned single judge of the High Court accepted the version of the complainant that cheque was issued at the shop of PW-3 which is situated within the territorial limits of the Trial Court's jurisdiction. Regarding notice, learned single judge relied on the decision of a Division Bench of the same High Court Kunjan Panicker v. Christudas, (1997) 2 Kerala Law Times 539 wherein it was held that "refusal and even failure to claim in circumstances as here will tantamount to service of notice."

As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The Trial Court was not persuaded to rely on the

interested testimony of DW-1 to rebut the presumption. The said finding was upheld by the High Court. It is not now open to the accused to contend differently on that aspect.

Learned counsel for the appellant first contended that the Trial Court has no jurisdiction to try this case and hence the High Court should not have converted the acquittal into conviction on the strength of the evidence collected in such a trial. Of course, the Trial Court had upheld the plea of the accused that it had no jurisdiction to try the case.

We fail to comprehend as to how the Trial Court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be inquired into and tried in a court within whose jurisdiction it was committed." The locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criteria to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act.

Even otherwise the rule that every offence shall be tried by a court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word `ordinarily' to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a Court having' jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the Court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. It reads thus:

"179. Offence triable where act is done or consequence ensues. -When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the Courts to try the offence was sought to be determined.

The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. 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.

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 5 different localities. But concatenation of all the above five is a 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 :

"Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

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.

The more important point to be decided in this case is whether the cause of action has arisen at all as the notice sent by the complainant to the accused was returned as `unclaimed.' The conditions pertaining to the notice to be given to the drawer, have been formulated and incorporated in clauses (b) and (c) of the proviso to Section 138(1) of the Act. The said clauses are extracted below :

"(b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

On the part of the payee he has to make a demand by `giving a notice' in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such `giving' the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days `of the receipt' of the said notice. It is, therefore, clear that `giving notice' in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer in the correct address.

In Black's Law Dictionary, `giving of notice' is distinguished from `receiving of the notice.' (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A person `receives' a notice when it is duly delivered to him or at the place of his business.

If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape-from the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt in interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

In Maxwell's `Interpretation of Statues' the learned author has emphasized that "provisions relating to giving of notice often receive liberal interpretation." (vide page 99 of the 12th edn.) The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in clause (b) of the proviso to Section 138 of the Act show that payee has the statutory obligation to `make a demand' by giving notice. The thrust in the clause is on the need to `make a-demand'. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is despatched his part is over and the next depends on what the sendee does.

It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him, [vide Harcharan Singh v. Smt. Shivrani and Ors., [1981] 2 SCC 535, and Jagdish Singh v. Natthu Singh, [1992] 1 SCC 647.] Here the notice is returned as unclaimed and not as refused. Will there be any significant different between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The Section reads thus :

"27. Meaning of service by post. - Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression `serve' or either of the expressions `give' or `send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post"

No doubt Section 138 of the Act does not require that the notice should be given only by `post'. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.

Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the

cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption.

The High Court is, therefore, right in holding the accused guilty of the offence under Section 138 of the Act. Still there is one more aspect, though neither side has argued about it before us, which requires elucidation. We will deal with that aspect now.

The High Court has imposed a sentence of imprisonment for 6 months and a fine of Rs. one lakh on the accused. Section 138 of the Act provides punishment with "imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of cheque or with both". But the court cannot obviate the jurisdictional limit prescribed in Section 386 of the Code. Though the said provision confers power on the Court of appeal to reverse an order of acquittal and find the accused guilty and pass sentence on him according to law, even the High Court when it is the Court of appeal has to conform to the second proviso to the Section 386 of the Code. It reads thus :

"Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal".

In this context a reference to Section 29(2) of the Code is necessary as it contains a limitation for the magistrate of first class in the matter of imposing fine as a sentence or as a part of the sentence. Section 29(2) reads thus:

"The court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both."

The trial in this case was held before a Judicial Magistrate of first class who could not have imposed a fine exceeding Rs. 5,000 besides imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit. It is true, if a judicial magistrate of first class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of Rupees five thousand.

However, the magistrate in such cases can alleviate the grievance of the complainant by making report to Section 357(3) of the Code. It is well to remember that this Court has emphasized the need for making liberal use of that provision, (Hari Kishan and State of Haryana v. Sukhbir Singh and Ors., AIR (1988) SC 2127). No limit is mentioned in the sub-section and therefore, a magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a court of magistrate of first class in respect of a cheque which covers an amount exceeding Rs. 5,000 the Court has power to award compensation to be paid to the complainant.

The question of sentence and award of compensation must be considered by the Trial Court. We deem it feasible that the magistrate shall hear the prosecution and the accused on those aspects. Of course, if the complainant and accused settle their disputes regarding this cheque, in the meanwhile, that fact can certainly be taken into consideration in determining the extent or quantum of sentence.

We, therefore, uphold the conviction of the offence under Section 138 of the Act, but we set aside the sentence awarded by the High Court for enabling the trial court to pass orders on the question of sentence and the compensation, if any payable.