

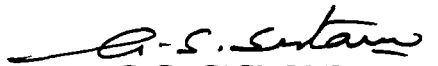
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% 27.05.2009

Present: Mr.Vijay Aggarwal, Adv. for the petitioner.

+ CRL.REV.P.NO.NO.149/2009

Learned counsel for the petitioner wishes to withdraw this petition, however, prays that this matter being the lead matter, file of this matter be tagged with Crl.Rev.P.No.166/2009. Dismissed as withdrawn. Let the file of this matter be tagged with Crl.Rev.P.No.166/2009.


G.S. SISTANI, J.

May 27, 2009
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Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P.179/2009, 166/2009, 169/2009 and 171/2009

Decided on 23.09.2010

IN THE MATTER OF :

M/S RELIGARE FINVEST LIMITED

..... Petitioner

Through: Mr. Vijay Aggarwal, Advocate with
Mr. Gurpreet Singh, Mr. Manoj Taneja and
Mr. Amit Shrivastava, Advocates

versus

STATE AND ANR.

..... Respondents

Through: Mr. M.N. Dudeja, APP for the State.
Mr. Buddy A. Ranganadhan, Advocate for R-2 in
Cri.RP-179/2009.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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

} Yes

HIMA KOHLI, J. (Oral)

1. This common order shall dispose of the petitions filed by the petitioner as the facts of these cases are identical and raise common question of law. For the sake of convenience, facts of Cri.Rev.P.No.179/2009 are being taken note of.

2. The present petition is filed by the petitioner under Section 397 read with Section 401 of the Cr.PC, against the judgment dated 09.03.2009 passed by the learned Metropolitan Magistrate in a complaint case No.10621/2009 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') holding *inter alia* that the court did not have the territorial jurisdiction to entertain the complaint and returning the

(13) (7)

same to the complainant/petitioner, for being presented before the court having territorial jurisdiction to try the same.

3. It is averred in the complaint petition that the petitioner/complainant is a public limited company having its registered and corporate office at New Delhi and is dealing with the business of providing its customers various types of loans. It is further stated that the respondent/accused availed loan facility from the petitioner/complainant but the account became irregular. Towards discharge of part of the debts, the respondent/accused issued cheques, which when presented by the petitioner/complainant to its bankers namely, HDFC Bank Ltd., Connaught Place, New Delhi, were returned unpaid by the bankers of the accused under the return memo dated 29.12.2008, with the remarks, "insufficient funds". The return memo was received by the petitioner/complainant at Delhi. In para 4 of the complaint, it is stated that the aforesaid cheques were submitted by the respondent/accused at the corporate and registered office of the complainant/petitioner. Thereafter, a legal demand notice was issued by the petitioner/complainant to the respondent/accused from Delhi, duly dispatched on 14.01.2009. As the respondent/accused failed to make the payments of the cheque amount, demanded through the legal notice within the stipulated period, the petitioner/complainant filed the aforesaid complaint before the court of the learned Metropolitan Magistrate. The impugned order came to be passed at the pre-cognizance stage. In other words, notices were not issued on the complaint to the accused and instead, the complaint was returned at the pre-summoning stage by the learned Metropolitan Magistrate to the petitioner/complainant for want of territorial jurisdiction.

4. Counsel for the petitioner/complainant submits that the learned Metropolitan Magistrate erred in arriving at the conclusion that his Court did

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not have the territorial jurisdiction to entertain the complaint. He states that a perusal of the complaint itself indicates that part of the cause of action arose in Delhi, and the following acts were done in Delhi:-

- (i) That the registered and corporate office of the petitioner/complainant is at New Delhi.
- (ii) That the cheques were submitted by the respondent/accused at the corporate and registered office of the complainant/company situated at Delhi.
- (iii) That the petitioner/complainant presented the cheques for encashment to its banker situated at Delhi.
- (iv) That the cheques, upon being dishonoured when presented to the bankers of the respondent/accused, were returned to the petitioner/complainant through its bankers at Delhi.
- (v) That the legal notice was dispatched by the petitioner/complainant to the respondent/accused from Delhi.

