

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

+ **Crl.M.C. No. 872/2010**

% **Judgment reserved on : 25th May, 2010**
Judgment delivered on : 02nd July, 2010

M/S RELIGARE FINVEST LIMITED PETITIONER

! Through: Mr. Vijay Aggarwal, Advocate.

VERSUS

\$ SAMBATH KUMAR A RESPONDENT

^ Through: NEMO.

;

+ **Crl.M.C. No. 1148/2010**

M/S RELIGARE FINVEST LIMITED PETITIONER

! Through: Mr. Vijay Aggarwal, Advocate.

VERSUS

\$ ASHWIN R. RESPONDENT

^ Through: NEMO.

AND

+ **Crl.M.C. No. 1235/2010**

M/S RELIGARE FINVEST LIMITED PETITIONER

! Through: Mr. Vijay Aggarwal, Advocate.

VERSUS

\$ NAMITHA DAMANI RESPONDENT

^ Through: NEMO.

CORAM:
HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J

All these three petitions under Section 482 of the Code of Criminal Procedure, 1973 filed by M/s Religare Finvest Limited (hereinafter to be referred as 'the petitioner/complainant company') are proposed to be decided by this common judgment because questions of facts and law involved in them are identical.

2. The legal issue that is involved in these petitions is about the territorial jurisdiction of the criminal courts to entertain complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'the NI Act') relating to bouncing of cheques.

3. The petitioner company had filed three separate complaints under Section 138 of the NI Act against the respondents/accused persons which vide impugned orders dated 19.08.2009 passed by the learned Metropolitan Magistrate, Delhi have been ordered to be returned to the complainant company for want of territorial jurisdiction under Section 201 Cr.P.C. for presentation of the same before the competent court within thirty days from the date of return of the complaints. The orders impugned by the petitioner company in these petitions have been passed by the court below relying upon a recent verdict of the Hon'ble Apex Court in the case of ***M/s Harman Electronics (P) Ltd. & Another Vs. M/s National Panasonic India Ltd., reported as 2009 1 SCC 720.***

4. Notice of these petitions was not sent to the accused persons/respondents since the complaints in question were ordered to be returned by the court below to the complainant company for want of territorial jurisdiction at pre-summoning stage.

5. I have heard the arguments of Mr. Vijay Aggarwal, learned counsel who appeared on behalf of the petitioner company and have also perused the written arguments placed by him on record. I have given my anxious

consideration to the submissions made on behalf of the petitioner company on the legal issue that is involved for decision of these petitions.

6. Briefly stated the facts of the case are that the petitioner is a banking company duly registered under the Companies Act, 1956. It has its registered office at Nehru Place, New Delhi-19, within the territorial limits of Delhi courts. The petitioner company had filed three separate complaint cases against the respondents/accused persons with accusations against them that they had availed the loan facility from the complainant company and in consideration of their having availed the loan facility had executed loan agreements in favour of the complainant company at its registered office at New Delhi reserving jurisdiction for Delhi courts alone in the event of any dispute under the said loan agreements. It was further stated in the complaints that the respondents/accused persons in order to discharge its/their part liability/debt had handed-over separate cheques of different amounts in favour of the complainant company at its office at New Delhi and these cheques were returned unpaid when presented for encashment. The cheques in question were presented by the complainant company to its bankers namely HDFC Bank Limited, New Delhi for encashment but they were returned unpaid by the drawer's bank along with return memo for the reason 'EXCEEDS ARRANGEMENT'. Subsequent to the dishonour of the cheques, the complainant company served a legal demand notice dated 23.01.2009 under Section 138 of the NI Act and thereby called upon the accused to make the payment of the dishonoured cheques within a period of fifteen days and since the accused failed to make payment of the dishonoured cheques within the stipulated time period of fifteen days, the complaints under Section 138 of the NI Act were

instituted by the complainant company against the accused persons/respondents. The court below vide its impugned orders dated 19.08.2009 has ordered return of these complaints to the complainant company for its presentation to the competent court within thirty days of its return as, according to the court below, it has no territorial jurisdiction to entertain these complaints as no part of cause of action has arisen in Delhi.

7. It is aggrieved by these orders of the court below the petitioner company has filed these petitions under Section 482 of the Code of Criminal Procedure, 1973 seeking setting aside of the said orders and for directions to the court below to take cognizance of its complaints and proceed against the accused persons in accordance with law.

