

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

+ Cr1.M.C.1906/2009 and Cr1.M.A.7121/2009

% Reserved on: 24th November, 2009
Date of Decision: 25th November, 2009

Mr. B.M. Patel Petitioner

! Through: Mr. D'Souza Philip, Adv.

Versus

\$ CITI Bank, NA New Delhi Respondent

^ Through: Mr. Akshay Bipin,
Addl.P.P. for the State.

: **V.K. JAIN, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing complaint cases No. 724/1 of 2008 and 1313/1 of 2008 filed by the respondent under Section 138 and 142 of Negotiable Instruments Act and Section 420 of Indian Penal Code.

2. A perusal of the first complaint filed by the respondent would show that the petitioner who was holding a Citi Bank card, issued a cheque No.712655 dated 8th February, 2008 for Rs.6,332/- drawn on IDBI Bank towards part payment of the purchases made by him on the credit card. The cheque, when presented for encashment, was returned with remarks "payment stopped insufficient funds". A legal notice was sent to the petitioner from Delhi requiring him to pay the amount of the

cheque within 15 days. Since he failed to make the payment, the complaint was filed under Section 138 of Negotiable Instruments Act.

3. In the second complaint filed under Section 138 of Negotiable Instruments Act read with Section 420 IPC, it was alleged that the petitioner who was holding a Citi Bank card issued a cheque No.712656 dated 8th March, 2008 drawn on IDBI, Park Street, Kolkata for Rs.6,332/- towards payment of the purchases made by him on the credit card issued to him by the complainant bank. The cheque, when sent for encashment, was returned with remarks "payment stopped by drawer". The complainant sent a notice requiring the petitioner to pay the amount recovered by the cheque and on his failure to make payment, the aforesaid complaint was filed against him.

4. In the complaint in respect of cheque No. 712655 dated 8th February, 2008, it has been alleged that in para 11 of the complaint that collection-cum- legal unit of complainant is situated at Delhi and demand notice was sent to the petitioner from Delhi, and therefore, in view of the decision of the Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 SCC 510, the Delhi Court has territorial jurisdiction to try the complaint. In the complaint filed in respect of cheque No. 712656 dated 8th March, 2008, it has been alleged in para 11 of the complainant that cheque was

delivered at the office of the complainant at the above-mentioned address, the same was sent for collection through the collecting branch of the complainant situated within the jurisdiction of Delhi Court and the information regarding dishonour of the cheque was also received in the office of the complainant situated in the jurisdiction of Delhi Court which, therefore, has jurisdiction to try the complaint.

5. This Court, while dismissing Crl. Misc. Case No. 1580 of 2009 *K.O. Issac v. State*, and other connected matters vide judgment dated 21st October, 2009, after considering the decisions of the Hon'ble Supreme Court in *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, (1999) 7 SCC 510, *Shamshad Begum vs. B. Mohammed* (2008) 13 SCC 77, *Prem Chand Vijay Kumar v. Yashpal Singh* (2005) 4 SCC 417 and the recent decision of the Hon'ble Supreme Court in *Harman Electronics Private Limited and Another Vs. National Panasonic India Private Limited*, (2009) 1 SCC 720, noted that in the case before it the entire transaction had taken place at Delhi, the cheques were issued and presented at Delhi and therefore held that the court at Delhi had the jurisdiction to entertain and try the complaint. It was further held that in view of the decision of Hon'ble Supreme Court in *Harman Electronics Private Limited and Another Vs. National Panasonic India Private Limited*, Delhi

courts would not have jurisdiction merely on account of notice of demand having been sent from Delhi.

6. In the complaint filed in respect of dishonour of cheque No.712656, the complainant has specifically alleged that the dishonored cheque was delivered to it at its office 'at the above noted address'. Since the address given in the complaint is of Delhi, this would imply that the cheque in question was delivered at Delhi office of the complainant. During the course of arguments, the learned counsel for the petitioner disputed this averment made in the complaint and claimed that, in fact, the cheque was delivered in Kolkata office of the complainant bank. In a petition under Section 482 of the Code of Criminal Procedure, it is not permissible for this Court to go into disputed questions of fact which require recording of evidence. For this purpose of such a petition, the allegations made in the complaint have to be taken on their face value and as correct. Therefore, at this stage, this Court has to assume that the cheque No. 712656 was delivered at Delhi office of the complainant bank. Therefore, in view of the decision of this Court in the case of K.O. Issac v. State (supra), Delhi Court would have jurisdiction to try this complaint.

7. As regards the complaint in respect of cheque No.712655, there is no averment in the complaint that the cheque in question was delivered at Delhi office of the

complainant. Jurisdiction of Delhi Court has been claimed on the grounds that the collection-cum-legal unit of the complainant is situated at Delhi and demand notice was sent from Delhi. Delhi Court cannot have jurisdiction to try a complaint under Section 138 of Negotiable Instruments Act merely because the complainant has an office or a branch situated in Delhi. No part of cause of action arises in Delhi solely on account of an office or a branch of the complainant being situated at Delhi. A perusal of the cheque in question would show that it has been drawn on IDBI Bank, Kolkata. A perusal of the Bank Memo, whereby this cheque has been returned unpaid would show that it was presented to and returned by Kolkata Branch of IDBI Bank. The notice to the petitioner was also sent at Kolkata. In view of the decisions of the Hon'ble Supreme Court in the case of *Harman Electronics Private Limited* (supra), Delhi Courts do not have jurisdiction merely because the notice of demand was sent from Delhi, when this is not the case of the complainant that the notice was served in Delhi. Even if the cheque drawn on a bank outside Delhi is deposited in a bank in Delhi that by itself would not confer jurisdiction by the Delhi Court to try a complaint under Section 138 of Negotiable Instruments Act unless some other essential component of offence under Section 138 of Negotiable Instruments Act took place in Delhi. In *Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd.* (2001) 3 SCC 609, the

Hon'ble Supreme Court, inter-alia, held as under:

““The bank” referred to in clause (a) to the proviso of Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all the banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.”

It was further observed that “the payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or Payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued.”

In para 10 of the judgment the Hon'ble Supreme Court further observed that

“Sections 3, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable.”

8. For the reasons given in the preceding paragraphs, while holding that no order is required to be passed in respect of the complaint filed in respect of the dishonour of cheque No.712656, it is directed that the complaint filed by the respondent in respect of dishonour of cheque No. 712655 be returned to it within four weeks for presenting it before a competent Court having jurisdiction over the matter.

The petition stands disposed of accordingly.

One copy of this order be sent to concerned Court(s) for information and necessary action.

(V.K.JAIN)
JUDGE

NOVEMBER 25, 2009
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