

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

Judgment reserved on: November 22, 2010
Judgment delivered on: November 24, 2010

+ CRL. M.C. NO.2172/2010 & CRL.M.A. No.8555/2010

DHANANJAY JOHRI

....PETITIONER

Through: Mr. Tarun Rana, Advocate

Versus

NAVEEN SEHGAL

.....RESPONDENT

Through: Mr. M.A. Khan, Advocate with Mr. Mirza Javed Beg, Advocate

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Dhananjay Johri, the petitioner herein, vide this petition under Section 482 Cr.P.C. has raised a legal issue relating to the territorial jurisdiction of Delhi court to entertain the complaint filed by the respondent against him under Section 138 of Negotiable Instruments Act, being CC No.1655/3/09 and sought quashing of the order of learned Metropolitan Magistrate dated 09.07.2009 taking cognizance of said complaint and summoning the petitioner to undergo trial under Section 138 of Negotiable Instruments Act.

2. Respondent (complainant) Naveen Sehgal had filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner claiming that he had rendered consultancy about medical electronic and equipments, their installation and maintenance etc. for the petitioner for which he raised a bill dated 06.02.2009 for ₹4 lakhs. In discharge of said liability, the petitioner issued five cheques, two worth ₹50,000/- each and three worth ₹1 lakh each, all drawn on Indus Bank Ltd., Kanpur. Complainant presented those cheques for encashment through his banker State Bank of India, Connaught Place, New Delhi, but those cheques were returned unpaid by the bankers of the petitioner with the endorsement "payments stopped by drawer". Upon dishonour of those cheques, complainant/respondent sent a notice dated 25.05.2009 in terms of Section 138 of the Negotiable Instruments Act to the petitioner, demanding payment of amount of those cheques. Despite of service of demand notice, the petitioner failed to pay the amount of cheques, i.e. ₹4 lakhs, within requisite period of 15 days from the date of receipt of notice. Thus, the complainant filed the above referred complaint under Section 138 of the Negotiable Instruments Act against the petitioner in the court of learned A.C.M.M., Delhi.

3. Learned counsel for the petitioner submitted that filing of the aforesaid complaint under Section 138 of the Negotiable Instruments Act in Delhi is an abuse of process of law because neither the petitioner nor the respondent/complainant are residents of Delhi. Further, the bill

dated 06.02.2009 raised by the respondent/complainant for ₹4 lakhs was issued by the respondent from Faridabad and sent to the petitioner at Kanpur. Even the demand notice was also served on the petitioner at the address of Kanpur, as such, it is apparent that no part of cause of action for filing of complaint under Section 138 of the Negotiable Instruments Act arose within the territory of Delhi. Therefore, Delhi courts, as per the learned counsel for the petitioner, have no territorial jurisdiction in this case. Thus, the summoning order dated 09.07.2009 passed by learned Metropolitan Magistrate, Patiala House Courts is liable to be quashed and the complaint filed by the respondent is liable to be returned to be filed in a court of proper jurisdiction. In support of this contention, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the matter of **M/s Harman Electronics (P) Ltd. & Another Vs. M/s National Panasonic India Ltd., (2009) (1) SCC 720.**

4. Learned counsel for the respondent, on the other hand, has contended that the learned M.M. has rightly assumed jurisdiction in this case for the reason that the cheques in question, as per the allegations in the complainant, were presented by the respondent/complainant in his Bank at Connaught Place. Therefore, in view of the judgment of the Supreme Court in the matter of **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 SCC 510**, Delhi court has jurisdiction to entertain the complaint.

5. I have considered the rival contentions and perused the relevant material on record. It is not disputed that the petitioner is a resident of Kanpur and the respondent is a resident of Faridabad. It is also not in dispute that the bill for ₹4 lakhs dated 06.02.2009, copy of which is Annexure C to the petition, was raised by the respondent from Faridabad and sent to the petitioner at Kanpur. It is also not in dispute that the notice under Section 138 of the Negotiable Instruments Act was served upon the petitioner at Kanpur address. Respondent is, therefore, seeking jurisdiction of Delhi court mainly on the ground that the cheques in question were presented with his bankers located in Delhi, i.e., State Bank of India, Connaught Place, New Delhi.