5. Counsel for the petitioner/complainant submits that while passing the impugned order, the learned Metropolitan Magistrate misinterpreted the judgment of the Supreme Court in the case of M/s Harman Electronics Pvt. Ltd. vs. M/s National Panasonic India Ltd. reported as **2009 II AD SC 21**. He states that the aforesaid judgment was in fact not applicable to the facts of the present case. It is further stated that the judicial pronouncement in the case of K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. reported as **(1999) 7 SCC 510** still holds the field and has not been watered down by any of the subsequent decisions on the point of territorial jurisdiction. Rather, if the subsequent decisions down the years are perused, the case of K. Bhaskaran (supra), remains the fountainhead and has been reiterated from

time to time. It is further urged that the aspect of territorial jurisdiction ought not to have been gone into by the learned Metropolitan Magistrate at the pre-summoning stage, and the said aspect could have been considered and decided either ways, even after cognizance was taken.

6. In support of his submission that the averments contained in the complaint petition *prima facie* revealed that it was maintainable within the territorial jurisdiction of Delhi, counsel for the petitioner relied on the following judgments:

- i. K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. (1999) 7 SCC 510
- ii. Trisuns Chemical Industry vs. Rajesh Agarwal and Ors. (1999) 8 SCC 686.
- iii. Alchemist Ltd. vs. State Bank of Sikkim, (2007) 11 SCC 335
- iv. Smt. Shamshad Begum vs. B. Mohammed 2008 (13) SCALE 669
- v. Rajiv Modi vs. Sanjay Jain V (2009) SLT 725
- vi. Religare Finvest Limited vs. Sambath Kumar A (2010) JCC (NI) 266
- vii. Patiala Casting P. Ltd. & Ors. vs. Bhushan Steel Ltd. 2010 IV AD (CRL)(DHC) 266.

7. Per contra, counsel for the respondent supports the impugned judgment and submits that the same does not deserve interference. He states that in the present case, the distinction between the term, "cause of action" and "offence" must be understood. He relies on the provision of Section 142(b) of the Act to urge that the aforesaid provision alone deals with the issue of cause of action and that the proviso (c) to Section 138 of the Act postulates that the said Section would not apply until the drawer of the

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cheque fails to make payment of the amount to the holder in due course of the cheque, within 15 days of the receipt of the said notice. He, therefore, submits that the location where the major part of the cause of action arises, i.e., the place where the cheque on presentation, is dishonoured has to be examined for deciding the issue of territorial jurisdiction. To fortify his submission that the offence under Section 138 is completed only on non-payment of the amount, as contemplated in proviso(c) and the locality where the drawer fails to make the payment within 15 days of the receipt of the notice, is of primary consideration, he relies on the following judgments:

- i. Shri Ishar Alloy Steels Ltd. vs. Jayaswals NECO Ltd. 2001 (3) SCC 609
- ii. ICICI Bank Ltd. vs. Subhas Chand Bansal 160 (2009) DLT 379
- iii. Achintya Mandal vs. Chaitanya Agro Products & Ors. 2009 (108) DRJ 471
- iv. M/s Harman Electronics Pvt. Ltd. vs. M/s National Panasonic India Ltd. 2009 II AD SC 21

8. In the case of K.Bhaskaran(supra), the question of territorial jurisdiction of the Magistrate's Court situated at Adoor in Pathanamthitta District in the State of Kerala, to try the case under Section 138 of the Act, was under consideration where, the cheque was dishonoured in another District in the State of Kerala. The learned Magistrate held that the court did not have the territorial jurisdiction to try the case as the cheque was dishonoured by the branch office of the complainant/bank situated in a different District. On an appeal preferred by the complainant before the High Court of Kerala, the Single Judge accepted complainant's version that the cheque was issued within the territorial limits of the trial court's jurisdiction

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and reversed the order of the Magistrate. Aggrieved by the order of the High Court, the appellant/accused approached the Supreme Court. While dealing with the submissions of both the parties on the question of territorial jurisdiction, the Supreme Court observed as below:-

"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 enquired 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.

