

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

Reserved on: October 14, 2009

Pronounced on: October 21, 2009

+ **(1) CRL.M.C. 1580/2009**
+ **(2) CRL.M.C. 1581/2009**
+ **(3) CRL.M.C. 1582/2009**
+ **(4) CRL.M.C. 1583/2009**
+ **(5) CRL.M.C. 1584/2009**
+ **(6) CRL.M.C. 1585/2009**
+ **(7) CRL.M.C. 1586/2009**

K.O.ISSAC & ANR Appellant

! Through : Mr. Harshad V.Hameed,
Advocate

Versus

\$ STATE & ANR. Respondent

^ Through: Mr. R.N.Vats, Addl.PP
Mr. Jayant K. Sud, Advocate with Mr.
Atul Sahi and Mr. Anupam Mishra,
Advocates

+ **(8) CRL.M.C. 1844/2009**
+ **(9) CRL.M.C. 1845/2009**
+ **(10)CRL.M.C. 1846/2009**
+ **(11)CRL.M.C. 1847/2009**
+ **(12)CRL.M.C. 1848/2009**
+ **(13)CRL.M.C. 1849/2009**
+ **(14)CRL.M.C. 1850/2009**
+ **(15)CRL.M.C. 1851/2009**
+ **(16)CRL.M.C. 1852/2009**
+ **(17)CRL.M.C. 1853/2009**

K.O.ISSAC & ANR Appellant

! Through : Mr. Harshad V.Hameed,
Advocate

Versus

\$ TECHNOLOGY DEVELOPMENT BOARD.....Respondent

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Through: Mr. R.N.Vats, Addl.PP
Mr. Jayant K. Sud, Advocate with Mr.
Atul Sahi and Mr. Anupam Mishra,
Advocates

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers 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?

V.K.Jain, J.

In these petitions under Section 482 of Code of Criminal Procedure, the petitioners are seeking quashing of the charge/notice framed against them under Section 251 of the Code, on a complaint filed by the respondent no. 2 under Section 138 of Negotiable Instruments Act. It has been stated in the petition that M/s Samudra Bio Pharma (P) Ltd. Formerly known as Shantha Marine Biotechnologies Pvt.Ltd. (hereinafter referred as 'the Company') was granted loan assistance of Rs. 350.00 lacs by respondent No. 2. On account of financial difficulties, the company could not make

repayment of the loan taken by it and entered into a Deed of Settlement, pursuant to which 48 Post Dated Cheques were issued to Respondent no. 2. The cheques, when presented, were dishonoured for want of funds. Complaints under Section 138 of Negotiable Instrument Act were filed by Respondent No. 2 at New Delhi against four persons including the Company and the petitioners.

2. The case of the petitioners is that the court of Metropolitan Magistrate at Delhi lacked jurisdiction to entertain the complaint as no cause of action arose in Delhi. It has also been stated that the complaint does not contain any averment to show as to how the court at New Delhi had jurisdiction to try the complaints.

3. The respondent No. 2 has opposed the petition. It has been stated in the reply that petitioners were Incharge of day to day affairs of the Company and therefore are liable to be punished for dishonour of cheques in question. It has been further stated in the reply that Delhi Court has jurisdiction to entertain the complaint as (i) the Loan Agreement was executed at Delhi; (ii) office of the complainant / respondent is in Delhi; (iii) the cheques were issued and presented at Delhi and (iv) the legal notice to the petitioner were sent from Delhi.

4. Chapter XIII of the Code of Criminal Procedure deals with jurisdiction of criminal court in inquiries and trials. Section 177, provides that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 178 of the Code, to the extent it is relevant, provides that where an offence is committed partly in one local area and partly in another or where it constitutes several acts done in different local areas it may be inquired into or tried by a court having jurisdiction for one of the such local areas.

Section 179 of the Code provides that when an act is an offence by reasons of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

5. There are five essentials of the offence u/s 138 of N.I. Act (i) drawing of the cheque, (ii) presentation of the cheque to the bank of the payee, (iii) return of the cheque unpaid by the drawee bank, (iv) giving of notice 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. Therefore, in view of the provisions

contained in Section 178 (b) and (d) of the Code, if any of these five acts, which collectively constitute offence under Section 138 of NI Act is committed in an area, the court exercising jurisdiction over that area would be competent to entertain and try the complaint under Section 138 of N.I. Act.

