

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

+ **W.P.(Crl.) No. 861, 884 & 885 of 2009**

Date of Order: 8th February 2010

! # SOM SUGANDH INDUSTRIES LTD. & ANR. Petitioners
Through: Mr. Sandeep Bhalla, Adv.

versus

^ \$ UOI & ANR. Respondents
Through: Mr. G.S. Kanojia, Adv. for R-1.
Mr. Mukesh Anand, Mr. R.C.
Bhadoria and Mr. Shailesh
Tiwari, Advs. for R-2.

* **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. The petitioners in these petitions under Article 226 of the Constitution are challenging the order passed by the learned Metropolitan Magistrate taking cognizance of the complaint filed by the respondents against them under Section 138 of Negotiable Instruments Act, on the ground that Delhi Courts do

not have jurisdiction to entertain and try these complaints. According to the petitioners, they are carrying business in Kundli, in District Sonapat, Haryana, cheques in question were issued in Haryana, cheques were drawn at Punjab National Bank, HSIDC Complex, Kundli (Haryana) and the notice of demand is alleged to have been sent to the petitioners in Haryana, though it was not received by them.

2. The respondents have contested the petition and have claimed that Delhi Court does have jurisdiction in the matter as Commissionerate, Central Excise falls under the jurisdiction of Chief Commissioner of Central Excise having office in Delhi and notice demanding the amount of the cheque was also issued from Delhi.

3. It is not in dispute that Som Sugandh Industries Ltd., the company which issued the cheques in question and is the primary accused in the complaint filed by the respondents, is having its office works in Village Nathupur, Kundli, District Sonapat of Haryana. This is not the case of the respondent that the company also has office, factory or other place of business in Delhi. There is no allegation to this effect in the complaint filed by the respondent.

4. According to the petitioners, cheques in question were issued to Superintendent, Central Excise (Anti Evasion) Rohtak. This factual assertion has not been disputed by the respondent. Even otherwise, this fact is evident from the cheques issued by the company, which have been issued in favour of Pay & Accounts Officer, Central Excise, Commissionerate, Rohtak.

5. It is also not in dispute that the cheques in question were drawn on Punjab National Bank, HSIDC Complex, Kundli, Sonapat (Haryana). This is also evident from a perusal of the cheques, copies of which have been filed with the petitions, and has otherwise not been disputed by the respondents.

6. A perusal of the notices sent by the respondents to the petitioners, copy of which is annexed to the petition and has not been disputed by the respondents, would show that the notice to all the accused persons was sent at the address of Village Nathupur, Kundli, Sonapat (Haryana).

7. The issue involved in these petitions came up for consideration before the Hon'ble Supreme Court in a recent decision – '**Harman Electronics Private Limited and Anr. v. National Panasonic India Private Limited**', (2009) 1 SCC 720. 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.

8. As regard, issue of notice from Delhi, Hon'ble Supreme 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.

9. The following observations made by the Hon'ble Supreme Court in this case are pertinent:

“A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a 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.”

10. In view of the above referred authoritative pronouncements of the Hon'ble Supreme Court in the case of **Harman Electronics** (supra) jurisdiction of Delhi Courts cannot be claimed on the ground that notice of demand was dispatched by the complainant from Delhi. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in '*Shamshad Begum v. B. Mohammed*.' AIR 2009 SC 1355. In that case, the respondent filed a complaint against the appellant at Mangalore under Section 138 of Negotiable Instruments Act. Before filing complaint, the respondent had issued a notice to the appellant from Mangalore and a reply was sent by her to the complainant at his Mangalore address. The

appellant filed a petition in Karnataka High Court under Section 482 of the Code of Criminal Procedure, seeking quashing of the complaint on the ground that since the agreement between the parties was entered into at Bangalore and the cheques were returned from the banks at Bangalore, only Bangalore court had jurisdiction to try the case. The High Court having dismissed the petition, the appellant came to the Supreme Court by obtaining Special Leave. Relying upon its earlier decision in **K. Bhaskaran's** case (supra) 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 in-concatenation of all the above five is a *sine qua non* for completion of the offence u/s 138 of the Act. The appeal was, dismissed, thereby upholding the decision of the High Court. This judgment was considered by me in CrI.M.C. 1580/2009 titled '**K.O. ISSAC & Anr. vs. State & Anr.**' decided on 21st October 2010 alongwith other judgment on the subject including the later decision of the Hon'ble Supreme Court in the case of Harman Electronics (supra) and I took the view that mere sending of notice from Delhi to the accused, who is outside the jurisdiction of Delhi

Court, does not confer jurisdiction of Delhi Court to entertain and try a complaint under Section 138 of Negotiable Instruments Act.

11. Proviso (b) to Section 138 of Negotiable Instruments Act requires payee of the cheque or its holder in due course, as the case may be, to make a demand of the amount of the cheque by giving a written notice to the drawer of the cheque. The question which arises for consideration is as to whether the demand is made at the place where the drawer of the cheque resides or works for gain or it is made at the place from where the notice of demand is dispatched to the drawer of the cheque. Since the requirement of the proviso will not be fulfilled without service of notice upon the drawer and considering the decision of the Hon'ble Supreme Court in the case of **Harman Electronics** (supra) holding therein that civil law principle that the debtor must seek the creditor does not apply to a criminal case, the demand shall be deemed to have been made at the place where the notice is served upon the drawer and not at the place from where it is dispatched to him. In fact in view of the decision in the case of **Harman Electronics** (supra), the notice shall be deemed to have been given at the place where it is

served upon the addressee and not at the place from where it was dispatched.

12. In the present case, the respondents have not claimed before me that cheques issued by the accused petitioner company were deposited by them in Delhi. But, even if that be the case, that also would not give jurisdiction to Delhi Court to try these complaints.

13. In '***Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.***' (2001) 3 SCC 609, 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
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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.*”

14. 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 outside Delhi is deposited in Delhi, the bank in which it is deposited in Delhi, is required to present it to the bank outside Delhi, for the purpose of encashment.

15. For the reasons given in the preceding paragraphs, all the three complaints, subject matter of these petitions, are liable to be returned to the complainant, for filing them before a competent court of jurisdiction. The learned counsel for the respondents states that in case the complaints are directed to be returned, they would present the same before Chief Judicial Magistrate, Sonapat. Hence, the trial court is directed to return the complaints, subject matter of these petitions, to the

complainant in order to enable it to institute them before Chief Judicial Magistrate, Sonapat.

The parties are directed to appear before Chief Judicial Magistrate at 10 AM on 22nd February 2010. If, there are other accused appearing before the learned Metropolitan Magistrate, he shall direct them as well to appear before Chief Judicial Magistrate, Sonapat on the aforesaid date and time.

One copy of this order be sent to trial court, within three days, for information and compliance.

**V.K. JAIN
(JUDGE)**

FEBRUARY 08, 2010

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