

1970 KHC 11
Kerala High Court
Justice V. K. Krishna Iyer.

SREETHARA KAMATH v. JAWALA PRASAD GUPTA

Citation(s) : 1970 KHC 11 : 1970 KLT 45 : 1970 KLJ 103 : 1970 KLR 148

Case No : CrI. M. P. No. 69 of 1969

Date : 07/01/1970

PENAL CODE, 1860 -- S.415 -- Cheating -- Post dated cheque issued for existing liability -- Cheque dishonored subsequently -- A post dated cheque is a representation about a future event, the holding out of a hope rather than the representation of a present faith -- It amounts to a broken promise not to a criminal offence of cheating. Para(s):7

Criminal Procedure Code, 1898 -- S.561A -- Inherent jurisdiction -- Cannot extend to proceedings of Courts outside its supervisory jurisdiction. Para(s):8

Referred: AIR 1938 Mad. 129; AIR 1940 Lah. 93; AIR 1936 Cal. 324; AIR 1956 MP 19; AIR 1954 SC 724; Referred to

Advocates:

S. Easwara Iyer; J. Ranganatha Kamath; For Petitioner

M. C. Mathew; A. K. Avirah; For Counter Petitioner

ORDER

1. The petitioner, a resident of Alleppey, is the accused in a criminal case pending the court of the Additional Munsiff Magistrate (I Class) Aligarh, Uttar Pradesh. The complaint against him was filed by the managing partner of the firm, Prakash Metal Industries. The learned magistrate presumably took cognizance of the complaint under S.420 IPC. and issued process for his appearance. A bailable warrant was issued and, on furnishing a bail bond, the accused was enlarged on condition that he would be present in court on 3-12-1968. However, instead of appearing in compliance with the

bond the accused merely applied for an adjournment by forwarding an application setting out that he was ill with rheumatism and could not appear unless he was given 45 days time. Whereupon the magistrate issued a nonailable warrant for the arrest of the accused and getting to know that such a warrant had been issued to the District Superintendent of Police, Alleppey, the accused filed the present petition under S.561A. CrI. P. C., impleading as counter petitioners the complainant in the Aligarh Court, the District Superintendent of Police, Alleppey and the Inspector of Police, South Station, Alleppey. The prayer in the criminal M. P. is to quash the warrant issued by the magistrate's court on the ground that no offence has been made out in the complaint, that the munsiff magistrate at Aligarh has no territorial jurisdiction to try the petitioner for the offence alleged and that there would be irreparable injury and miscarriage of justice to the petitioner if he were arrested and taken to the far of U. P. Court where the court language is Hindi of which the petitioner is innocent.

2. The arguments by both sides will become clearer if considered after formulating the points raised. The petitioner's counsel argued that under S.561A CrI. P. C. the High Court's jurisdiction extends to prohibiting the execution of a warrant within the territorial jurisdiction of the High Court even though the process itself was issued by a court outside it. Unlike certain other provisions. S.561A CrI. P. C. does not restrict the power to orders of courts subordinate to the High Court concerned. He further argued that no offence had been made out even on the complaint as it is and it would be an abuse of the process of the court if on the strength of such a complaint the accused in Kerala is to be compelled to stand a trial at the other end of the country in a court in Uttar Pradesh, difficulties of distance, heightened by the barrier of language, making it impossible for the accused to get a fair trial. Even assuming that an offence had been made out, it did not arise within the limits of the Aligarh court but only in Alleppey; in that view the court which issued the warrant had no jurisdiction to take cognizance of the case and the High Court of Kerala was within its powers in quashing such a proceeding.
3. Counsel for the counter petitioners contended that whether an offence had been made out and whether it arose within the jurisdiction of the Aligarh court were both matters to be considered by that court and if for want of jurisdiction or for the reason that no offence had been made out the criminal proceeding was liable to be quashed, the appropriate court which had jurisdiction in that behalf was the High Court at Allahabad, the Kerala High Court having no power to set aside an order of a court outside its territorial limits. Of course, it was also contended that an offence had actually been made out and the munsiff magistrate, (First Class) Aligarh had not acted

improperly in issuing a bailable warrant and, when the bond executed pursuant thereto was broken, in issuing a non bailable warrant. There was a contention by the counter petitioners that the petitioner having submitted to the jurisdiction of the U. P. Magistrate's court could not now turn round and say that that court has no jurisdiction.

