

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

+ Crl Rev. P.170/2010 & Crl.M.A.4840/2010

% Judgment reserved on: 04th August, 2011
Judgment delivered on: 09th September, 2011

GE CAPITAL TRANSPORTATION

FINANCIAL SERVICES LTD

..... Petitioner

Through: Mr.Vinay Kumar Shailendra,
& Ms.Worthing Kasar, Advocates

versus

RAHISUDDIN KHAN

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J.

1. Vide the instant petition the petitioner has challenged the impugned order dated 30.03.2010, whereby, the learned Metropolitan Magistrate, Dwarka Courts, New Delhi returned the complaint case under Section 138 Negotiable Instrument Act, 1881 (hereinafter referred to as

'NI Act'), *inter-alia* holding that the complaint is barred by jurisdiction.

2. In the present case as submitted by learned counsel for the petitioner, the summons have not been issued by learned MM as the complaint filed by the petitioner has been returned on the ground of jurisdiction, therefore, there is not necessity to issue notice to the respondent in the instant petition also. This position has been fortified by the judgment of the constitution bench in the case of Chander Deo Singh Vs. Prakash Chandra Bose AIR 1963 SC 1430 wherein the Supreme Court has held that the entire scheme of Chapter XVI of the Code of Criminal Procedure shows that an accused person does not come into the picture at all till the process is issued; and since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings.

3. Learned counsel for petitioner submits that the cheque in question was duly presented by the petitioner as the complainant through its bank (collecting bank) to the

respondent/accused bank at New Delhi. Ld. Counsel further submits that cheque which was payable at par at all branches of ICICI Bank was issued to the complainant by the respondent/accused in partial discharge of the pecuniary liability (towards repayment of the loan). Same was tendered to the Citibank N.A., Jeevan Bharti Building Connaught Place, New Delhi where the petitioner has account bearing No.7152027 for encashment. Same was presented by the Citibank N. A. to the respondent's bank through clearing house of RBI at New Delhi. Cheque was dishonoured by the bank of the respondent on account of insufficiency of the funds in the respondents account at New Delhi. Cheque was returned unpaid by the respondent's bank to the petitioner's bank at New Delhi. Legal/demand notice was issued to the respondent within the statutory period seeking payment of the cheque amount from New Delhi. Respondent failed to make the payment within 15 days of receipt of the notice at New Delhi. A complaint case under Section 138 NI Act had been filed at New Delhi.

4. The petitioner also led an evidence of an expert witness Shri Raja Maingi, Assistant Manager, Citibank, N.A., New Delhi, who deposed on oath that in the return memo of drawee bank LOC Delhi means presentation of cheque was made in Delhi to the bank of the accused and the cheque was dishonoured due to the reason mentioned by the accused bank and returned unpaid to the bank in Delhi. Even in the case accused is having an account outside Delhi, the cheque physically never goes there under the core banking system. The accused's bank participate as a member of core banking system, accordingly these cheques were presented at Delhi as per RBI guidelines to the bank of accused.

5. Further submits that the Id. Trial Court returned the complaint in spite of the fact that the present case is fully covered by the order dated 03.11.2009 passed by the Supreme Court in Special Leave Petition (C) No.29044/2009 titled as Vinay Kumar Shailendra Vs. Delhi High Court Legal Services Committee & Anr. He further made it clear that the SLP was filed against the order dated 23.09.2009 passed by

this Court in WP (C) No.11911/2009 titled Delhi High Court Legal Services Committee Vs. Government of NCT of Delhi 163(2009) DLT 56 (DB), whereby, the Supreme Court had directed '*Status quo, as on today, shall be maintained until further orders*'. Since the present complaint was filed in May 2009, much before the directions passed by the apex Court.

6. Before going into the issues with respect of the jurisdiction in this present petition, it is essential to refer the judgment dated 23.09.2009 of the Division Bench of this Court where the complaints were filed on the basis of the issuance of the legal notice from Delhi and was held that:-

"The High Court under Article 226 of the Constitution is required to enforce the law of the land and in accordance with the judgment of Supreme Court in M/s Harman Electronics Pvt. Ltd Vs. National Panasonic India Pvt. Ltd 2009(1) SCC 720, all pending complaints in courts having no jurisdiction have to be returned."