6. The question of jurisdiction in complaints u/s 138 of Negotiable Instruments Act came up for consideration before the Hon'ble Supreme Court in *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, (1999) 7 SCC 510, and the Hon'ble Supreme Court, referring to the above referred five components constituting offence u/s 138 of N.I. Act, held that if these five different acts were done in five different localities, one of the courts exercising jurisdiction in one of the five local areas can become a place of trial for the offence under Section 138 of N.I. Act and the complainant can choose any one of those courts having jurisdiction over one of those local areas where any of these five acts was done.

7. In *Shamshad Begum vs. B. Mohammed* (2008) 13 SCC 77, the respondent filed a complaint against the appellant at Mangalore u/s 138 of Negotiable Instruments Act. Before filing complaint, the respondent had issued a notice to the appellant from Mangalore and a reply was sent by her to the

complainant at his Mangalore address. The appellant filed a petition in Karnataka High Court u/s 482 of the Code of Criminal Procedure, seeking quashing of the complaint on the ground that since the agreement between the parties was entered into at Bangalore and the cheques were returned from the banks at Bangalore, only Bangalore court had jurisdiction to try the case. The High Court having dismissed the petition, the appellant came to the Supreme Court by obtaining Special Leave. Relying upon its earlier decision in K. Bhaskaran's case (Supra) and referring to the five components enumerated in that decision, it was held that it is not necessary that all the five acts should have been perpetrated in the same locality and it was possible that each of these acts could have been done at five different localities though in-concatenation of all the above five is a *sine qua non* for completion of the offence u/s 138 of the Act. The appeal was, dismissed, thereby upholding the decision of the High Court.

8. In *Prem Chand Vijay Kumar v. Yashpal Singh* (2005) 4 SCC 417, the Hon'ble Supreme Court held that for securing conviction u/s 138 of Negotiable Instruments Act, the following facts are required to be proved:-

- (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.

9. This issue came up for consideration before the hon'ble Supreme Court in a recent decision – *Harman Electronics Private Limited and Another Vs. National Panasonic India Private Limited*, (2009) 1 SCC 720. In that case, the appellant was carrying business at Chandigarh. The complainant had its head office at Delhi and a branch office at Chandigarh. The cheque in question was issued, presented and dishonoured at Chandigarh. The respondent / complainant issued notice to the appellant from Delhi. The notice was served upon the appellant at Chandigarh. On failure of the appellant to pay the amount of the cheque, a complaint was filed at Delhi. An application filed by the

appellant questioning jurisdiction of the court at New Delhi was dismissed on the ground that since the notice was sent by the complainant from Delhi, the appellant had failed to make payment at Delhi and the respondent was carrying out business at Delhi, the Delhi court had jurisdiction to entertain the complaint.

The jurisdiction of the court at Delhi was claimed on the ground that the cheque though deposited at Chandigarh, they having been sent by Citi Bank N.A. for collection at Delhi, the amount became payable at Delhi and the notice of demand was sent from Delhi requiring the appellant to make payment at Delhi. The Hon'ble Supreme Court noted that (i) the complainant had a branch office at Chandigarh; (ii) transactions were carried on only from Chandigarh; (iii) cheques were issued and presented at Chandigarh and (iv) dishonour of the cheques took place at Chandigarh. As regard, issue of notice from Delhi, Hon'ble Court held that issuance of notice would not by itself give rise to a cause of action but communication of notice would give. The Hon'ble Court was of the view that for constituting offence u/s 138 of Negotiable Instruments Act, the notice must be received by the accused, though it may be deemed to have been received

in certain situations. The Hon'ble Supreme Court also referred to its own decision in *Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd.* (2006) 3 SCC 658. In that case respondent No.1 issued certain cheques to the appellant from Ernakulam, which were deposited by him with Suri Branch of the Bank. The respondent was also having an office at Ernakulam. On return of the cheques, demand notice was sent by the appellant to the respondents. On non-payment, criminal complaint was filed by the appellant in the court of the Chief Judicial Magistrate, Bir Bhum at Suri. It was observed that sending of cheques from the Ernakulam or the respondent having an offence at that place did not form an integral part of the cause of action for which a complaint petition was filed by the appellant and cognizance of the offence u/s 138 of Negotiable Instruments Act was taken by the Chief Judicial Magistrate, Suri. It was noted that while issuance of notice by the holder of Negotiable Instrument is necessary, service thereof is also imperative and only after service of such notice and failure on the part of the accused to pay the demanded amount, within a period of 15 days thereafter, the commission of an offence completes and, therefore, giving of notice cannot have precedence over the service. The Hon'ble Court declined to apply the civil law

Principle that the debtor must seek the creditor, to a criminal case. Holding that jurisdiction in a criminal case is governed by the provisions of Criminal Procedure Code and not on common law principle, It was held that Delhi Court had no jurisdiction to try the case.

