

Criminal Revision

PRESENT: The Hon'ble Justice Ashim Kumar Roy

Judgment On: 01-02-2010.

C.R.R. No. 3166 of 2009

Ranjan Sengupta

versus

The State of West Bengal & Anr.

Point:

Representation: In a case under Section 138 of the Negotiable Instruments Act where the payee/complainant is a partnership firm, whether to be represented ought by the partners who were represented at the initial stage-Code of Criminal Procedure, 1973-S.326

Fact: The petitioner invoking Section 482 of the Code of Criminal Procedure, challenged his prosecution under Section 138 of the Negotiable Instruments Act and sought for quashing of the same on the ground that (a) the Court of the Ld. Chief Judicial Magistrate, Alipore, where the aforesaid criminal proceeding is pending, is lacking of jurisdiction as no part of cause of action arose within its territorial limit; (b) the payee of the cheque, a partnership firm, filed the complaint being represented by one of its partner and after his retirement as there is no legal scope to substitute him and the impugned proceeding instituted at his instance stands abated; and (c) in view of specific bar contained in Section 326 (3) of the Code of Criminal Procedure, the Ld. Magistrate has no jurisdiction to proceed against the petitioner on the basis of the evidence recorded by his predecessors in office.

Held: In the present case the complainant presented the cheque for encashment through its banker United Bank of India, Parnasree Branch, issued the demand notice from his office situated at Behala and the demand notice was served upon the accused at his office situated at 7, Apurba Mitra Road, Kolkata – 700 026. All the aforesaid places are situated within the territorial limit of the Learned Court below where the impugned proceeding is pending against the petitioner. (Paragraph – 4)

In a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act where the payee, who will be the complainant, is a juristic person, in this case a partnership firm, ought to be represented by any natural person, who may be anyone of its partner or any duly authorized person and such partnership firm can always be represented at the different stage of proceeding by different persons, viz., by any of its partners or by any authorized representative. There is no law the person who represented a partnership firm at the initial stage shall have to represent it till the end of trial, even when such person lost his authority due to his retirement or for any other reasons. It is highly preposterous to suggest that merely because the person who initially represented the partnership firm has retired as a partner then in that case the retiring partner cannot be substituted by the existing partners or by any authorized person of the partnership firm. (Paragraph – 5)

In the instant case, trial was commenced long before such provisions for summary trial being introduced in the N.I. Act and the petitioner was all through tried by the Court following the procedure prescribed for summons trial and not in a summary way. The recording of evidence was commenced in the year 2000, thereafter also the rest of the witnesses of the complainant as well as the petitioner was examined as a defence witness following the procedure prescribed for a summons case. No part of the trial was held in a summary way and the accused person never took any objection to that even after amendment. It is true that the evidence was recorded at different stage by different Magistrates. Since, entire evidence was recorded

during the trial not the substance of the evidence and the trial was not held in a summary way, thus, the accused person cannot be said to have suffered any prejudice. In view of the fact the trial was commenced as a regular summons case and not in a summary way and upto now continued following the procedure prescribed for summons trial and not in a summary way, the bar contained in sub-section (3) of Section 326 of the Code is not at all attracted. (Paragraph – 6)

Cases cited:

1. Harman Electronics Private Limited & Anr. Vs. National Panasonic India Private Limited, reported in (2009) 1 SCC (Cri) 610
2. Associated Cements Vs. Kesvand, reported in 1998 SCC (Cri) 475

For Petitioner : Mr. Ayan Bhattacharjee

For O.P. No. 2 : Mr. Angshuman Chakraborty

For State : Mr. Alope Roy Chowdhury

The Court:

1. The petitioner invoking Section 482 of the Code of Criminal Procedure, challenged his prosecution under Section 138 of the Negotiable Instruments Act and sought for quashing of the same.

2. Mr. Ayan Bhattacharjee, learned advocate appearing on behalf of the petitioner contended as follows;

(a) The Court of the Learned Chief Judicial Magistrate, Alipore, 24-Parganas (South) where the aforesaid criminal proceeding is pending against the petitioner is lacking of jurisdiction as no part of cause of action arose within its territorial limit.

(b) The payee of the cheque Creative Construction, a partnership firm, filed the complaint being represented by one of its partner Debashis Mukherjee and after his retirement as there is no legal scope to substitute him the impugned proceeding instituted at his instance stands abated.

(c) In view of specific bar contained in Section 326 (3) of the Code of Criminal Procedure, the Learned Magistrate has no jurisdiction to proceed against the petitioner on the basis of the evidence recorded by his predecessors in office.

Mr. Bhattacharjee in support of his contention relied on a decision of the Hon'ble Supreme Court in the case of Harman Electronics Private Limited & Anr. Vs. National Panasonic India Private Limited, reported in (2009) 1 SCC (Cri) 610.

On the other hand, Mr. Angshuman Chakraborty, the Learned Counsel appearing on behalf of the complainant/opposite party vehemently opposed the prayer for quashing. According to him all the contentions of Mr. Bhattacharjee are absolutely baseless and without any substance. He further submitted the case in question relates to an offence punishable under Section 138 of the Negotiable Instruments Act for dishonour of a cheque of Rs. 24 lakhs and was instituted in the year 1999 but due to the dilatory tactics adopted by the petitioner, although the examination of the accused under Section 313 of the Code was completed long back but till date the trial could not have been concluded. He prayed for dismissal of this criminal revision.