12. 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:-

(18) (12)

"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 enquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."

13. 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.

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 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:

"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." (emphasis added)

9. The aforesaid judgment thus clarifies that the five essential ingredients for completing the offence under Section 138 of the Act are as below:-

- (i) Drawing of the cheque,
- (ii) Presentation of the cheque with the bank,
- (iii) Returning of the cheque unpaid by the drawee bank,
- (iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and
- (v) Failure of the drawer to make payment within 15 days of the receipt of the notice.

10. The aforesaid judgment was echoed by the Supreme Court in the case of Smt. Shamshad Begum (supra), wherein it was reiterated that:

"8. It is not necessary that 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 concatenation of all the above five is sine qua non for completion of the offence under Section 138 of the Act." (emphasis added)

11. In the case of Trisuns Chemical Industry (supra), while examining the judgment of the Gujarat High Court, passed in a revision petition, wherein, it was held that a perusal of the complaint filed before the trial court showed that there was nothing to reflect that any part of the transaction took place within the territories of the State of Gujarat and the Judicial Magistrate, Gandhidham ought not to have taken cognizance of the matter and ought not to have directed issuance of process, the Supreme Court held that the Magistrate erroneously assumed that for the purpose of taking cognizance of an offence, the Court must necessarily have the territorial jurisdiction to try the case as well. Adverting to Chapter XIII of the Code of

Criminal Procedure, relating to "Jurisdiction of Criminal Courts in Enquiries and Trials", the Court held that the jurisdictional aspect becomes relevant only when the question of enquiry and trial arises. In this regard, reference may be made to the following observations:

"13. Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a Magistrate of the power to take cognizance of an offence – of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Anyway this is a different matter.

14. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier." (emphasis added)

12. In the case of Rajiv Modi (supra), the Supreme Court formulated the following question for consideration:-

"10. The issue before us is, whether the High Court under Section 482 Cr.P.C. was justified in quashing the complaint on the ground that no cause of action has arisen in Patna in respect of the alleged offences under the provisions of IPC.

11. The learned Counsel for the appellant would submit, that, the cognizance stage and the trial stage are two different aspects of criminal jurisprudence and under the Code, there is no territorial restriction for any Magistrate to take cognizance of an offence although at the stage of trial, the said issue may become relevant in view of the provisions of Chapter XIII of the Code. The Counsel would also assert that

Section 177 of the Code relating to the jurisdiction of the Criminal Courts do not trammel the powers of any Court to take cognizance of the offence and thus, would apply to Sections 190 and 200 as well.

12. In order to appreciate the jurisdictional aspect, it would be relevant to discuss the meaning of the expression "cause of action". This Court has laid down that the cause of action is a fundamental element to confer the jurisdiction upon any Court and which has to be proved by the plaintiff to support his right to a judgment of the Court. It is relevant to take note of what was stated by this Court in State of Bombay v. Narottamdas Jethabhai, **1951 SCR 51**. In this case, it is observed that the jurisdiction of the Courts depended in civil cases on a "cause of action" giving rise to a civil liability and in criminal cases on the commission of an offence, and on the provisions made in the two Codes of Procedure as to the venue of the trial and other relevant matters."

13. After taking into consideration a catena of decisions on the point of "cause of action", while tracing the decisions starting from the year 1950's right upto 2009, including judgments rendered in the cases of State of Bombay vs. Narottamdas Jethabhai, **1951 SCR 51**; State of Madras vs. V.P. Agencies, **AIR 1960 SC 1309**, Gurdit Singh vs. Munsha Singh, **(1977) 1 SCC 791**; State of Rajasthan vs. Swaika Properties, **(1985) 3 SCC 217**; ONGC vs. Utpal Kumar Basu, **(1994) 4 SCC 711**; Bloom Dekor Ltd. vs. Subash Himatlal Desai, **(1994) 6 SCC 322**; Rajasthan High Court Advocates' Assn. vs. Union of India, **(2001) 2 SCC 294**; Y. Abraham Ajith vs. Inspector of Police, **(2004) 8 SCC 100**; and Alchemist Ltd. vs. State Bank of Sikkim, **(2007) 11 SCC 335**, the Supreme Court crystallized the law as follows:-

"22. It is evident from the above decisions, that, to constitute the territorial jurisdiction, the whole or a part of "cause of action" must have arisen within the territorial jurisdiction of the Court and the same must be decided on the basis of the averments made in the complaint without embarking upon an inquiry as to the correctness or otherwise of the said fact."

