

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ Crl. M.(C ) No. 1476/2007**

Judgment reserved on: September 01, 2008  
Judgment delivered on: 09.02.2009

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M/s B.B.C.Shipping & Ship Building and Others

..... Petitioner.

Through: Mr. V.P. Singh and Mr. Nitin  
Sharma, Advocates for petitioners.

versus

Govt. of NCT of Delhi & Others

..... Respondent

Through: Mr. Amit Khenka with Mr. A.K. Siras,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

1. Whether the Reporters of local papers may  
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported  
in the Digest? Yes

**KAILASH GAMBHIR, J.**

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1. By way of this petition filed under Section 482 Cr.  
P.C. the petitioners seek quashing of complaint case No.

678/2004 pending in the court of Sh. Sanjeev Jain Id. ACMM Karkardooma Courts, Delhi .

2. Abridgedly stated the counsel for the petitioner has confined his arguments with regard to the maintainability of the complaint case filed by respondent No.2 in Karkardooma Courts due to the lack of territorial jurisdiction and accordingly the arguments were addressed by both the counsel within the confines of said issue of jurisdiction alone. The facts of the case are as under:-

3. The case of the respondent complainant in brief is that it entered into an Agreement dated 28.2.2003 with the petitioner No.1/company whereby it had undertaken to construct various types of houses in the township of Ship Repairing Complex at Paradip (Orissa), in pursuance of which the respondent No.2/company had deposited a sum of Rs.1,80,00,000/- as earnest money with the petitioner No.1/company at New Delhi on 28.10.2003. It is further the case of the respondent No.2/company that the petitioner No.1/company could not mobilize its resources leading the

respondent No.2/company to write a letter dated 20.11.2003 cancelling the aforementioned Agreement and requesting the petitioner No.1/company to return the sum of Rs.1,80,00,000/- paid by it as earnest money. As put in by the respondent No.2/company, the petitioner No.1/company gave two cheques drawn on Federal bank both dated 22.11.2003, i.e. cheque No. 535407 for the sum of Rs.1,00,00,000/- and cheque No. 535408 for the sum of Rs.84,00,000/- towards the refund of the earnest money and the interest as agreed to between the parties. It is further the case of the respondent No.2/company that it was shocked to have received the letter dated 23.2.2004 from the lawyers of the petitioner No.1/company addressed to the petitioner No.1/company whereby the respondent No.2/company came to know that the petitioner No.1/company has instituted a suit in Calcutta Civil Court in respect of the aforesaid cheques amounting to Rs.1,84,00,000/-. Being thus informed, the respondent No.2/company caused its appearance in the court of the learned Civil Judge, Calcutta, who directed the

petitioner No.1/company to furnish all the papers/documents relating to the case of the respondent No.2/company but which direction has not been followed. As per the respondent No.1/company, it sent both the cheques for collection, through its bankers in Delhi but the same returned dishonoured by the bankers of the petitioner No.1/company namely Federal Bank, Shakespere Sarani, Calcutta with its memo dated 16.03.2004 stating that the payment stopped by the drawer owing to the case pending at Alipore Court. According to the respondent No.2/company, such an endorsement on the returning memo dated 16.03.2004 by the Federal Bank was malafide and was done at the instance of the petitioner No.1/company. Being, under such an impression, the respondent No.2/company wrote letter dated 4.4.2004 to the Federal Bank seeking clarification of its remarks on the Memo dated 16.3.2004 but there was no response from the Bank. After the service of the statutory notice as per the provisions of Section 138 of the Negotiable Instruments Act and other formalities, the respondent

No.2/company instituted a complaint u/s 138 of the Negotiable Instrument Act in the court of the learned Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi which resulted in the orders dated 12.5.2004 which is assailed herein.

