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

+ CRL.M.C. 2695/2009 & CRL.M.A. 9081/2009

ONLINE IT SHOPPE INDIA PVT LTD & ORS.

.....

Petitioner

Through: MR. RUPESH GUPTA FOR
MR. PRAGYAN SHARMA, ADVOCATE

versus

STATE & ANR.

.....

Respondent

Through: MR. ASIT TIWARI,
ADVOCATE FOR RESPONDENT NO. 2

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

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

Judgment (ORAL)

This is a petition under Article 226 of the Constitution for quashing criminal complaint No. 596/09 pending before ACMM-III, Rohini Court, Delhi.

2. A complaint under Section 138 of Negotiable Instruments Act read with Sections 141 and 142 thereof was

filed by the respondent against the petitioners alleging therein that in partial discharge of a legally enforceable debt, they issued three cheques, all drawn on City Union Bank, Karimpatta Cross Road, Pallimulku, Ernakulam. The cheques when presented, were dishonoured with remarks "Payment Stopped by Drawer". A legal notice dated 17.3.09 was sent by the respondent / complainant to the petitioners from Delhi demanding the amount of the cheques. Since the payment was not made, this complaint was filed before the ACMM.

3. In para 9 of the complaint it has been stated that the cause of action for the present complaint arose at Delhi as the office /works / business/ bank of the complainant is situated in Delhi and the cheque was also deposited at Delhi.

4. The only contention raised by the learned counsel for the petitioners is that Delhi courts does not have jurisdiction to entertain the complaint as no part of the cause of action arose in Delhi.

5. It was noted by this court while deciding C.M. No. 1580/09 and other connected matters, vide judgment dated 21.10.2009, there are five essential components of the offence under Section 138 of Negotiable Instruments 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.

6/ 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, this court 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, the court at Delhi had the jurisdiction to entertain and try the complaint. It was further noted 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.

7. In the present case, the complainant / respondent invokes jurisdiction of Delhi court on two grounds; firstly, that the notice of demand was sent to the petitioner from Delhi; and secondly that the cheques in question were deposited with the banker of the respondent No. 2 / complainant in Delhi. In view of the decision of the Hon'ble Supreme Court

in *Harman Electronics Private Limited and Another Vs. National Panasonic India Private Limited*, Delhi Court would not have jurisdiction merely because notice of demand was sent from Delhi or office of the complainant is situated in Delhi when the notice to the petitioner was sent at Ernakulam.

8. As regards presentation of the cheque, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in *Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd*; (2001) 3 SCC 609. In this case the Hon'ble Supreme Court, inter-alia, held that *“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.”

9. The ratio of the above referred judgment of the Hon'ble Supreme Court is that a cheque is deemed to have been presented to the banker of the drawer irrespective of the fact whether it is deposited by the payee in his own bank. The banker of the payee, after receiving the cheque from him, is required to present it to the banker of the drawer and therefore if the cheque issued from a bank in Ernakulam is deposited in Delhi, the bank in which it is deposited in Delhi, is required to present it to the bank at Ernakulam, for the purpose of encashment. Therefore, it cannot be said that the cheques issued by the petitioners were presented in Delhi, despite the fact that the bank in which the respondent No. 2 had an account was in Delhi, the cheque shall be deemed to have been presented only to the bank at Ernakulam on which they were drawn. Therefore, deposit of cheques in Delhi would not confer jurisdiction of Delhi court to try this complaint.

10. Since sending of notice from Delhi to Ernakulam does not confer jurisdiction on Delhi Court in view of the decision of the Hon'ble Supreme Court in the case of *Harman Electronics Private Limited (Supra)* and the deposit of cheque with the banker of respondent No. 2 in Delhi also does not confer

jurisdiction of Delhi court when the cheque is presented to a bank outside Delhi, and there is no other ground which would confer jurisdiction on Delhi Court, it cannot be said that the Delhi Court has the jurisdiction to try this complaint.

11. For the reasons given above, it is directed that the complaint filed by respondent no. 2 be returned to it within four weeks for presenting it before a competent court having jurisdiction over the matter.

CRL.M.C. 2695/2009 & CRL.M.A. 9081/2009 stand disposed of.

V.K. JAIN,J

NOVEMBER 20, 2009/ACM