4. Prima facie, it appears to me that the complaint instituted before the munsif magistrate, Aligarh does not clearly disclose an offence but assuming in favour of the petitioner that the criminal proceeding is therefore liable to be quashed under S.561A Crl. P. C. it is doubtful if the Kerala High Court has power to set aside an order or quash a proceeding of a court outside its jurisdiction or area of superintendence. And more than all in the circumstances of this case, no extraordinary circumstances exist justifying the use of the extraordinary power under S.561A of the Code. Now to the admitted facts.
5. The accused placed an order for building fittings and locks on 24-9-1966 with the complainant's firm through its representative who was visiting Kerala at that time. The understanding was that the goods were to be supplied to the accused and thereafter the price plus postage and sales tax would be remitted to the supplier. The goods were duly supplied and the accused took delivery of them in January 1967. Two post-dated cheques, one dated 20-5-1967 and the other dated 15-6-1967 were issued by the accused to the agent of the complainant on 26-4-1967. The cheque dated 20-5-1967 was dishonoured by the Bank when forwarded for collection through the Central Bank of India, Aligarh. It was strenuously contended before me that even on these facts - although the accused has a different version of the case which I am not disposed to consider since, at this stage, when I am called upon to interfere under S.561A Crl. P. C. I must ordinarily assume the facts stated in the complaint to be true,--no offence had been made out under S.420 IPC. and that no part of the offence arose within the limits of the Aligarh Court.
6. When considering an application under S.561A Crl. P. C. it is proper to proceed on the allegations in the complaint and, if, taken at their face value and accepted in their entirety, they do not constitute any offence as alleged no question of appreciating evidence arises and the High Court can certainly exercise its inherent jurisdiction and quash the proceedings under S.561A Crl. P. C. Proceeding by this test we must ascertain whether the issuing of the post-dated cheque for an existing liability and which is dishonoured subsequently, amounts to an offence even if the accused, while issuing the cheque, knew that he would not be able to put sufficient money in the bank on the future date concerned.

7. If a person gives a cheque which is dishonoured and from the circumstances it could be presumed that he must have been aware and even intended that the cheque would be and should be dishonoured, he would prima facie be guilty under S.420 IPC. Of course, the position would be otherwise if he had no knowledge then that he had no sufficient money in the bank when issuing the cheque. What is the legal position when a post-dated cheque is issued, as in the present case? Normally, a charge of cheating rests upon a representation which is proved to be false and which relates to an existing fact but not to a future event. However, if even on the date when the representation is made as to a future event, such as when a person orders goods on credit and promises to pay on a later date, the prosecution proves that at the date when the promise was made the accused had not the slightest intention to fulfil the promise and held out the promise deceptively so as to induce the promisee to deliver the goods it is plausible to contend that there was a case of cheating. For, he had no intention whatsoever to pay but merely said so by way of a false inducement (vide AIR 1954 SC 724). It is a moot point whether a statement that something will be done or will happen in future is sufficient without more, under S.415 IPC. A postdated cheque is a representation about a future event, the holding out of a hope rather than the representation of a present fact and if such a cheque were to be dishonoured, it amounts to a broken promise but not to a criminal offence, although it may amount to discreditable conduct in business circles. (AIR 1938 Mad. 129, AIR 1940 Lah. 93). When the accused gives the post-dated cheque for goods delivered earlier and the cheque is dishonoured, a fortiori no offence of cheating can be spelt out. (Vide 1936 Calcutta 324 and AIR 1956 MB 19). In this state of the law, counsel wanted me to hold that there was no basis for proceeding with the complaint and that the issuance of a warrant to arrest him and to take him over a long distance to Aligarh is a harassment amounting to abuse of the process of the court. While I do feel the force of this submission and I am inclined to agree with the complaint, as it reads, together with the admitted fact that a post-dated cheque was issued, is too vague and inadequate to disclose any offence under S.420 IPC. I am not prepared to dispose of the case on that footing. Similarly, the argument that the representation was made in Alleppey, that the order for the goods was placed in Alleppey, that the goods were supplied at Alleppey and that the post-dated cheque (together with the representation accompanying it) also was handed over in Alleppey and that therefore no part of the offence could be said to have arisen within the jurisdiction of the Aligarh court has force. Counsel for the complainant countered this submission by inviting my attention to the rulings reported in AIR 1924 Patna 708 and 1955 N.U.C. case 4955 to persuade me to the view that the consequence of the cheating viz., loss of money, took place in Aligarh or, at any rate, was realised by the