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29. In view of the above principles, the Court on basis of the averments made in the complaint, if it is *prima facie* of the opinion that the whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of the complaint. There is no need to ascertain that the allegations made are true in fact." (emphasis added)

14. The attention of this Court has been drawn to the two recent decisions of Single Benches of this Court in the cases of Religare Finvest Limited vs. Sambath Kumar A reported as **(2010) JCC (NI) 266** and Patiala Casting P. Ltd. & Ors. vs. Bhushan Steel Ltd. reported as **2010 IV AD (CRL)(DHC) 266**. In both the cases, the Single Benches noticed the judgment in the case of Harman Electronics (supra), and held that mere sending of notice from Delhi would itself not give rise to a cause of action in Delhi, for taking cognizance under the Act and the said act ought to be accompanied by some other act(s), for vesting territorial jurisdiction in a particular court. In the case of Religare Finvest Limited (supra), the Single Judge also considered the judgment in the cases of Mosaraf Hossain Khan vs. Bhagheeratha Engg. Ltd. reported as **(2006) 3 SCC 658** and Lok Housing and Constructions Limited vs. Raghupati Leasing and Finance Limited and Anr. reported as **100 (2002) DLT 38** to hold that a complaint under Section 138 of the Act could be filed in any of the five local areas where any of the five different acts constituting the offence under Section 138 of the NI Act were done. The judgment in the case of Delhi High Court Legal Services Committee vs. Government of N.C.T. of Delhi reported as **163 (2009) DLT 56** was also distinguished by holding that the same had no application to the facts of the said case as the said judgment directed return of complaints in cases, in which Delhi courts did not have territorial jurisdiction to try the complaints. It may be noted that the aforesaid judgment is stated to have been taken in

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appeal to the Supreme Court and *status quo* was ordered to be maintained until further orders and the matter has been directed to be posted before a three Judges Bench. It is stated that the said matter is still pending disposal.

15. As regards the submission of the counsel for the respondent that territorial jurisdiction vests in a Court in whose jurisdiction, the major portion of the cause of action arises, i.e., the locality where the bank of the accused which has dishonoured the cheque is situated, the Supreme Court has clarified in the case of K. Bhaskaran (supra), that the locality where the bank of the accused, which has dishonoured the cheque, is situated cannot be regarded as the sole criteria to determine the place of offence and that a place, for the purpose of invoking the provisions of Section 138 of the Act, would depend on a variety of facts. Pertinently, the term used by the Supreme Court in the aforesaid case for completing the offence under Section 138 of the Act is "acts" and not "cause of action". The said position emerges clearly from a bare reading of paras 11, 14 and 16 of the aforesaid judgment reproduced hereinabove. Therefore, this Court is not inclined to agree with the submission of the counsel for the respondent that the major portion of the cause of action in the present case arose only after the cheque issued by the respondent/accused was forwarded by the banker of the petitioner/complainant to the banker of the accused, and where, on presentation, the cheque was dishonoured, which in the present case, is situated not in Delhi, but in Pune.