4. Mr. V.P. Singh, counsel appearing for the petitioners contended that there was no justification whatsoever for the respondent company to have instituted its complaint in the court of the learned ACMM Karkardooma Courts, Delhi because none of the acts as contemplated for conferring the jurisdiction in the court has been done or performed within the jurisdiction of Karkardooma courts. Admittedly, the respondent company has its registered office at Kalkaji, New Delhi; the bank of the respondent No.2/company is situated at Nehru Place, New Delhi and therefore, only the courts situated at Patiala House, New Delhi could have entertained the complaint of the respondent No.2/company. However, as would appear from para 15 of the complaint, the respondent company chose the jurisdiction

of the Karkardooma Courts only because the notice as envisaged u/s 138 of the Negotiable Instruments Act was posted from the Post Office situated within the jurisdiction of Karkardooma Courts. This by itself was not enough for the court of the learned ACMM to have assumed jurisdiction to entertain the complaint and later issue the process against the petitioners, rather the learned ACMM ought to have returned the complaint to the respondent company under Section 201 Cr.P..C. for presentation to the Court having jurisdiction in the matter which, in the present case, vests with the Patiala House Courts. It has been held in **Hongkong & Shanghai Banking Corporation vs Manas Satpathy 2005 (2) JCC (NI) 148** by this Court that jurisdiction cannot be self-created to initiate a complaint u/s 138 of the Negotiable Instruments Act.

5. The counsel also submitted that perusal of the notice of demand dated 4.4.2004 sent u/s 138 of the Negotiable Instruments Act shows that the said notice was sent by S.N. Gupta & Company, Advocates, for the

respondent No. 2 on behalf of the respondent. All their offices are situated in New Delhi excepting chamber no. 138, Civil Wing Tis Hazari Courts, Delhi. There was no earthly reason for M/s S.N. Gupta & Company. Advocates to have posted the said notice from a post office situated within the jurisdiction of Karkardooma Courts. This subterfuge ought to have cautioned the learned ACMM Karkardooma courts, Delhi to return the complaint u/s 201 of the Cr.P.C. for its presentation in Patiala House courts, or any other court having jurisdiction in the matter. The assumption of jurisdiction by the Karkardooma courts, is thus shrouded in mystery and this, by itself, is enough to quash the complaint.

6. I have heard counsel for the parties at considerable length and have gone through the record. Similar issues came up for consideration before the Court of HMJ H.R. Malhotra, in the case of **Manas Satpathy (Supra)** and therein it was held that merely posting a legal notice from Krishna Nagar which falls within the jurisdiction of Karkardooma Courts would not give right to the petitioner to

file a criminal case in that area. Confirming the order of the Metropolitan Magistrate the Court held that the Metropolitan Magistrate rightly dismissed the complaint on jurisdiction aspect as the complaint was filed contrary to the provisions of Section 177 and 178 of the Cr.P.C. In the facts of the present case also the respondent No.2 who is a drawee/payee of the cheque has its registered office at New Delhi while the office of the drawer i.e. the appellant herein is in Calcutta. Both the dishonoured cheques in question were issued by the appellant from their office at Calcutta and both the cheques were drawn on Federal Bank Limited, Calcutta. The respondent complainant whose registered office was in New Delhi presented the said cheques with their bankers at New Delhi and were returned with the remarks "payment stopped by the drawer". Due to the dishonor of the cheques the respondent No.2 got served legal notice of demand dated 4.4.2004 and this legal notice which is the bone of contention between the parties sent by the lawyer was dispatched from the post office located within the jurisdiction of Karkardooma

Courts. Based on the place of dispatch of legal notice the complainant/respondent No.2 filed the complaint at Karkardooma Courts. The crucial question which now arises is to decide the issue of jurisdiction i.e. whether the place of dispatch of legal notice or the place of office of the lawyer can confer the jurisdiction to a criminal court under Section 138 N.I. Act.

7. Territorial Jurisdiction of a Criminal Court in the case under the Negotiable Instruments Act was directly in issue in the judgment of the Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan- (1999) 7 SCC 510** wherein the law on the subject is laid down in the following terms:—

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

**15.** 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 five different localities. But a 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:

"178. (a)-(c) \* \* \*

(d) where the offence consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas."

