

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. 213/2010

% Judgment decided on: 29th October, 2010

MS. HEMA CHATURVEDI Petitioner
Through: Mr. N.B. Joshi and Mr. Ajit
Kumar, Advs.
Versus

M/S SUNINT ENTERPRISES PVT. LTD. Respondent
Through: Mr. Surendra Kumar and
Mr. A.K. Babbar, Advs.

Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. Short question which needs to be answered in this petition is “whether the courts at Delhi will have territorial jurisdiction to entertain and try the complaint under Section 138 of Negotiable Instruments Act, 1881 (for short hereinafter referred to as “the N.I. Act”) for the reasons that complainant has its registered office; cheque was deposited and notice was issued from Delhi”.

2. Factual matrix of the case is that the respondent has

filed a complaint under Section 138/142 of the N.I. Act read with Section 420B of the Indian Penal Code against the petitioner alleging therein that it was having its Registered office at Delhi and works at Hapur; it supplied lubricant oil worth ₹ 11,52,350/- to the petitioner on credit basis; petitioner in order to clear the part liability issued a cheque no. 511402 dated 20th June, 2007 for ₹ 4,97,750/- drawn on ICICI Bank Limited, Chowk Allahabad Branch, Allahabad in favour of the respondent, which was deposited by the respondent in its bank i.e. Syndicate Bank, Mori Gate, New Delhi on 26th June, 2007 for collection. However, the cheque was returned dishonoured along with a Return Memo dated 5th July, 2007 for the reason “payment stopped by the drawer”. Since the amount was not paid despite demand notice served on the petitioner within the statutory period, hence the complaint.

3. With regard to the territorial jurisdiction respondent has averred in the complaint as under :-

“That the complainant company’s registered Office is at Delhi and the banker of the Complainant company is also in Delhi and hence this court has the territorial jurisdiction to try and decide this criminal complaint.”

4. It appears that the complaint had been filed in Delhi

since respondent is having its Registered Office at Delhi; its bank, where cheque was deposited, is in Delhi as also because the notice had been issued by the respondent from its Registered Office at Delhi. In my view, merely because the respondent has Registered Office at Delhi, its bank is in Delhi and the notice had been issued from Delhi, would not vest territorial jurisdiction on Delhi courts to entertain and try the complaint under Section 138 of the N.I. Act.

5. Section 138 of the N.I. Act Reads as under:-

138. Dishonour of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for ["a term which may extend to two year"], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, ³["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability".

6. Bare perusal of the aforesaid provision shows that the cheque has to be presented on the drawer's bank, where account is being maintained by him. It is only the banker of the drawer which will be in a position to say that the cheque amount exceeds arrangement. Only drawer's bank can return the cheque unpaid for "insufficient funds in the account of drawer" or for any other reason. The payee of

the cheque has no option but to present the cheque for encashment to the drawer's bank, on which the cheque had been drawn, either personally or through a bank. The payee of the cheque has the option to present the cheque in any bank but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque to drawer's bank on which the cheque is drawn that too within a period of six months. In view of this, merely because the payee had deposited the cheque at Delhi would not mean that he had presented the cheque at Delhi.

7. In ***Ishar Alloy Steel Ltd. vs. Jayaswals NECO Ltd.*** **2001 Criminal Law Journal 1250**, Supreme Court held as under :-

“Thus, ‘the bank’ referred to in Clause (a) to the proviso to Section 138 of the Act means the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee in whose favor the cheque is issued.”

8. In ***V.S. Thakur vs. State and Anr.*** **Manu/DE/3317/2009** this Court held as under:-

“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, 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.”

(Emphasis supplied)

9. In the above legal backdrop, it can be concluded that the Court within whose territorial jurisdiction drawee bank is situated would have territorial jurisdiction to entertain a complaint under Section 138 of the N.I. Act. Similar view has been expressed by this Court ***ICICI Bank Ltd. Vs. Subhash Chand Bansal & Ors. 160 (2009) Delhi Law Times 379.***

10. Mere issuance of notice from Delhi will also not attract the jurisdiction of Delhi courts. ***In Harman Electronics (P) Ltd. and Anr. v. National Panasonic India Ltd. AIR 2009 SC 1168***, it has been held that the place of service would matter and not the place where the notice had been issued. Accordingly, merely because notice had been issued from

Delhi would also not vest jurisdiction on Delhi courts for preferring a complaint under Section 138 of the Act.

10. In ***K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr. MANU/SC/0625/1999 : (1999) 7 SCC 510***, it had been held that the offence under Section 138 of the Act can be completed only with the concatenation of number of acts, that is (i) drawing of the cheque (ii) presentation of the cheque to the bank (iii) returning the cheque unpaid by the drawee bank (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount (v) failure of the drawer to make payment within 15 days of the receipt of the notice. In case the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done.

11. Merely, because respondent has its Registered Office at Delhi by itself would not vest jurisdiction in courts, at Delhi. Reliance placed on *K. Bhaskaran (supra)* by the counsel for

the respondent does not advance his case any further as the Registered Office of the complainant has not been identified as the place where the complaint can be filed. Place of notice has also been clarified in Harman Electronics' case (supra).

12. For the foregoing reasons, I am of the view that Delhi courts have no territorial jurisdiction to entertain and try the complaint under Section 138 of the N.I. Act filed by the respondent. Accordingly, this petition is disposed of with the direction to the Trial Court to return the complaint to the respondent forthwith, who shall prefer the same in the court of competent jurisdiction within period of one month from the date complaint is handed over to it.

A.K. PATHAK, J.

OCTOBER 29, 2010

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