7. The aforesaid judgment of this Court on being challenged vide SLP as mentioned above on the ground that, the judgment of the Supreme Court in M/s Harman Electronics (supra) cannot be considered as overhauling the

earlier decision of the Supreme Court in K.Bhashkaran Vs. Sankaran Vaidyan Balan & Anr (1999) 7 SCC 510 decided on 29.09.1999 contrary to several decisions of the Constitution Bench at the Supreme Court.

8. Learned counsel for petitioner further submitted that the in *Central Board of Dawoodi Bohra Community & Anr. Vs. State of Maharashtra & Anr.* (2005) 2 SCC 673 wherein it was held in para No.12 as under:-

“12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose

decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions:

(i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such

listing. Such was the situation in Raghbir Singh & Ors. and Hansoli Devi & Ors.(supra)."

9. According to the above judgment, the law was laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on all Benches of lesser or co-equal strength.

10. Further submitted that the Bench comprising of three Judges of the Supreme Court appreciated the submissions and grounds made in the said SLP vide order dated 03.11.2009, issued notices in the said petition and directed the matter be posted before a three Judge Bench and in the meantime, directed '*Status quo, as on today, shall be maintained until further orders*'.

11. It is submitted that in view of the order dated 03.11.2009 passed by the Supreme Court; learned Magistrate was precluded from returning the present complaint on the basis of the judgment of the Supreme Court in M/s Harman Electronics (supra) as referred above, wherein the same issue was involved.

12. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court in Trisuns Chemical Industry Vs. Rajesh Aggarwal & Ors. 1999 (8) SCC 686 wherein it was held as under:-

“11. It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal courts in enquiries and trials. That chapter contains provisions regarding the place where the enquiry and trial are to take place. Section 177 says that:

“177. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed”.

As is submitted under Section 179 which states that, when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a court within whose local jurisdiction such thing has been done or such consequence has ensued. It cannot be overlooked that the said provisions do not trammel the powers of any court to take cognizance of the offence. Power of the court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1) & (2) read thus:

“(i) Subject to the provisions of this Chapter, any Magistrate of the first

class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

13. Further, it is submitted that Section 193 imposes a restriction on the court of sessions to take cognizance of any offence as a court of original jurisdiction. But any Magistrate of First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not.

14. It is stated, the only restriction contained in Section 190 is that the power to take cognizance is subject to the provisions of this Chapter. There are 9 Sections in

Chapter XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these: Except as hereinafter provided. Those words are now replaced by Subject to the provisions of this chapter. Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a judicial magistrate of first class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a magistrate of the power to take cognizance of an offence of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non-obstante clauses.

15. Further submits, the jurisdictional aspect becomes relevant only when the question of enquiry or a trial arises. It is therefore, a fallacious thinking that only a

magistrate having jurisdiction to try the case has the power to take 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.

16. According to the aforesaid judgment of the Supreme Court, in Trisums Chemical Industry (supra) learned Magistrate taking cognizance of the offence must not necessarily have a territorial jurisdiction to try the case. Only when the inquiry or trial begins, does the territorial aspect become relevant. In fact, after taking cognizance of the offence, the Magistrate may have to decide as to which court would have the jurisdiction to enquire into the case as such a situation can arise only during the post-cognizance stage.

17. Ld. Counsel for the petitioner has further relied upon the judgment of this Court in Religare Invest Ltd. Vs.

State & Anr. Crl. Rev. Petition No.179/2009 decided on 23.09.2010 as was held in para No.24 as under:-

"24. As discussed above, the Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case as well. Only when an enquiry or trial begins, does the jurisdictional aspect become relevant. In fact, after taking cognizance of the offence, the Magistrate may have to decide as to which court would have the jurisdiction to enquire into the case and such a situation can arise only during the post cognizance stage. At the pre-cognizance stage, the Magistrate has only to examine the averments, as set out in the complaint and not more, for prima facie arriving at a decision as to whether some of the acts essential for completing an offence under Section 138 of the Act were done in the territorial jurisdiction of that Court. In the present case, having perused the complaint filed by the petitioner/complainant without ascertaining the correctness of the allegations made therein, prima facie it has to be held that a part of the cause of action has arisen in Delhi and the same is not based solely on the issuance of a legal notice by the petitioner/complainant to the respondent/accused from Delhi, but some other acts done prior thereto, as set out in para (3) hereinabove."