**16.** 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.

8. Thus clearly in view of law laid down by the Supreme Court in **Bhaskaran's case**, the courts at 5 different locations can have the territorial jurisdiction to entertain a complaint under Section 138 of the NI Act. But the practice of filing the complaint at courts situated in different locations in respect of cheques forming part of same transaction has to be deprecated.

9. The Apex Court in M/s. **Prem Chand Vijay Kumar v. Yash Pal Singh**, reported in 2005 All MR (Cri) 2029 (SC), followed in **Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd.**, reported in MANU/SC/8067/2006, further restated the basic ingredients which are necessary to lodge complaint Under Section 138 of the Negotiable Instruments Act. Those are as under:

9. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908 (in short 'CPC')) "cause of action" means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period: and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

Proceedings on the basis of the generic meaning of the term "cause of action," certainly each of the above facts would constitute a part of the

cause of action but Clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. A combined reading of Sections 138 and 142 makes it clear that cause of action is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises and can arise only once.

10. In view of above undisputed position of facts and law, the cause of action as contemplated in Section 142 of the Negotiable Instruments Act, would certainly arise at a place where the drawer fails to make payment of the cheque. The registered office of the respondent complainant is at Kalkaji and the cheques were presented by the complainant at the bank situated at Nehru Place within the jurisdiction of Patiala House. Mere dispatch of demand notice from a post office under the jurisdiction of Karkardoom Courts, considering the scheme of N.I. Act, and in the facts and circumstances of the case, cannot give jurisdiction to the Court at Karkardooma, since, the bank where the cheques were presented is situated within the jurisdiction of the Patiala House Courts.

11. Admittedly, in the instant case, the basic transaction took place at Calcutta. The cheques were issued at Calcutta. The same were presented for collection at New Delhi at Nehru Place. The Federal Bank from Calcutta had endorsed and returned the cheques at Calcutta for want of money. Taking into account above facts and the settled legal position, a complaint in the above circumstances should have been filed at Patiala House Court and not at Karkardooma Court. The offence in question has been committed at Nehru Place, Delhi at which place the cheques were presented and returned dishonoured and also at Kalkaji where the registered office of the respondent is located from which place the demand was raised. Both these places i.e. Nehru Place and Kalkaji falls within the jurisdiction of Patiala House Courts as on date.

12. The contention as raised by the learned Counsel for the petitioner that the above Judgment of the Apex Court in **K. Bhaskaran AIR 1999 SC 3762 (supra)** supports his case to this extent that giving of notice in writing to the drawer of the

cheques demanding payment of the cheques amount and failure of the drawer to make payment within 15 days from the notice gives cause of action only at Karkardooma Court Delhi is without any substance or force. The Apex Court in **K. Bhaskaran and M/s. Prem Chand (supra)** refers to the basic ingredients which are necessary for an offence under Section 138 of the Act. There is no dispute about this that all these ingredients are necessary. We are concerned with the cause of action in the present matters. The demand notice is a must. But a place of issuance of notice cannot be said to be determinative feature to decide the jurisdiction for filing a complaint under Section 138 of N.I. Act. The notice was though sent from Delhi, but received at Calcutta. The party failed to make the payment as per notice. Therefore, issuance of notice from Delhi itself cannot give cause of action to file complaint at Delhi. The object of issuing notice as observed by the Apex Court in **Rajneesh Aggarwal v. Amit J. Bhalla**, reported in **MANU/SC/1462/2001** is as under:

“Mere dishonour of a cheque would not raise to a cause of action unless the payee makes a

demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheques."

13. Furthermore, the Supreme Court in **K. Bhaskaran (supra)** considered as to what are the various causes of action in a case under Section [138](#) of the Act to give territorial jurisdiction to a court. In para 11 of the judgment the Supreme Court held as under:

"11. 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 criterion 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."

