

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

Date of Decision: December 7, 2009

+ **CRL.M.C. 2854/2009 & CrI.M.A.9663/2009**

V.S. THAKUR Petitioner
Through Mr.Akshay Malik, Advocate.

versus

STATE & ANR. Respondent
Through Mr.Amit Sharma, APP for the State.

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

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

V.K.JAIN, J. (ORAL)

1. This is a petition under Section 482 of the Code of Criminal Procedure quashing the complaint filed by respondent No.2 against the petitioner under Section 138 of Negotiable

Instruments Act.

2. Learned counsel for respondent No.2 states that Delhi Court has jurisdiction to try the complaint as the notice of demand was sent from Delhi and cheque in question was deposited with the bank of the complainant/respondent No.2 in Delhi.

3. 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 (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.

4. In the present case, the complainant/respondent invokes jurisdiction of Delhi courts 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 Hon'ble Supreme Court in ***Harman Electronics Private Limited and Another Vs. National Panasonic India***

Private Limited, (2009) 1 SCC 720, Delhi courts would not have jurisdiction merely because notice of demand was admittedly sent from Delhi or office of the complainant is situated in Delhi when the notice to the petitioner was sent at Dehradun. 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.

5. 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.

6. As regards presentation of the cheque, the Hon'ble

Supreme Court in *Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd*; (2001) 3 SCC 609, 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.”*

7. 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 Dehradun is deposited in Delhi, the bank in which it is deposited in Delhi, is required to present it to the bank at Dehradun, for the purpose of encashment. Therefore, it cannot be said that the cheque issued by the petitioner was 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 Dehradun on which it was drawn. Therefore, deposit of cheque in Delhi would not confer jurisdiction of Delhi court to try this complaint.

8. Since sending of notice from Delhi to Dehradun 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.

9. 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. 2854/2009 & Crl.M.A.9663/2009 stand disposed of.

V.K. JAIN,J

DECEMBER 07, 2009
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