18. Learned counsel for the petitioner submits that the aforesaid judgment has reiterated the position of law and

the same has been followed by this Court in GE Capital Transportation Financial Services Ltd. Vs. Lakmanbhai Govind Bhai Karmur, Criminal M.C. No.2478/2009 decided on 28.02.2011 as was held in para No.9 as under:-

“9. Admittedly, the cases were at the pre-summoning stage and evidence had yet not been recorded by the learned Metropolitan Magistrate. On this point, this Court has already held in the case of M/s Religare Finvest Ltd. Vs. State & Anr. (supra) that the Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case. The observations made in this context in the aforesaid judgment are reproduced herein below:

“24. As discussed above, the Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case as well. Only when an enquiry or trial begins, does the jurisdictional aspect become relevant. In fact, after taking cognizance of the offence, the Magistrate may have to decide as to which court would have the jurisdiction to enquire into the case and such a situation can arise only during the post-cognizance stage. At the pre-cognizance stage, the Magistrate has only to examine the averments, as set out in the complaint and not more, for prima facie arriving at a decision as to whether some of the acts essential for completing an offence under Section 138 of the Act were done in the

territorial jurisdiction of that Court. In the present case, having perused the complaint filed by the petitioner/complainant without ascertaining the correctness of the allegations made therein, prima facie it has to be held that a part of the cause of action has arisen in Delhi and the same is not based solely on the issuance of a legal notice by the petitioner/complainant to the respondent/accused from Delhi, but some other acts done prior thereto, as set out in para (3) hereinabove.”
(Emphasis added)

19. Learned counsel for the petitioner has further referred to a Supreme Court judgment in Rajiv Modi Vs. Sanjay Jain & Ors. V (2009) SLT 725 in para Nos. 22 & 29 held as under:-

“22) It is evident from the above decisions, that, to constitute the territorial jurisdiction, the whole or a part of ‘cause of action’; must have arisen within the territorial jurisdiction of the court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts.

23).....

24).....

25).....

26).....

27).....

28).....

29) *In view of the above principles, the Court on basis of the averments made in the complaint, if it is prima facie of the opinion that the whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of the complaint. There is no need to ascertain that the allegations made are true in fact."*

20. Ld. Counsel submits, thereafter this Court in Religare Invest (supra) has reiterated the aforesaid position of law and the same has been followed by this Court in the case of GE Capital (supra).

21. The issues arising for consideration in the present petition are as under:-

I) Whether learned Magistrate has a jurisdiction to try the cases under Section 138 NI Act on account of presentation of cheque to the drawee bank (Bank of the respondent/accused) in New Delhi by the petitioner/complainant through its Bank (collecting bank) at New Delhi?;

II) Whether Ld.MM has jurisdiction to try the cases under Section 138 NI Act on account of dishonour of cheque at New Delhi by the drawee

bank (bank of the respondent/accused) and return of unpaid cheque because of insufficiency of funds in the account of the respondent/accused by the drawee bank at New Delhi to the petitioner / complainant bank (collecting bank) at New Delhi?;

III) Whether Ld.MM has jurisdiction to try the cases under Section 138 NI Act on account of issuance of statutory notice to the respondent/accused from New Delhi by the petitioner/complainant in view of the judgment of the Supreme apex Court in case of K.Bhaskran (supra) in spite of the judgment of the Supreme Court in case of M/s Harman Electronics(supra).

22. Before dealing the issue involved in the petition in hand, the facts of the present case are as under:-

Cheque which was payable at par at all branches of ICICI Bank was issued to the complainant by the respondent/accused in partial discharge of the pecuniary liability (towards repayment of the loan). Same was

tendered to the Citibank N.A., Jeevan Bharti Building Connaught Place, New Delhi where the petitioner has account bearing No.7152027 for encashment. Same was presented by the Citibank N. A. to the respondent's bank through clearing house of RBI at New Delhi. Cheques was dishonoured by the bank of the respondent on account of insufficiency of the funds in the respondents account at New Delhi. Cheque was returned unpaid by the respondent's bank to the petitioner's bank at New Delhi. Legal/demand notice was issued to the respondent within the statutory period seeking payment of the cheque amount from New Delhi. Respondent failed to make the payment within 15 days of receipt of the notice at New Delhi. A complaint case under Section 138 NI Act had been filed at New Delhi.