8. It was argued by the learned counsel appearing on behalf of the petitioner company that the court below has mis-interpreted the judgment of the Hon'ble Apex Court in the matter of M/s Harman Electronics (P) Ltd. (supra) as, according to him, the ratio of the said judgment was not applicable in the case of the complainant company. It was contended that the learned court below has wrongly held that no part of cause of action has arisen within the jurisdiction of the courts at New Delhi except that the notice has been sent by the complainant from New Delhi. According to Mr. Vijay Aggarwal, learned counsel appearing on behalf of the petitioner company, the substantial part of cause of action for filing of complaints against the accused persons under Section 138 of the NI Act has arisen within the jurisdiction of Delhi courts and, therefore, it was urged that Delhi courts were competent and have jurisdiction to entertain the complaints filed by the complainant company against the accused persons as (i) The loan agreements between the parties, i.e. the complainant company and the accused were executed at

Delhi; (ii) The complainant company is having its registered office at New Delhi and maintain all its records and is doing its business from its registered office, i.e. from Nehru Place, New Delhi; (iii) The cheque was handed-over by the accused to the complainant at Delhi; (iv) The cheque was presented to the payee bank, i.e. presenting bank at Delhi; (v) The cheque was dishonoured by the drawer bank's clearing branch which is also situated at New Delhi; (vi) The complainant company came to know about the dishonour of the cheques within the jurisdiction of this Court; (vii) The parties to the agreements in terms of the loan agreements conferred the jurisdiction upon the courts at New Delhi alone; and (viii) Legal demand notice as required under Section 138 of the NI Act was issued to the accused from Delhi.

9. Chapter XIII of the Code of Criminal Procedure deals with the jurisdiction of criminal courts in inquiries and trials. Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. Section 177 provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 of the Code, to the extent it is relevant, provides that where an offence is committed partly in one local area and partly in another, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any one of such local areas. Section 179 of the Code provides that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

10. There are five essentials of offence under Section 138 of the NI Act and they are:

- (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 fifteen days of the receipt of the notice.

Therefore, in view of the provisions contained in Section 178 (b) & (d) of the Code if any of these five acts which collectively constitute offence under Section 138 of the NI Act is different in an area, the court exercising jurisdiction over that area would be competent to entertain and try the complaint under Section 138 of the NI Act.

11. The question of jurisdiction in complaints under Section 138 of the NI Act came up for consideration before the Hon'ble Supreme Court in the matter of ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, reported as (1999) 7 SCC 510***, and the Hon'ble Supreme Court referring to the above-referred five components which constitute offence under Section 138 of the NI Act has held that if these 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 offence under Section 138 of the NI Act and the complainant can choose any one of those courts having jurisdiction over any one of those local areas where any of these five acts was done.

12. In ***Smt. Shamshad Begum Vs. B. Mohammed, reported as (2008) 13 SCC 77***, the respondent filed a complaint against the appellant at Mangalore under Section 138 of the NI Act. Before filing complaint, the respondent had issued a notice to the appellant from Mangalore and a reply was sent by her at his Mangalore address. The appellant filed a

petition in Karnataka High Court under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the complaint on the ground that since the agreements between the parties were entered into at Bangalore and the cheques were returned from the banks at Bangalore, therefore, only Bangalore court had jurisdiction to try the case. The High Court having dismissed the petition, the appellant came to the Hon'ble Supreme Court by applying the special leave. Relying on its decision in K. Bhaskaran's case and referring to the five components enumerated in that decision, it was held that it is not necessary that all the five acts should have been perpetrated in the same locality and it was possible that each of these acts could have been done at five different localities though inconcatenation of all these five acts is a sine qua non for completion of the offence under Section 138 of the NI Act. The appeal was dismissed thereby upholding the decision of the High Court.

13. In ***Prem Chand Vijay Kumar V/s Yashpal Singh reported as (2005) 4 SCC 417***, it was held by the Hon'ble Apex Court that for securing prosecution under Section 138 of the NI Act, the following facts are required to be proved:

- (a) That the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;
- (b) That the cheque was presented within the prescribed period;
- (c) That the payee made a demand for payment of the money by giving a notice in writing to the drawer within a stipulated period; and
- (d) That the drawer failed to make the payment within fifteen days of the notice.

14. The issue of territorial jurisdiction again came up for consideration before the Hon'ble Supreme Court in a recent decision in the matter of

M/s Harman Electronics (P) Ltd. (supra). In that case, the appellant was carrying on business at Chandigarh. The complainant had its head office at Delhi and a branch office at Chandigarh. The cheque in question was issued, presented & dishonoured at Chandigarh. The respondents/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 cheque, a complaint was filed at Delhi. The 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. The respondent was carrying on its business at Delhi, the Delhi court has jurisdiction to entertain the complaint.

15. The jurisdiction of the court at Delhi was claimed in the above mentioned case on the ground that the cheque although deposited at Chandigarh, the same having been sent by Citi Bank NA for collection at Delhi, the amount became payable at Delhi. The notice 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 regards issuance of notice from Delhi, the Hon'ble Supreme Court held that issuance of notice would not by itself give rise to a cause of action but communication of the notice would give. The Hon'ble Supreme Court was of the view that for constituting offence under Section 138 of the NI Act, the notice must be received by the accused though it is deemed to have been received in certain situations. The Hon'ble Supreme Court also referred to its own decision in **Mosaraf**

Hossain Khan Vs. Bhagheeratha Engg. Ltd., reported as (2006) 3 SCC 658. In that case respondents had issued certain cheques to the appellant from Ernakulam which were deposited at Suri branch of the bank. The respondents were also having an office at Ernakulam. On return of cheques, the demand notice was sent by the appellant to the respondents. On non-payment of the cheques, criminal complaint was filed in the court of Chief Metropolitan Magistrate in Birbhum at Suri. It was observed that sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of cause of action for which a complaint petition was filed by the appellant and cognizance of the offence was taken by the Chief Metropolitan Magistrate at Suri. It was noted that issuance of a notice by the holder of a 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 fifteen days thereafter the commission of an offence is completed and, therefore, giving of notice cannot have precedence over the service. The Hon'ble Court declined to apply the civil liability 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 the Criminal Procedure Code and not on common law principle.

