

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

Date of Reserve: 21st July, 2010

Date of Order: August 11th, 2010

+ CrI. M.C. 555 of 2010

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Patiala Casting P. Ltd. & Ors.

Through: Mr. S.N. Chopra with Mr. Abhishek Puri, Advocates

11.08.2010
...Petitioners

Versus

Bhushan Steel Ltd.

Through: Mr. Rajesh Banati, Advocate with Mr. Abhishek Rao, Advocates

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By the present petition under Section 482 Cr.P.C, the petitioners sought quashing of criminal complaint no.3360 of 2008 under Section 420 IPC and Section 138 read with Section 142 of the Negotiable Instruments Act as amended by the Banking Public Institutions and Negotiable Instrument Law(amendment) 1988 (66 of 1988) and quashing of summoning order dated 24th December 2008 made against the petitioners under Section 138 of Negotiable Instrument Act by the learned Metropolitan Magistrate, on the ground that the learned MM had no jurisdiction to entertain the complaint.

2. The complainant (respondent herein) was given the cheque in question payable at Bank of Baroda, SSI Mandi, Gobindgarh, Punjab. The complainant deposited this cheque with their banker Punjab National Bank, Partap Ganj Branch, Delhi, since the complainant was having its head office and registered office at Delhi. The cheque got

dishonoured and was returned back unpaid by the banker of the petitioners on account of “*exceeds arrangements*”. A demand notice demanding the cheque amount was sent by respondent (complainant) from his head office at Delhi and despite notice the cheque amount was not paid. On this basis, a complaint was filed in Delhi. The petitioners allege that the complaint was not maintainable in Delhi as no part of cause of action had arisen in Delhi and the complaint was an abuse of process of the Court. It is submitted by the petitioners that the term ‘bank’ as referred in Section 138 proviso (a) of the Negotiable Instruments Act would mean drawers bank and not the collector bank. The issue of notice from Delhi should also not give jurisdiction to Delhi courts since the respondent was served with the notice in Punjab. It is submitted the transaction between petitioners and respondent took place in Mandi, Gobindgarh, Punjab. The cheque was issued at Gobindgarh Bank, Punjab and it was dishonoured at Gobindgarh. The notice was received at Gobindgarh and thus the jurisdiction was only of Gobindgarh Court. Reliance was placed by the petitioners on *Ishar Alloys Steel Ltd. v Jaiswal Neco Ltd. (2001) 3, SCC 609* and *Harman Electronics P. Ltd. v National Panasonic India P. Ltd. (2009) 1 SCC 720* and other similar cases.

3. On the other hand, it is submitted by counsel for respondent that the respondent was having its registered office at Delhi. The cheque was deposited with its bank at Delhi, the statutory demand notice was issued from Delhi and the cheque got dishonoured at Delhi. Thus, the cause of action had arisen in Delhi. Respondent relied upon *Sharad Jhunjunwala v Compuage Infocom Limited & Anr. Crl. Writ Petition No.595 of 2010* decided by Bombay High Court and *K.Bhaskaran case, 1999 (7) SCC 510*.

4. In *Herman Electronics (supra)*, the complaint was silent as to whether the cheque was presented at Delhi or not and it was informed to the Court that the cheque was put in a drop box at Chandigarh but as the payment was to be obtained by Delhi branch it

was sent to Delhi. The Apex Court observed that complaint does not show that the cheque was presented at Delhi. It was silent in this regard. The Court therefore came to conclusion that the Court at Delhi would not be the court of proper jurisdiction. The observation of Apex Court are as under:

“Indisputably, the parties had been carrying on business at Chandigarh. The head office of the respondent complainant may be at Delhi but it has a branch office at Chandigarh. It is not in dispute that the transactions were carried on only from Chandigarh. It is furthermore not in dispute that the cheque was issued and presented at Chandigarh. The complaint petition is totally silent as to whether the said cheque was presented at Delhi. As indicated hereinbefore, the learned counsel appearing on behalf of the respondent complainant contended that in fact the cheque was put in a drop box but as the payment was to be obtained from the Delhi branch, it was sent to Delhi. In support of the said contention, a purported certificate issued by Citibank NA has been enclosed with the counter-affidavit, which reads as under:

”This is to confirm that M/s National Panasonic India (P) Ltd. (NPI) having registered office at AB-11, Community Centre, Safdarjung Enclave, New Delhi 110 029 are maintaining Current Account No.2431009 with our Bank at Jeevan Bharti Building, 3, Parliament Street, New Delhi 110 001 only and not at any other place in India including Chandigarh.

Further confirmed that Citibank has provided the facility for collection of cheques/demand drafts from branches of NPI located at various places/ cities in India. However, all amounts of cheques /demand drafts so collected on behalf of National Panasonic India (P) Ltd. are forwarded and debited/ credited to the aforesaid Current Account No.2431009 with our bank at Jeevan Bharti Building, 3, Parliament Street, New Delhi-110001”.

12. The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for

collection of the cheque admittedly was available at Chandigarh and the said facility was availed of. The certificate dated 24-6-2003, which was not produced before the learned court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi branch of Citibank. We, therefore, have no further option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonor of the cheque also took place at Chandigarh. The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the Negotiable Instruments Act.

5. In the case in hand, the situation is different. The respondent (complainant) had presented the cheque at Delhi bank and notice was also sent from Delhi. I consider that the position is squarely covered by *Sharad Jhunjunwala (supra)* wherein the High Court Bombay made following observations:

8. Since the cheque was deposited by the respondent no.1 in its bank in Mumbai and notice was issued in Mumbai, in view of the ratio of the judgment in *K. Bhaskaran case (1999) 7 SCC 510*, the Court in Mumbai had the jurisdiction to try and decide the said complaint. The Division Bench of this Court in the case of *M/s Preethe S. Babu (supra)* has held that in such circumstances, the Mumbai Court would have the jurisdiction to entertain the complaint. The Division Bench of this Court has taken into consideration the judgment in the case of *M/s Harman Electronics (P) Ltd. (supra)* and also the case of *Ahuja Nandkishore Dongre vs. State of Maharashtra* and another reported in 2007 Crl.L.J. 115 and *Deepti Kumar Mohanty (supra)* and after having taken into consideration the said judgments, the Division Bench came to the conclusion that in cases where the registered office is situated in Mumbai and statutory notice was issued from Mumbai and the cheque was deposited in Mumbai and it was dishonoured in Mumbai, the cause of action had arisen in Mumbai and therefore the Magistrate before whom the complaint is filed has jurisdiction to try and decide the case. The

Division Bench also took into consideration the judgment of the Apex Court in the case of K. Bhaskaran (supra) and another judgment of the Supreme Court in the case of Shamshad Begum (Smt.) v. B. Mohammed (2008) 13 SCC 77) and Mosaraf Hossain Khan vs. Bhaheeratha Engg. Ltd. (2006 3 SCC 658).

6. I consider that where the registered/ head office of complainant is at Delhi, cheque for encashment is deposited by complainant at Delhi, notice of demand is served from Delhi and amount of cheque is not paid despite notice, the court of MM at Delhi would have jurisdiction to entertain complaint under Section 138 of Negotiable Instruments act. The learned MM rightly entertained the complaint of respondent under Section 138 of the NI Act and rightly summoned the accused persons/ petitioners. I find no force in this petition. The petition is hereby dismissed with no orders to costs.

August 11, 2010
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SHIV NARAYAN DHINGRA J.