23. Mr. Vinay Kumar Sahilendra, Ld. Counsel for the petitioner submits that the Supreme Court in K.Bhaskaran (supra) while dealing with the issue of jurisdiction has held that Section 138 NI Act contemplates following acts, which are component of offence under Section 138 NI Act :-

- 1) drawing of the cheque;

- 2) presentation of the cheques 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 cheques amount;
and
- 5) failure of the drawer to make payment within 15 days of the receipt of the notice.

24. Therefore, five different acts if were dealt in five different localities, anyone of the Courts exercising jurisdiction in one of the five local areas, can become a place of trial for the offence under Section 138 NI Act.

25. Thereafter, the Supreme Court has reiterated the decision of K.Bhaskaran (supra) in the case of Shamshad Begum Vs. B. Mohammad 2008 (13) SCALE 669 it is held as under:-

“3. In response, the respondent had submitted that before issuing notice to the appellant he had shifted his residence to Mangalore and therefore he had issued the notice from Mangalore which was received by the appellant and the reply was sent by her to the complainant to the Mangalore

address. Therefore, as one of the components of the said offence i.e. notice in writing to the drawer of the cheque demanding payment of cheque amount was sent from Mangalore, Court at Mangalore had jurisdiction to try the case. The High Court noted that one of the components of the offence was giving notice in writing to the drawer of the cheque demanding payment of the 2 cheque amount. The said action took place within Mangalore jurisdiction and, therefore, the petition was without merit. It was however stated that if the presence of the appellant was not very necessary for continuation of the proceeding, on appropriate application being filed, the court can grant exemption from appearance.

6. In K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr. [1999(7) SCC 510], it was inter alia observed as follows:-

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)...

(b)...

(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.

17. The more important point to be decided in this case is whether the cause of action has arisen at all as the notice sent by the complainant to the accused was returned as "unclaimed". The conditions pertaining to the notice to be given to the drawer, have been formulated and incorporated in clauses (b) to (c) of the proviso to Section 138 of the Act. The said clauses are extracted below:

(b) the payee or the holder in due 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, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque 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.;

8. It is not necessary that 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 concatenation of all the above five is sine qua non for the completion of the offence under Section 138 of the Act.

26. The Supreme Court even in case of M/s Harman Electronics (supra) has affirmed the decision of the Supreme Court in K.Bhaskaran (supra) in respect of the Courts having jurisdiction over the places (I) where the cheque has been drawn; (II) where the cheque has been presented to the bank; (III) where the cheque has been returned unpaid by the drawee bank; (IV) where the respondent/accused failed to make the payment within 15 days of the receipt of the legal notice to try the cases under Section 138 of the NI

Act.; (V) Failure of the drawer to make payment within 15 days of the receipt of the notice.

27. The division bench of the Supreme Court in M/s.Harman Electronics (supra) differed with the earlier decision taken by another division bench in K.Bhaskaran (supra) with respect to the jurisdiction over the place of issuance of demand/legal notice, and held that the courts having jurisdiction over the place, where, the respondent/accused receives the legal notice and not the place of issuance of legal notice, would have jurisdiction to try the cases under Section 138 NI Act.

28. As regards to the aspect (I) and (II) above, section 138 NI Act clearly states that the cheques have to be drawn by the person on account maintained by him with the banker and does not mention the branch of the bank. The branch acts only as a facilitation centre. Cheque is always drawn on the bank, whether, payee bank or the drawee bank.

29. Section 3 of the NI Act defines the '*banker*' as people who include any person acting as a banker and any post office saving bank.

30. Section 6 of the Act defines '*cheque*' and it *inter-alia* states that a "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

"Explanation 1. – For the purposes of this section, the expressions –

- (a) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;*
- (b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.*

Explanation II. – For the purpose of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India."

