

HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: May 14, 2009
Judgment delivered on: May 15, 2009

- + (1) Crl. Rev. P. No. 202/2009*
- + (2) Crl. Rev. P. No. 205/2009*
- + (3) Crl. Rev. P. No. 206/2009*
- + (4) Crl. Rev. P. No. 210/2009*
- + (5) Crl. Rev. P. No. 215/2009*
- + (6) Crl. Rev. P. No. 217/2009*
- + (7) Crl. Rev. P. No. 199/2009
- + (8) Crl. Rev. P. No. 200/2009
- + (9) Crl. Rev. P. No. 201/2009
- + (10) Crl. Rev. P. No. 203/2009
- + (11) Crl. Rev. P. No. 204/2009
- + (12) Crl. Rev. P. No. 211/2009
- + (13) Crl. Rev. P. No. 212/2009
- + (14) Crl. Rev. P. No. 213/2009
- + (15) Crl. Rev. P. No. 214/2009
- + (16) Crl. Rev. P. No. 216/2009

% ICICI Bank Ltd. ... Petitioner
Through: Mr. Punit Kumar Bhalla,
Advocate.

versus

Subhash Chand Bansal*
Raman Kannan*
M. Prasanna*
A.R. Vijaya Kumar*
Sivathanu Subramaniam*
P. Dayanand*
Vaneeta Bahri
Shiv Tours & Travels
Arun Pandey
Mahendra Rastogi
Naveen Yadav
Albino Electricals
Hitendra Nagar
Kundan Ram
Sudhanshu Yadav
Satya Prakash Singh ... Respondents
Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

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1. The question involved in the above-captioned eight petitions is of territorial jurisdiction. Petitioner had filed eight complaints under section 138 of Negotiable Instruments Act, 1881 before a Metropolitan Magistrate, Dwarka Courts, Delhi, against the Respondents regarding bouncing of cheques.

2. Vide impugned orders of 12th January, 2009 and 25th February, 2009, trial court has dismissed Petitioner's aforesaid complaints on the ground of territorial jurisdiction by relying upon a recent verdict of the Apex Court in the case of "*Harman Electronics (P) Ltd. and Anr. Vs. National Panasonic India Ltd.*", reported in **(2009) 1 SCC 720**.

3. In the above-captioned first six petitions, Petitioner's complaints under section 138 of Negotiable Instruments Act, 1881 have not been entertained vide impugned order of 12th January, 2009, and have been returned to the Petitioner at the very first hearing, for being presented

before the competent court having territorial jurisdiction over the subject matter of these criminal complaints. In the remaining above titled ten petitions, Respondents/accused has been summoned but before the Respondents/accused could appear, these ten complaints have been returned back to the Petitioner for presenting them before the competent court having territorial jurisdiction.

4. Petitioner's counsel has been heard at length and the decision in **(1999) 7 SCC 510**, relied upon by him have been perused.

5. I shall first deal with the first six petitions, which have not been entertained by the trial court at its threshold by holding vide impugned order that it does not have territorial jurisdiction over the subject matter of Petitioner's complaints under section 138 of Negotiable Instruments Act, 1881.

6. In these petitions, it is not in dispute that the Respondents are residing outside the territorial jurisdiction of the trial court and the bank of the Respondent is also beyond the territorial jurisdiction of the trial court. In the impugned order, trial court has quoted paragraphs No. 24 and 25 from a recent verdict of the Apex Court in the case

of *“Harman Electronics (P) Ltd. and Anr. Vs. National Panasonic India Ltd.”*, reported in **(2009) 1 SCC 720**, which reads as under:-

*“24. Indisputably all statutes deserve their strict application, but while doing so the cardinal principles therefor cannot be lost sight of. A Court derives a jurisdiction only when the cause of action arose within his jurisdiction. The same cannot be conferred by any act of omission or commission on the part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, commission of an offence completes. Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter in *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.*, (2001) 6 SCC 463, emphasis has been laid on service of notice.*

25. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower cannot only present the cheque for its encashment at four different places but also may serve notices from four different places so

as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-a-vis the provisions of the Code of Criminal Procedure.”