10. In the present cases, it has been specifically alleged in the reply filed by the respondent that (i) the entire transaction took place at Delhi, (ii) the cheques were issued at Delhi, and (iii) the cheques were present at Delhi. Therefore, applying the provisions of Section 178 (b) & (d) of the Code of Criminal Procedure, the court at Delhi has the jurisdiction to entertain and try the complaints filed by the respondent, as part of the cause of action arose in Delhi. The decision of the Hon'ble Supreme Court in the case of *Harman Electronics Private Limited* (Supra), where jurisdiction of Delhi Court was claimed solely on account of notice of demand having been sent from Delhi, therefore, has no application to the present cases.

11. It was pointed out by the learned counsel for the petitioners that there is no specific averment in the complaint that the cheques issued by the petitioner were issued and presented at Delhi, the only averment in the

complaint, conferring jurisdiction on the court at Delhi being that the legal notice was sent to the accused from New Delhi and the bankers of the complainant are also within the jurisdiction of Delhi court. Obviously, when the complainant stated that its bankers are also within the jurisdiction of Delhi court, it was also meant to convey that the bank being situated in Delhi, the cheques were also presented at Delhi. If the bank of the complainant is situated in Delhi, the cheque could not have been deposited elsewhere by the complainant. This is not the case of the petitioner that cheques in question were issued at a place other than Delhi or were not deposited by the complainant/respondent at Delhi. In para (j) of the petition, it has been stated that pursuant to respondent No.2 agreeing to a re-scheduling of a loan, the company entered into a deed of settlement with it and was forced to issue 48 post-dated cheques. During the course of arguments, it was stated on behalf of the complainant that since the deed of settlement was executed at Delhi, the cheques were also issued and delivered to the complainant/respondent at Delhi. This factual averment was not disputed during the course of arguments. This is not the case of the petitioners that transaction between the parties took place at a place other than Delhi or that the Settlement Deed was not executed in

Delhi. It was also not disputed that the complainant has its office only in Delhi. In any case, the disputed questions of facts cannot be gone into in a petition u/s 482 of the Code of Criminal Procedure and since the case of the complainant is that the transaction between the parties took place at Delhi, cheques in question were issued to it at Delhi and were deposited by it at Delhi, such averments have to be taken as correct for the purpose of this petition.

12. The judgment of this court in *Delhi High Court Legal Services Committee v. Govt. of NCT of Delhi*; 163 (2009) DLT 56 does not have any application in these cases since that judgment directs return of those complaints in which Delhi Court does not have territorial jurisdiction to try the complaint. A perusal of the judgment would show that the petitioner in that case had sought return of those complaints in which territorial jurisdiction of Delhi Courts was claimed only on the ground that statutory notice after dishonour of the cheque was issued from Delhi, though, the same was communicated outside Delhi and further the cause of action also accrued outside the territory of Delhi. The decision in *Delhi High Court Legal Services Committee's* case (Supra) applies only to those cases where the complainant invokes

jurisdiction of Delhi Courts solely on the ground that notice of demand was issued from Delhi despite the fact that it was served outside Delhi. If the complainant claims jurisdiction of Delhi Court on some other fact, which is one of the essentials constituting offence under Section 138 of Negotiable Instrument Act, that judgment would not apply, and that complaint would not be liable to be returned to the complainant for want of jurisdiction. If the transaction between the parties took place in Delhi, cheques were issued in Delhi and the same were deposited by the complainant / respondent at Delhi, jurisdiction of Delhi Court to entertain these complaints cannot be disputed.

For the reasons given in the preceding paragraphs, I do not find any merit in the petitions and the same are hereby dismissed. Stay order, if any, stands vacated. A copy of this judgment be sent to concerned trial court.

(V.K. JAIN)
JUDGE

October 21, 2009
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