3. I have given my anxious and thoughtful consideration to the rival submissions of the parties. Perused the impugned order as well as the Lower Court Records.

4. Now, having regards to the materials on record I find the contention of the petitioner that not a single event took place out of which cause of action arose, empowering the Court concerned to take cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act within its territorial limit has no foundation to stand. In the case of Harman Electronics

Private Limited & Anr. Vs. National Panasonic India Private Limited (supra), the Apex Court held that in a case relating to an offence punishable under Section 138

of the Negotiable Instruments Act, issuance of notice would not by itself give rise to cause of action but the communication of the notice would i.e. the receipt of notice would ultimately give rise to the cause of action for filing of the complaint, when in spite thereof the cheque amount is not paid. In the said case the cheque was dishonoured at Chandigarh and thereafter demand notice was issued by the complainant from New Delhi which was admittedly served upon the accused at Chandigarh. In such circumstances the Apex Court held the concerned court situated at New Delhi, the place from where the demand notice was issued has no territorial jurisdiction and accordingly directed the case should be transferred to the concerned Court at Chandigarh. However, in the present case the complainant presented the cheque for encashment through its banker United Bank of India, Parnasree Branch, issued the demand notice from his office situated at Behala and the demand notice was served upon the accused at his office situated at 7, Apurba Mitra Road, Kolkata – 700 026. All the aforesaid places are situated within the territorial limit of the Learned Court below where the impugned proceeding is pending against the petitioner.

Therefore, there cannot be any controversy that the Learned Additional Chief Judicial Magistrate, Alipore before whom the aforesaid complaint case is pending certainly possessed necessary jurisdiction to hold the trial of the petitioner for commission of the alleged offence.

5. The next contention of the petitioner that the case has been abated because of the fact the person through whom the complaint was filed by the partnership firm, M/s. Creative Construction has retired and left the firm is equally not tenable. In a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act where the payee, who will be the complainant, is a juristic person, in this case a partnership firm, ought to be represented by any natural person, who may be anyone of its partner or any duly authorized person and such partnership firm can always be represented at the different stage of proceeding by different persons, viz., by any of its partners or by any authorized representative. There is

no law the person who represented a partnership firm at the initial stage shall have to represent it till the end of trial, even when such person lost is authority due to his retirement or for any other reasons. It is highly preposterous to suggest that merely because the person who initially represented the partnership firm has retired as a partner then in that case the retiring partner cannot be substituted by the existing partners or by any authorized person of the partnership firm. In this connection reliance may very well be placed in the case of *Associated Cements Vs. Kesvand*, reported in 1998 SCC (Cri) 475.

6. Besides above it has also been most strenuously contended on behalf of the petitioner that in the instant case the Learned Magistrate before whom the trial is pending is not the same Magistrate who recorded the evidence of the complainant and his witnesses. It is further contended that all trials relating to offence punishable under Section 138 of the Negotiable Instruments Act is to be held following the procedure prescribed for a summary trial and as such in view of the specific bar contained in Section 326 (3) of the Code of Criminal Procedure, it is not permissible for the successor Magistrate to act on the evidence recorded by his predecessors in office. In this connection it is pertinent to note the trial in question was instituted on a complaint made to the Court on 30th March, 1999 and the recording of evidence of the complainant and his witnesses was commenced on June 30, 2000 and completed on 16th December, 2006. Thereafter, the accused was examined under Section 313 of the Code on 2nd July, 2007 and his examination as a defence witness was concluded on 7th April, 2009. The provisions of Section 143 has been inserted in the Negotiable Instruments Act by the Act 55 of 2002 with effect from 6th February, 2003 and by insertion of such provisions a Court has been empowered to try summarily an accused for an offence punishable under the said Act, and to impose a sentence exceeding three months which is not otherwise permissible under the Code of Criminal Procedure. Before such amendment all trials relating to any offence punishable under the Negotiable Instruments Act were held by following the procedure for trial of

summons case. In the case at hand, trial was commenced long before such provisions for summary trial being introduced in the N.I. Act and the petitioner was although tried by the Court following the procedure prescribed for summons trial and not in a summary way. The recording of evidence was commenced in the year 2000, thereafter also the rest of the witnesses of the complainant as well as the petitioner was examined as a defence witness following the procedure prescribed for a summons case. No part of the trial was held in a summary way and the accused person never took any objection to that even after amendment. It is true that the evidence was recorded at different stage by different Magistrates. Since, entire evidence was recorded during the trial not the substance of the evidence and the trial was not held in a summary way, thus, the accused person cannot be said to have suffered any prejudice. In view of the fact the trial was commenced as a regular summons case and not in a summary way and upto now continued following the procedure prescribed for summons trial and not in a summary way, the bar contained in sub-section (3) of Section 326 of the Code is not at all attracted.

For the reasons stated above, I do not find any merit in this criminal revision and same stands dismissed.

I find already the examination of the accused as a defence witness has been concluded and the date is fixed for recording of further defence witness, if any, in such circumstances considering the facts that the trial has been pending for nearly 11 years, I direct the Learned Magistrate that within 7 days from the date of communication of this order to fix a date for recording of defence evidence, if any, such date must not be fixed beyond the period of 15 days. If the defence fails to avail such opportunity the Learned Magistrate must close the evidence and pronounce the Judgement within a month thereafter.

The office is directed to at once communicate this order to the Court below and to send down the records at once.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)