31. Section 72 of Negotiable Instruments Act (hereinafter referred to as “NI Act”) clearly states that the cheque must be presented to the Bank at which it is drawn. Again the said Section does not mention the branch of the Bank on which cheque is drawn.

“Section 74:- Subject to the provisions of Section 84; a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer”.

32. Further submits, Section 146 of NI Act, *inter-alia*, provides that the Court shall in respect of every proceeding under Sections 138 – 145 NI Act on production of Bank slips or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque unless and until such fact is disproved.

33. Ld. counsel for the petitioner has cited the judgment of the Supreme Court in Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd. (2001) 3 SCC 609 (Paras 9 & 10) has, *inter-alia*, held that:-

“9. ... 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. ... 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 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.”

The Hon’ble Supreme Court clearly states that the cheque must be presented to the Bank at which it is drawn. Again the said Judgement does not mention the branch of the Bank on which cheque is drawn.

34. This Court in the case of Shroff Publisher & Distributors Pvt. Ltd. & Ors. Vs Springer India Pvt. Ltd. 143 (2007) DLT 661 has held that:-

“19. A combined reading of Sections 3, 72 and 138 of the Act leaves no doubt 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.”

Again this Court has held that the presentation of the cheque has to be at the Customer’s Bank i.e. Drawee Bank and there is no mention of branch of the drawee bank by this Court.

35. As submitted in the Core Banking System which is being adopted by all the banks in the country in accordance with the mandate of the Reserve Bank of India, if the

Account Payee outstation Cheque is tendered by the Customer to its bank at New Delhi then the same is sent by the Collecting Bank (Petitioner/Complainant's Bank) to the Clearing House of the RBI which sends the cheque to the Service Branch of the Drawee Bank at New Delhi and if the drawer of the cheque has the requisite amount in its account it is cleared there itself and if the account does not have the requisite amount for honouring the cheque, the same is dishonoured. Here, the service branch of the Drawee Bank at New Delhi has the access to the account of the drawer in view of interlinking of all the branches all over the country. If the Collecting Bank has adopted the cheque truncation system then the cheque is scanned by the collecting bank and thereafter image of the cheque is transmitted to the clearing house of the Reserve Bank of India at New Delhi which sends the image of the cheque to the service branch of the Drawee Bank at New Delhi and if the drawer of the cheque has the requisite amount in its account it is cleared there itself and if the account does not have the requisite amount for honouring the cheque, the same is dishonoured. Here the service branch of the Drawee Bank at New Delhi

has the access to the account of the drawer in view of inter-linking of all the branches all over the country.

36. Similarly, a bearer cheque can be presented to any branch of the Bank (and not particularly to the branch where the drawer has the account) and the said cheque will be honoured by the said branch of the Bank if the customer's account has the sufficient amount to honour the said cheque, since all the branches are inter-linked.

37. Therefore, the concept of base branch which was there as a facilitator has altogether vanished. In fact, the base branch or any other branch does not have any legal identity of its own other than the Bank.

38. Ld. Counsel further submits, in the present case, cheque was tendered by the petitioner/complainant to his bank i.e. Citibank N.A. at New Delhi, where, Citibank through the clearing house of the RBI presented the cheque to the Customer Bank i.e. Drawee Bank at New Delhi. The cheque was dishonoured on presentation on account of insufficient funds by the respondent/accused bank (Drawee Bank) at New Delhi. Accordingly, the cheque was returned unpaid by

the Drawee Bank to the petitioner/complainant's Bank at New Delhi. This is evident from the Return Memo of the respondent/accused bank itself.

39. Thus, it is evident that the cheque was presented by the petitioner/complainant's Bank to the Drawee Bank at New Delhi through the clearing house of the Reserve Bank of India and cheque was dishonoured at New Delhi by the Drawee Bank and thereafter the cheque was returned as unpaid by the Drawee Bank to the petitioner/complainant's Bank at New Delhi. Therefore, Ld. MM has the jurisdiction to try the present case under Section 138 of the NI Act and take cognizance of the offence mentioned in the complaints and issue summons to the Respondent/Accused accordingly.