14. From the discussions in the foregoing paragraphs the position that emerges is that the venue of enquiry or trial has primarily to be determined by the averments contained in the complaint. If on the basis of such averments the Court has jurisdiction, it has to proceed with the complaint. From the law laid down in the aforementioned judgment it is crystal clear that the cause of action for filing a complaint under Section 138 of the Act may also be at a place where the drawer of the cheque resided or the place where the payee resided or the place where either of them carried on business or the place where payment was to be made. But It is also manifest that any one of the five conditions enumerated by their Lordships in **K. Bhaskaran's case**, may not by itself invariably clinch the issue while deciding the question of jurisdiction. That question has to be decided keeping in view the entire sequence of events starting from issuance of the

cheque in the ultimate culmination of refusal to pay. In any event of the matter the place of posting of a demand notice cannot determine the place of jurisdiction. One may post a demand notice from a place where none of the situations forming part of cause of action may arise as envisaged under Section 138 and Section 142 of the Negotiable Instruments Act. But can it be said that merely a demand notice was posted from a particular place, the same by itself would become a relevant factor to determine the place of jurisdiction. The answer is simply no.

15. Undoubtedly, Sections 177 to 182 in Chapter XIII, Code of Criminal Procedure, also cannot be overlooked. The ingredients of the offence punishable under Section 138 of the Act being such, it has to be borne in mind that one of the several acts leading to the commission of the offence will not take away the jurisdiction of the court within the territory of which the majority of the acts have been perpetrated. Section 178(d) of the Code has to be read in the backdrop of the peculiar nature of the offence punishable under Section 138.

The observations of the Hon'ble Apex Court in **K. Bhaskaran's case (supra)** have to be read and understood in that context. In that view of the matter, the respondent-complainant in this case may not be able to draw any support from the above decision of the apex court.

16. The other facet is the convenience of the parties. In such matters whenever there is a contest and trial is necessary, it is in the interest of all that the place where such cheque is issued, presented and dishonoured should be the place for detail enquiry and adjudication of all the issues. In such matters basic parties including witnesses are definitely need to play relevant role during the trial. The convenience of all the parties, in the facts and circumstances of the case and considering the scheme is also important facet that goes to support the case of the petitioner that the complaint ought to have been filed at Patiala House Court and not at Karkardooma Court.

17. Having regard to the entire facts and circumstances of the case on hand, I am satisfied that the complainant is not

entitled to institute the complaint before the Karkardooma court at Delhi. It may not be just or proper to allow the complainant to prosecute the petitioner/accused before the Karkardooma Court at Delhi solely for the reason that the statutory demand notice was posted from a post office within the jurisdiction of the Karkardooma Courts. In my view, the method adopted by the complainant is clearly intended to harass the petitioner. This cannot be permitted.

18 . Before I conclude the important aspect which both the counsel did not argue is that as on date Delhi constitutes to be one Sessions Division. Since, Delhi constitutes to be one Metropolitan area Under Section 8 of Criminal Procedure Code headed by one District & Sessions Judge and one Chief Metropolitan Magistrate and no separate Sessions Divisions have so far been created by bringing an amendment to Section 8 of Cr.P.C., therefore, it is apparent that the present division of the Sessions Courts is by way of administrative instructions. In view of this position, it would be travesty of justice if the proceedings

which have already taken place before Karkardooma Court are set aside for de novo trial of the case, besides, such a course will result in causing further delay in the matter. In the light of the above position, I am not in agreement with the counsel for the petitioner that after transfer of the case to Patiala House Courts, the trial of the case should commence afresh.

19. Therefore, the court below is directed to transfer the complaint to the ACMM, Patiala House Court so as to place the same before the concerned Court having jurisdiction over the matter.

20. In view of the above discussion, the petition is allowed to the above extent. It is made clear that the proceedings at the Patiala House Court shall continue from the stage at which it was before the Karkardooma Courts. It is made clear that I have not considered the merit of any of the other contentions raised by the parties. Parties are directed to appear before the Karkardooma Court for appropriate directions on \_\_\_\_\_.

21. With these directions, the petition is disposed of.

**February 09, 2009**

**KAILASH GAMBHIR, J.**