7. However, learned counsel for the Petitioner heavily relies upon another decision of the Coordinate Bench of the Apex Court in the case of “*K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr.*, **(1999) 7 SCC 510**, to contend that place of drawing of cheque, its presentation, its return, place of giving of notice and place of failure of drawer to make the payment would have the jurisdiction to entertain a complaint under section 138 of Negotiable Instruments Act, 1881, pertaining to bouncing of cheque and the complaint can be filed at any one of the five places and the choice will be of the Complainant.

8. It has been pointed out on behalf of the Petitioner that aforesaid case of *K. Bhaskaran* (supra) has been quoted with approval in a recent unreported decision by the Apex Court in the case of “*Smt. Shamshad Begum vs. B. Mohammad*”, Crl. A. No.1715/2008, decided on 3rd November, 2008 and the same has been relied upon by a single bench of the High Court of Madhya Pradesh in Crl.

C. No.1233/2009, titled “*Manjul vs. Wasim Shekh*” decided on 3rd March, 2009, while distinguishing the verdict of the Apex Court in the case of Harman Electronics (*Supra*).

9. Learned counsel for the Petitioner vehemently contends that the case of Harman Electronics (*Supra*) has been illegally relied upon by the trial court and the same is distinguishable on facts as in the above said case, statutory notice was given from Delhi but the entire transaction had taken place at Chandigarh but therefore, it had been held that the Delhi courts do not have territorial jurisdiction as by giving of notice alone, territorial jurisdiction cannot be created.

10. After having heard learned counsel for the Petitioner and upon perusal of the decisions cited, I am of the considered opinion that the recent verdict of the Apex Court in the case of M/s. Harman Electronics (*Supra*) holds the field. This decision has been rendered by the Apex Court on 12th December, 2008 and the earlier decision of the Apex Court rendered in the case of K. Bhaskaran (*Supra*) has been duly considered and the conclusive observations made in paragraph No. 14, reads as under:-

“14. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that

*dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, **there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint.** As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. **Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.**"*
(emphasis supplied)

11. Thus, it is abundantly clear that for commission of an offence under section 138 of Negotiable Instruments Act, 1881, notice must be received by the accused. It may be deemed to have been received in certain situations. Section 177 of the Code of Criminal Procedure determines

the jurisdiction of a court trying the matter. The court will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local. However, there may be a case, where the accused would have shifted his residence outside the territorial jurisdiction of the court concerned, but then, in such a case, the court in whose territorial jurisdiction drawee bank, (i.e., banker of the accused) is situated would have the territorial jurisdiction to entertain the complaint in question. Therefore, the place where an offence has been committed plays an important role.

12. In *M/s. Harman Electronics (Supra)*, a contention was raised that a debtor must seek the creditor should be applied in a case of this nature and it was repelled in the following words:-

“We regret that such a principle cannot be applied in a criminal case. Jurisdiction of the Court to try a criminal case is governed by the provisions of the Criminal Procedure Code and not on common law principle.”

13. It needs no elaboration that when two decisions of coordinate benches of the Apex Court are cited, then the

later one prevails. The decision of the Apex Court in the case of Smt. Shamshad Begum (supra) relied upon by the Petitioner is of 3rd November, 2008; whereas, the Apex Court decision in the case of M/s. Harman Electronics (Supra) is of 12th December, 2008. I find myself unable to agree with the reasoning in decision rendered by a Single Bench of the High Court of Madhya Pradesh in the case of *Manjul vs. Wasim Shekh (Supra)*, as the latest decision of the Apex Court in the case of M/s. Harman Electronics (Supra) cannot be brushed aside by simply observing that it was rendered in a different context and by relying upon the decision in the case of K. Bhaskaran (Supra).

14. Trial court has taken note of the ground realities by observing in the impugned order, which reads as follows:-

“We cannot, as things stand today, be oblivious that financial institutions have their branch offices in number of cities from where they enter into transactions with the persons interested in personal loan/housing loan/car loan/furniture loan/educational loan, etc. and the courts cannot be a mute spectator by permitting the Complainant to proceed against accused persons residing at far of places.”