40. Now, I will deal with third question.

III) Whether the Court at Delhi has a jurisdiction to try the cases under Section 138 on account of issuance of statutory notice under Section 138 of NI Act to the Respondent/Accused from New Delhi by the Petitioner/Complainant in view of the Judgement of Supreme Court in the case of K. Bhaskaran (supra) in spite of the

Judgement of the Supreme Court in the case of M/s.Harman Electronics (supra)?

41. The Supreme Court in the case of K. Bhaskaran (supra) has held that the Court would have jurisdiction to try the case under Section 138 NI Act over a place from where legal notice is issued to the customer demanding a payment of the dishonoured cheque under Section 138 of NI Act apart from places where other components of the offence has taken place namely

(i) drawing of cheque;

(ii) presentation of the cheque to the bank,

(iii) returning of the cheque unpaid by the Drawee bank;

(iv) failure of the drawer to make payment within 15 days of the receipt of the notice.

42. The judgement of K. Bhaskaran(supra) has been reiterated by the division bench of the Hon'ble Supreme Court in the case of Smt. Shamshad Begum (supra).

43. However, the division bench of the Supreme Court in M/s.Harman Electronics (supra) gave a contrary judgement to that of K. Bhaskaran (supra) and Shamshad Begum (supra) and held that the Court would not have jurisdiction over the place from where legal notice is issued to the customer demanding payment of the dishonoured cheque under Section 138 of NI Act.

44. However, even on the issue of place of issuance of legal notice, the decision of the Supreme Court in K.Bhaskaran (supra) is still the law of the land since it has not been over-ruled by a larger bench of Supreme Court in view of the doctrine of '*binding precedent*' and the judgment of the constitution bench of the Supreme Court in Central Board of Dawoodi Bohra (supra), which has held that law laid down by the Supreme Court in a decision delivered by a bench of larger strength is binding on any subsequent bench of lesser or co-equal strength. The same has been reiterated by the Constitution Bench of the apex Court in Union of India & Anr. Vs. Raghubir Singh 1989 (2) SCC 754.

45. Accordingly, where there was conflict of judgements in between two Supreme Court judgements delivered by a bench of the same strength, the Supreme Court followed the earlier judgement in preference to the later judgement in the cases of Babu Parasu Kaikadi (dead) by Lrs. Vs. Babu (2004) 1 SCC 681 (paras 14 & 18), Indian Oil Corporation Ltd. Vs. Municipal Corporation & Anr. 1995 (4) SCC 96 (Paras 3 & 8), Union of India & Ors. Vs. Godfrey Philips India Ltd. 1985 (4) SCC 369 (Para 12) and Commissioner of Sales Tax, J&K & Anr. Vs. Pine Chemicals Ltd. & Ors. 1995 (1) SCC 58 (Para 10).

46. Similarly, Division Bench of this Court in the case of Virender Kumar @ Bittoo Vs State as reported in 59 (1995) DLT 341 (DB) (Paras 29, 31, 33 & 34) held that;

“In case there is a conflict of judgments in between the two Supreme Court judgements cited above, then law is settled that a Bench having same Judge strength cannot over-rule the earlier judgment given by the same Bench strength.”

and accordingly followed the earlier judgement of the Supreme Court in rendering the decision.

47. The Supreme Court in K. Bhaskaran (supra) has held that the Court has the jurisdiction over a place from where legal notice is issued to the customer demanding payment of the dishonoured cheque under Section 138 of NI Act, to try the case under Section 138 of the NI Act on the premise that whatever be the endorsement on the returned envelope containing the notice or acknowledgement due card, the receipt of the notice will be presumed in view of Section 27 of the General Clauses Act. But the learned judges who decided the M/s.Harman Electronics (supra) case differed with the K. Bhaskaran's (supra) on this point of the presumption of the receipt of the notice and held that, receipt of notice cannot be presumed to give the place from where notice has been issued a jurisdiction to try the cases under Section 138 NI Act. However, the bench of three judges of the Supreme Court in C.C. Alavi Haji Vs. Palapety Muhammed & Anr. (2007) 6 SCC 555 (Paras 2, 3, 5, 10, 15, 17 & 19) reiterated the views of K. Bhaskaran (Supra) on this point of presumption with regard to receipt of notice. The said judgement of Alavi Haji (supra) was not brought to the notice of the division bench who decided M/s.Harman

Electronics (supra) In view thereof, the judgement of M/s.Harman Electronics (supra) is judgement per *in curium* and does not lay down the law.