16. In the matter of **Lok Housing and Constructions Limited Vs. Raghupati Leasing and Finance Limited & Another, reported as 100 (2002) DLT 38**, it was held by this court that a complaint under Section 138 of the NI Act can be filed in any of the five local areas where any of the five different acts constituting the offence under Section 138 of the NI Act were done. Thus, it is clear that if the five different acts constituting offence under Section 138 of the NI Act 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 NI Act. In other words, the complainant can choose any one of those courts having jurisdiction over one of the local areas within the territorial limits of whom any one of the five acts was done. The decision of the Hon'ble Supreme Court in the case of M/s Harman Electronics (P) Ltd. (supra), where jurisdiction of Delhi court was claimed solely on account of notice of demand having been sent from Delhi, therefore, has no application to the facts of the present case.

17. The judgment of this court in ***Delhi High Court Legal Services Committee Vs. Government of N.C.T. of Delhi, reported as 163 (2009) DLT 56***, also does not have any application to the facts of the present case since that judgment directs return of those complaints in which Delhi courts does not have territorial jurisdiction to try the complaint. A perusal of this judgment would show that the petitioner in that case had sought return of those complaints in which territorial jurisdiction of Delhi courts was claimed only on the ground that statutory notice after dishonour of the cheques was issued from Delhi though, the same was communicated outside Delhi and further the cause of action also accrued outside the territory of Delhi. The decision in Delhi High Court Legal Services Committee's case (supra) applies only to those cases where the complainant invokes jurisdiction of Delhi courts solely on the ground that notice of demand was issued from Delhi despite the fact that it was served outside Delhi. If the complainant claims jurisdiction of Delhi courts on some other fact, which is one of the essentials constituting offence under Section 138 of the NI Act, that judgment would not apply and that complaint would not be liable to be returned to the complainant for want of jurisdiction. If the transaction between the parties took place

in Delhi and the cheques in question were deposited by the complainant/respondent at Delhi, jurisdiction of Delhi courts to entertain such complaints cannot be disputed.

18 The venue of inquiry or trial of a case like the present one is primarily to be determined by the averments contained in the complaint or charge-sheet and unless the facts therein are positively disproved, ordinarily the court, where the charge-sheet or the complaint has been filed, has to proceed with it except where action has to be taken under Section 202 of the Cr.P.C.

19. In ***Trisuns Chemicals Industries Vs. Rajesh Agarwal and Others, reported as 1999 Crl.L.J. 4325***, it was held by the Hon'ble Apex Court as under:

“It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case. The jurisdictional aspect becomes relevant only when the question of inquiry or trial arises. It is, therefore, a fallacious thinking that only a Magistrate having jurisdictions to try the case has the power to take the cognizance of the offence, if he is a Magistrate of the first class, his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.”

20. A perusal of the complaints filed by the complainant company against the accused persons in the present case would show that the following cause of actions persist within the jurisdiction of Delhi courts:

“(i) The complainant company is having its registered office at New Delhi and maintaining all the records and doing its business from its registered office, i.e. from Nehru Place, New Delhi;

(ii) The loan agreement is the written documentary evidence which was executed between the petitioner and the

- accused in Delhi;
- (iii)The cheque was handed over by the accused to the complainant at Delhi;
 - (iv)The cheque was presented to the payee bank, i.e. Presenting bank in Delhi;
 - (v) The cheque was dishonoured by the drawer bank's clearing branch which situates at New Delhi;
 - (vi)The complainant came to know about the dishonour of cheque within the jurisdiction of this Hon'ble Court;
 - (vii)The parties to the agreement in terms of the agreement conferred the jurisdiction upon the courts at New Delhi alone; and
 - (viii)Legal demand notice was issued from Delhi."

21. From the above, it is crystal clear that most and substantial part of cause of action for filing of complaint by the complainant company against the accused persons under Section 138 of the NI Act had arisen within the jurisdiction of the courts at Delhi. Hence, the impugned orders of the court below holding that no part of cause of action has arisen in Delhi, on the face of it are illegal and unlawful and against the factual matrix of the case. The impugned orders are, therefore, liable to be set aside and are hereby set aside. These petitions are allowed. The cases are remanded back to the court below with directions to proceed and decide the complaints under Section 138 of the NI Act filed by the complainant company against the accused persons in accordance with law. The complainant company is directed to appear before the court below for further directions at 2:00 P.M. On 09.07.2010. A copy of this order be sent to the concerned trial court for information.

A copy of this judgment be kept in the files of the connected petitions which have also been disposed of by this common judgment.

JULY 02, 2010
'BSR'

S.N.AGGARWAL, J