6. In order to appreciate rival contentions, it is necessary to have a look at the judgment of the Supreme Court in **K. Bhaskaran** (supra) case. In the aforesaid case, Hon'ble Supreme Court, inter alia, observed thus:

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

“178. (a)-(c) * * *

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas.”

16. Thus it is clear, if 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 one 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. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.”

7. The respondent is claiming territorial jurisdiction of Delhi courts on the ground that the cheques in question were presented by him to his bankers at Delhi i.e. State Bank of India, Connaught Place, which is one of the components constituting the offence under Section 138 Negotiable Instruments Act.

8. Admittedly, in the instant case, the cheques in question were drawn at Indus Bank Ltd. Kanpur and those cheques were sent for collection of the cheque amount to the drawee bank through the bankers of the respondent i.e. State Bank of India, Connaught Place Branch. Thus, it is clear that two banks were involved in the process of encashment of the cheques i.e. the collecting bank namely State Bank of India, Connaught Place, New Delhi and drawee bank i.e. Indus Bank Ltd. Kanpur. In the matter of **K. Bhaskaran** (supra), Supreme Court has not defined the terminology “the Bank”, but has enunciated

five components which constitute the offence under Section 138 Negotiable Instruments Act. Thus, question for determination is, which of the above two banks fall within the purview of the term “The Bank” to which the cheques in question were presented.

9. As per the banking law and practice, the cheque can be encashed only on presentation to the drawee bank. In the instant case, the respondent has sent the cheques for collection of the cheque amount to the drawee bank through his bankers, i.e., State Bank of India, Connaught Place, New Delhi. Therefore, State Bank of India, Connaught Place, New Delhi only acted as an agent of the respondent to present the cheques in question for encashment to the drawee bank. The deposit of cheques for collection in State Bank of India, Connaught Place, by no stretch of imagination, can be treated as presenting of cheques for encashment. The presentation of cheques could be complete only when the cheques in question were presented to the drawee bank. Therefore, in my considered view, the word “the bank” used in component (2) of offence under Section 138 of the Negotiable Instruments Act in the judgment of **K. Bhaskaran** (supra) case refers to the drawee bank and not the collecting bank through which the cheques are sent for presentation. In my aforesaid view, I find support from the judgment of the Supreme Court in the matter of **Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.**, (2001) 3 SCC 609, wherein the Supreme Court has enunciated the meaning of words “a bank” and “the bank” in Section 138 of the Negotiable Instruments Act as under:

“9. The use of the words “a bank” and “the bank” in the section is an indicator of the intention of the legislature. The former is an indirect (*sic* indefinite) article and the latter is prefixed by a direct (*sic* definite) article. If the legislature intended to have the same meanings for “a bank” and “the bank”, there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word “banker” in Section 3 of the Act is prefixed by the indefinite article “a” and the word “bank” where the cheque is intended to be presented under Section 138 is prefixed by the definite article “the”. The same section permits a person to issue a cheque on an account maintained by him with “a bank” and makes him liable for criminal prosecution if it is returned by “the bank” unpaid. The payment of the cheque is contemplated by “the bank” meaning thereby where the person issuing the cheque has an account. “The” is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of “a” or “an”. It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. “The” is always mentioned to denote a particular thing or a person. “The” would, therefore, refer implicitly to a specified bank and not any bank. “The bank” referred to in clause (a) to the proviso to Section 138 of the Act would mean 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 favour the cheque is issued.

10. It, however, does not mean that the cheque is always to be presented to the drawer’s bank on which the cheque is issued. 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 other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to (C) bank. The non-presentation of the cheque to the drawee bank within the period specified in the section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of 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. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee.”

10. In view of the above enunciated principle of law, deposit of the cheques by the respondent/complainant in his account at State Bank of India, Connaught Place, New Delhi, does not amount to presenting of the cheques in “The Bank”, as such, it would not confer territorial jurisdiction on Delhi Courts, when none of the other components of Section 138 Negotiable Instruments Act occurred in Delhi.

11. In view of the above, I find that Delhi court has no territorial jurisdiction in this matter, as such, the order dated 09.07.2009 passed by the learned Metropolitan Magistrate is set aside, being without jurisdiction and it is directed that the complaint in question be returned to the complainant/respondent for being filed in the court of proper jurisdiction.

12. Petition as well as the pending application is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

November 24, 2010
pst