48. Be that as it may, the bench comprising of three judges of the apex Court in the case of Union of India & Ors. Vs. Godfrey Philips India Ltd. (1985) 4 SCC 369 (Para 12) has held that it is difficult to understand how a division bench in Jit Ram (1981) 1 SCC 11 could possibly overturn or disagree with what was said by another division bench in Motilal Sugar Mills (1979) 2 SCC 409 which was decided earlier. If the division bench in Jit Ram case found themselves unable to agree with the law laid down in Motilal Sugar Mills case, they could have referred Jit Ram case to a larger bench but it was not right on their part to express their disagreement with enunciation of the law by a coordinate bench of the same court in Motilal Sugar Mills.

49. It is pertinent to mention here that the Supreme Court in the case of Indian Oil Corporation Ltd. Vs. Municipal Corporation & Anr. (1995) 4 SCC 96 (Paras 3 & 8) has held that a earlier decision of the Supreme Court cannot be

overruled even by a co-equal bench of that court and therefore the division bench of the High Court acted total misunderstanding of the law of the precedents and Article 141 of the Constitution in relying upon the subsequent decision of the Supreme Court.

50. Thus, the Division Bench which decided Harman (supra) case had the liberty to doubt the correctness of the view taken by Division Bench which decided K.Bhaskaran's case, but they were under the duty to place the matter before the Chief Justice to constitute a larger bench and further decide the issue. As pointed out earlier, the issue on which they differed with K. Bhaskaran (supra) has been decided by a larger bench of three judges in Alavi Haji's (supra), which reiterated the earlier view of K.Bhaskaran(supra).

51. The real issue which this Court is confronted with is, whether, to follow the earlier decision of the Apex Court as decided in the case of K. Bhaskaran (supra) or the later decision of Supreme Court as decided in the case of M/s.Harman Electronics (supra)?

52. In my opinion, the earlier decision of the Apex Court in K. Bhaskaran(supra) is to be followed since it is the law of the land as it has not been overruled till date by the larger bench of the Supreme Court in view of doctrine of '*binding precedent*' and decision of the Constitution Bench of the Supreme Court in the case of Central Board of Dawoodi Bohra Community (supra) (para 12) and the decisions of the Supreme Court in the case of Indian Oil Corporation Ltd. Vs. Municipal Corporation & Anr. (supra); Babu Parasu Kaikadi (supra) (paras 14 & 18); in the case of Union of India & Ors. (supra) (Para 12); Commissioner of Sales Tax, J&K & Ors.(supra) (Paras 10, 13, 17) and the Division Bench of this Court in the case of Virender Kumar @ Bittoo (supra) (Paras 29-34).

53. The Division Bench of this Court in the case of Rakhi Rughwani & Ors. Vs. Union of India & Ors. 144 (2007) DLT 443 (DB) (Para 8) has held that "... Be that as it may, it is entirely unarguable that where a Supreme Court judgment is available it must be followed in its true tenor regardless of the pronouncement of Benches of the High Court."

54. Accordingly, the judgement of Supreme Court in K. Bhaskaran(supra) ought to be followed regardless of the contrary pronouncements made by the various benches of the High Court in the cases namely (a) M/s Mahika Enterprises & Anr. Vs. State (NCT of Delhi & Anr.) judgement dated 01.10.2010 passed in Crl. M.C. 1988/2010, (b) V.S. Thakur Vs. State of NCT of Delhi & Anr. (Delhi) 2010 (1) JCC (NI) 40, (c) Som Sugandh Industries Ltd. & Anr. II (2010) DLT (Crl.) 475, (d) Online IT Shoppe India Pvt. Ltd. & Ors. vs. State & Anr. 2010 (1) JCC (NI) 27. It may be pointed out that none of these judgements take into consideration the aforesaid Order dated 03.11.2009 passed by the Apex Court.