complainant in Aligarh and, therefore, the magistrate there had jurisdiction. In my view, deception and the inducement of the person so deceived to deliver property are the ingredients of the offence. In the present case, even assuming that there is a false representation, the deceit and the delivery in consequence of the deceit took place in Kerala, most probably. If the ingredients necessary for finding the offence of cheating occurred in Kerala it follows that the Aligarh court has no jurisdiction (See AIR 1927 Mad. 544 and AIR 1957 SC 857). However, I am not deciding this point conclusively for the reason that all the necessary facts are not available before me and the High Court of Kerala cannot, acting under S.561A Crl. P.C., ordinarily quash the order of a court situated outside its territorial jurisdiction. If this view be correct the other questions which I have touched upon earlier need not be gone into by me. That is why I am not deciding those points although out of deference to the arguments addressed by both sides at the bar I have briefly adverted to them.

8. The only argument put forward by the counsel for the petitioner in support of his contention that the Kerala High Court has jurisdiction under S.561A to interfere with an order of a court outside its territorial limits is that S.561A does not speak of "any inferior criminal court situate within the local limits of its jurisdiction" but merely refers to "abuse of the process of any court". May be that if on the basis of an illegal warrant issued by a court or authority outside the jurisdiction of the High Court a person is taken into custody, within such territorial jurisdiction, the High Court, or an appropriate motion under S.491 Crl. P.C. or Art.226 of the Constitution, may be competent to examine the validity of the detention of the person. Counsel did not argue this aspect although I drew their attention to it since both of them stated that the accused had not been arrested and the situation that would arise in that event may well be considered, if necessary, at a later stage. The technical argument based upon the difference in language between S.439 and 561A of the Code does not appeal to me. The High Court's existing inherent powers which are preserved by S.561A of the Crl. P. Code cannot, it seems to me, extend to proceedings of courts outside its supervisory jurisdiction. Even on the view that when, pursuant to an order of an outside court, something illegal is done within those limits, the High Court can intervene, such inherent power can be exercised only in exceptional circumstances. When an Indian court has passed an order directing the issue of an arrest warrant it is open to the accused to move that court to quash the proceedings or set aside that order if no offence is disclosed by the complaint. Even if that court has no power in that behalf or declines to act at that stage the High Court concerned can be moved by the aggrieved party for relief. Thus it is not as if the party is without remedy and, ordinarily, this court must exercise its inherent power to help him out of an injustice

only where he has no alternative remedy. In this view, assuming that the execution of an. illegal order, or of a process which may amount to an abuse, when it takes place within the jurisdiction of the High Court may be interdicted by it, such power, being of an extraordinary kind, ought to be reserved as far as possible for extraordinary cases. They are not usually invoked when there is another remedy available. In the present case, another remedy is available. What is more, the petitioner has already" entered into a bond to appear before the Aligarh Magistrate but has not chosen to show up before him under the plea of long illness. Such a case does not justify the exercise of powers under S.561A CrI. P.C.

9. For these reasons I am constrained to dismiss this criminal miscellaneous petition. But I must mention that it is a general principle that parties should not be encouraged to resort to the criminal courts in cases in which the point at issue between them is one which borders on a civil dispute or can more appropriately be decided by a civil court. It is still more important to remember that when a complaint is filed against an accused person engaged in normal business over a thousand miles away from the court he should not be lightly dragged to the court by issuance of a warrant,ailable or nonailable, unless an offence clearly appears on the materials preliminarily presented. In a large country like ours, if courts do not proceed with circumspection and too readily issue warrants to persons living long distances away, the consequence will be irreparable injury, particularly when the affected party is poor. The tendency for procuring a warrant from court by artful representation or manipulation of facts would be on the increase and many an innocent person could be blackmailed by this device of deriving the accused on a cross country race to defend himself in an unfamiliar place and in an unfamiliar language and take his witnesses to such a far-off places unless magistrates refuse process except in clear and bona fide cases. I do hope the Aligarh court will pay heed to the aspects I have dealt with above.
10. With these observations I dismiss the criminal miscellaneous petition.