16. It is clear from the provision itself that an offence under Section 138 would not be completed with the dishonour of the cheque. Rather, it attains completion only with the failure of the drawer to pay the cheque amount within the expiry of the fifteen days after the legal notice is served upon the drawer of the cheque/s whose cheque/s have been dishonoured. As

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noted above, the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts, the acts being, drawing of the cheque, presentation of the cheque with the bank, returning of the cheque unpaid by the drawee bank, giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and failure of the drawer to make payment within 15 days of the receipt of the notice. It is not essential that all the acts should be committed at the same locality. It is quite possible that all the five acts are perpetrated in five different localities. In such a situation, any one of the courts exercising jurisdiction in one of the five localities can become the place of trial for the offence under Section 138 of the Act. At the stage of entertaining a complaint under Section 138 of the Act, the Court is only required to arrive at a prima facie opinion as to the territorial jurisdiction, on the basis of the averments made therein, without launching into a fact finding mission as to their correctness or otherwise.

17. Hence, the contention of the counsel for the respondent that non-payment of cheque amount under Section 142(b) of the Act alone can give rise to a cause of action for an offence under Section 138 of the Act and it is the "cause of action", which has to be seen and not "the act", is found to be untenable and turned down. The five acts mentioned in the aforesaid judicial dicta were clearly spelt out and the Supreme Court further clarified that each of those five acts could be done in five different localities. This would naturally mean that the act of presenting of the cheque by the complainant where he is situated, could be in a different city from where the accused and his banker is situated.

18. The argument of the counsel for the respondent that in the case of Shri Ishar Alloy Steels Ltd. (supra), the Supreme Court had clarified that the words, "a bank" and "the bank" in Section 138 of the Act are an indication of

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the intention of the legislature and that since both "a bank" and "the bank" deal with the banker of the accused, the aspect of territorial jurisdiction has to be examined in the said context, must be considered in the light of the issue before the said Court. In the aforesaid case, the issue, which engaged the Supreme Court was set out in para 2 of the judgment, which reads as below:

"2.(a) What is meant by, "the bank" as mentioned in clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881?

(b) Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the payee of the cheque?

(c) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the Act?"

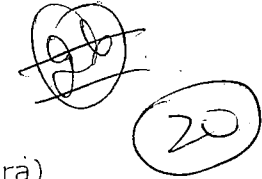
19. It is therefore quite apparent that the aforesaid judgment did not deal with the issue of territorial jurisdiction at all. Rather, the focus was on the meaning of term, "the bank", as mentioned in clause (a) of the proviso to Section 138 of the Act and whether such a bank would take within its fold any bank, including the collecting bank of the payee of the cheque, for the purposes of examining the validity of the cheque under the Act. It is settled law that a decision is not an authority for a proposition which did not fall for its consideration. Hence, the aforesaid judgment cannot be said to have a bearing on the issue of territorial jurisdiction to entertain a complaint by a particular court.

20. In the case of Harman Electronics (supra), the Supreme Court particularly noted in paras 12 and 13 of the judgment that the complaint/petition did not show that the cheques were presented at Delhi and rather, the petition was completely silent on that aspect. Having regard to the facts and circumstances of the aforesaid case, where it was observed that

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the parties had been carrying on business at Chandigarh, the transactions took place at Chandigarh, the cheques were issued and presented at Chandigarh, the Supreme Court had observed that it had no option but to presume that the cheques were also presented at Chandigarh and dishonour of the cheques took place at Chandigarh and hence, mere sending of notice from Delhi itself would not give rise to a cause of action for taking cognizance under the Act. In the present case, mere issuance of a legal notice by the petitioner/complainant from Delhi alone is not the sole basis for filing the complaint in the territorial jurisdiction of Delhi. As noted in para (3) above, there were certain other acts, which were done within the territorial jurisdiction of Delhi, for invoking Delhi jurisdiction.

21. Apart from the aforesaid judgments, counsel for the respondent relies on the decisions of two Single Benches of this Court in the cases of ICICI Bank Ltd. (supra) and Achintya Mandal (supra) to urge that the learned Metropolitan Magistrate had rightly returned the complaint to the petitioner for want of territorial jurisdiction. A perusal of the aforesaid judgments shows that reliance was placed on the judgment in the case of Harman Electronics (supra) to hold that the Magistrate was right in returning the complaint petitions. But the fact position of both the cases are entirely different and distinguishable from the instant case. In the case of Achintya Mandal (supra), the learned Single Judge observed that the only single fact of the statutory notice being dispatched from Delhi formed the basis of filing the complaint in Delhi and that alone could not vest territorial jurisdiction on Courts in Delhi. In the case of ICICI Bank Ltd. (supra), it was observed that the respondents were residing outside the territorial jurisdiction of the trial court and the bank of the respondent was beyond the territorial jurisdiction of the trial court. However, there is no mention in the said judgment as to the



location, where the other acts mentioned in the case of K. Bhaskaran (supra) were done. In this view of the matter, neither of the two judgments can be stated to be applicable to the facts of the instant case.