55. Further this Court in Prakash Industries Ltd. Vs. State & Ors. 106 (2003) DLT 527 (Para 5) has held that “... *It is well settled principle and should be known to one and all that any law laid down by Hon’ble Supreme Court is, unless reversed or reviewed, binding on all the Courts in India including the High Courts. Mere reference by a Judge for reviewing the existing law to a larger Bench does not and cannot take away the binding effect of the earlier decision of*

the Supreme Court." Accordingly, the judgement of Supreme Court in of K. Bhaskaran (supra) ought to be followed regardless of the contrary pronouncements of the benches of the High Court.

56. Thus, in order to give a brief review of what has been discussed above:-

- 1) The Magistrate taking cognizance of an offence must not necessarily have the territorial jurisdiction to try the case as well. Only when an enquiry or trial begins, does the jurisdictional aspect become relevant. In fact, after taking cognizance of the offence, the Magistrate may have to decide as to which court would have the jurisdiction to enquire into the case and such a situation can arise only during the post-cognizance stage.
- 2) At the pre-cognizance stage, the Magistrate has only to examine the averments, as set out in the complaint and not more, for prima facie arriving at a decision as to whether some of the acts essential for completing an offence under Section 138 of the

Act were done in the territorial jurisdiction of that Court.

3) There appears no ambiguity on the aspect of the right of the petitioner/complainant to file a complaint in a Court having jurisdiction in the context of the five acts mentioned in the case of K.Bhaskaran (supra).

4) Learned Metropolitan Magistrates are precluded from returning/dismissing the complaints In view of the order dated 03.11.2009 passed by the Supreme Court.

In the present case, having perused the complaint filed by the petitioner/complainant without ascertaining the correctness of the allegations made therein, prima facie it has to be held that a part of the cause of action has arisen in Delhi and the same is based solely on the acts done as set out in para (22) hereinabove.

57. In K. Bhaskaran (supra) referred to the above-referred five components which constitute offence under Section 138 NI Act, 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. In Shamshad Begum (supra) the Apex Court relied on its decision by applying Special Leave in K.Bhaskaran (supra) and referred five components enumerated in that decision, it was held that it is not necessary that all the five acts should have perpetuated in the same locality and was possible that each of these acts could have been done at five different localities though *in concatenation* of all these five acts is *sine quo non* for completion of the offence. Further, in 2008 in M/s.Harman Electronics (supra) the Apex Court held that issuance of notice would not by itself give rise to the cause of action, but communication of the notice would give. The Apex Court was of the view that for constituting offence under Section 138 NI Act, the notice must be received by the accused though, it is deemed to have been received in certain situation. Finally, in 2009 Delhi High Court Legal Services Committee (supra) the decision 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. The said judgment has been challenged in SLP NO. 29044/2009 titled as Vinay Kumar Shailendra Vs. Delhi High Court Legal Services Committee Anr. wherein the Supreme Court vide order dated 03.11.2009 has directed to maintain status qua until further order. Hence, it is crystal to say that, keeping in view the '*doctrine of precedent*', the judgment delivered by the Division Bench of the Apex Court in K.Bhaskaran (supra) is still binding, as till date no larger Bench of the Apex Court has altered or reviewed the said judgment qua territorial jurisdiction.

58. Thus, Id.MM has the power and jurisdiction to entertain the present complaints and take cognizance of the offence mentioned in the complaints and issue summons to the respondent/accused accordingly.

59. I make it clear that earlier in a case it was directed to return the complaint with liberty to file it at Kolkata. The decision in that case was taken on the submission of learned counsel for respondent that he had

‘no objection’, if that case transferred to Kolkata, since the respondent had branch office of the company over there.

60. Accordingly, Crl. Revision Petition No.170/2010 is allowed and the impugned order dated 30.03.2010 passed by Id.MM is set aside.

61. The complaint is restored to its number and stage.

62. In view of above, Criminal M.A.No.4840/2010 is rendered infructuous.

63. Accordingly, petitioner is directed to appear before the Trial Court on 19.09.2011 at 02:00 PM for directions.

64. The Registrar General of this Court is directed to send a copy of this judgment to all District Judges for circulation among the Officers of DJS and DHJS.

SURESH KAIT, J

September 09th 2011

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