15. The aforesaid ground reality stands illustrated from Crl. Rev. P. No. 210/2009, wherein the Respondent-

accused is from Vellore, which is in South India and the complaint regarding dishonor of cheque has been filed in Delhi courts. Taking note of such a situation, Apex Court in the case of M/s. Harman Electronics (Supra) has declared in unequivocal terms that financial institutions, ought not to be permitted to do forum hunting as per their convenience, much to the grave harassment of the accused and a balance has to be struck. I am in respectful agreement with the above said ratio of the decision in the case of M/s. Harman Electronics (Supra).

16. During the course of the arguments, it had transpired that criminal complaints of Petitioner pertain to cheque amounts ranging from Rs.1,500/- to Rs.4,500/- only in these matters. In such like cases, it would be too harsh upon a Respondent/accused to come to Delhi from far of places and to face the proceedings under section 138 of Negotiable Instruments Act, 1881, merely because Petitioner chooses to file the complaints under the aforesaid Act in Delhi.

17. It is a hard reality that the financial institutions, like the Petitioner, have made Delhi Courts a dumping ground for filing of criminal complaints under section 138 of Negotiable Instruments Act, 1881, in bulk and even in cases where the territorial jurisdiction is of the courts as

far as in South India. This has resulted in choking of the Delhi criminal courts seized with such like matters. In the impugned order, trial court has rightly relied upon the latest verdict of the Apex Court rendered in the case of M/s. Harman Electronics (Supra) to hold that it does not have territorial jurisdiction to entertain these criminal complaints.

18. There is no illegality or infirmity in the impugned order of 12th January, 2009 and thus, Crl. Rev. P. Nos.202, 205, 206, 210, 215 and 217 of 2009 are devoid of any merit and are hereby dismissed.

19. Now I shall deal with the remaining ten petitions, which pertain to impugned order of 25th February, 2009, vide which the trial court, after taking cognizance of Petitioner's complaints and upon issuing of notice to the Respondent/accused and before the Respondent/accused could appear, has returned Petitioner's complaints in these ten matters by holding that the trial court does not have territorial jurisdiction to proceed further with these matters.

20. Learned counsel for the Petitioner contends that such a course is not open to the trial court in view of the decision of the Apex Court in the case of "**Adalat Prasad**

Vs. Rooplal Jindal and Ors.”, (2004)7SCC338, wherein it has been declared as under:-

“It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of Code.”

21. Learned counsel for the Petitioner is right in his submission that it was not open to the trial court to have proceeded to return Petitioner’s complaints, after summoning the Respondent/accused in these complaints. Although, no fault can be found with the view taken by the trial court, regarding the territorial jurisdiction aspect, but, the trial court could not have done it at this intermediate stage. However, though the impugned order of 25th February, 2009 passed by the trial court in these ten petitions, i.e., Crl. Rev. P. No. 199 to 201, 203, 204, 211 to 214 and 216 of 2009, is being set aside, but the net result

is the same, i.e., while exercising inherent jurisdiction, this court declares that Petitioner's complaints, which are subject matter of these ten revision petitions, cannot be entertained by the trial court for want of territorial jurisdiction and thus, the trial court is directed to return Petitioner's complaint in these ten petitions, to enable the Petitioner to present them before the court of competent territorial jurisdiction, who shall deal with it in accordance with law. So far as the limitation aspect is concerned, Petitioner can resort to proviso to sub-section (b) of section 142 of Negotiable Instruments Act, 1881.

22. Resultantly, Crl. Rev. P. No. 202, 205, 206, 210, 215 and 217 of 2009 are dismissed, whereas, remaining ten petitions, i.e., Crl. Rev. P. No. 199 to 201, 203, 204, 211 to 214 and 216 of 2009, are disposed of, in the terms, as aforesaid.

23. Before parting with this order, a word of advise needs to be given to the trial courts, who are dealing with cases like the present ones. The advise is that after taking cognizance of the offence under the Negotiable Instruments Act, 1881, it is not open to them to *suo motu* throw out the criminal complaints abruptly by declaring that they do not have the territorial jurisdiction to deal with the matter. Adoption of such a course is strictly

prohibited by the Apex Court in the case of “*Adalat Parshad*” (*supra*), which is a much quoted decision. Let the District & Session Judge-I, Delhi, convey the aforesaid advise to the respective trial courts, who are dealing with such like cases.

24. With aforesaid directions, these sixteen petitions stand disposed of.

Sunil Gaur, J.

May 15, 2009
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