22. With respect to the submission of the counsel for the respondent that cause of action has to be considered in the context of substantive law viz. a-viz procedural law, it may be noticed that Section 4(2) of the Cr.P.C postulates that all offences under any other law shall be investigated, inquired into, tried and otherwise, dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 5 of the Cr.P.C, which is the saving clause, stipulates that nothing contained in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

23. In the present case, the Negotiable Instruments Act is the substantive statute and the procedural aspect of filing of the complaint, and dealing with the procedures to be followed by the trial court thereafter are all governed under the procedural law, i.e., the Code of Criminal Procedure. Hence, reference to Chapter XIII of the Code of Criminal Procedure, which deals with jurisdiction of criminal courts, is but natural. Section 177 relates to ordinary place of inquiry and trial, Section 178 relates to place of inquiry or trial and Section 179 relates to offence triable where act is done or consequence ensues. All the aforesaid three provisions have been particularly explained by the Supreme Court in the case of K. Bhaskaran (supra), as noted above. Therefore, reading of the Negotiable Instruments Act in isolation dehors the procedure prescribed in the Cr.P.C, for dealing with the filing of the

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complaint and the manner of proceeding with the complaint, is neither possible, nor permissible.

24. As discussed above, the Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case as well. Only when an enquiry or trial begins, does the jurisdictional aspect become relevant. Infact, after taking cognizance of the offence, the Magistrate may have to decide as to which court would have the jurisdiction to enquire into the case and such a situation can arise only during the post-cognizance stage. At the pre-cognizance stage, the Magistrate has only to examine the averments, as set out in the complaint and not more, for *prima facie* arriving at a decision as to whether some of the acts essential for completing an offence under Section 138 of the Act were done in the territorial jurisdiction of that Court. In the present case, having perused the complaint filed by the petitioner/complainant without ascertaining the correctness of the allegations made therein, *prima facie* it has to be held that a part of the cause of action has arisen in Delhi and the same is not based solely on the issuance of a legal notice by the petitioner/complainant to the respondent/accused from Delhi, but some other acts done prior thereto, as set out in para (3) hereinabove.

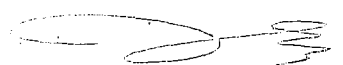
25. From the aforesaid facts and circumstances, there appears no ambiguity on the aspect of the right of the petitioner/complainant to file a complaint in a Court having jurisdiction in the context of the five acts mentioned in the case of K. Bhaskaran (supra). In the present case, as noted above, a substantial part of the cause of action for filing of the complaint by the petitioner/company against the respondent/accused under Section 138 of the Act, *prima facie* appears to have arisen within the jurisdiction of the courts in Delhi. However, it is clarified that if after taking cognizance, the

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respondent/accused is able to place such material facts on the record which demonstrate that the Courts in Delhi do not have the territorial jurisdiction to entertain the complaint, the learned Metropolitan Magistrate shall still have a free hand to ascertain the truth of the allegations made by the petitioner/complainant and arrive at a different conclusion.

26. The present petitions are therefore allowed and the impugned order is set aside. The case is remanded back to the trial court with directions to proceed further and deal with the complaint of the petitioner under Section 138 of the Act, in accordance with law. The petitioner shall appear before the learned Metropolitan Magistrate on 18.10.2010 at 2:00 PM.

27. A copy of this order shall be forwarded by the Registry forthwith to the trial court for information.



(HIMA KOHLI)
JUDGE

SEPTEMBER 23, 2010
arkb