

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

Judgment delivered on: July 18, 2011

+ **CRL. REV. P. 313/2011 & CRL. M.A. 7998/2011**

M/S. GRANDLAY ELECTRICALS (INDIA) PETITIONER

Through: Mr.Virender Mehta, Advocate

Versus

M/S. ESS ESS ENTERPRISES & ORS. RESPONDENTS

Through: Mr. Sunil Sharma, APP for R-3.

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.(ORAL)

1. M/s. Grandlay Electricals (India), the petitioner herein, vide instant revision petition has prayed for setting aside of order dated 28th January, 2011 passed by the learned M.M.-1 (N.I. Act) : SE Distt., whereby the complaint of the petitioner filed under Section 138, N.I.Act was returned to be filed before the court of competent territorial jurisdiction.

2. Briefly stated, facts relevant for disposal of this petition are that the petitioner filed a criminal complaint under Section 138,

N.I.Act against the respondents No. 1 & 2 claiming that the petitioner company had supplied some material to the respondent No.1 firm. The respondent firm accordingly issued Cheque No. 153379 dated 26.10.2010 for Rs. 15,99,770/- drawn on State Bank of Patiala, Ludhiana against the payment of the goods supplied. The cheque was presented by the petitioner to its banker Punjab & Sind Bank, Jangpura Extension, New Delhi. The cheque, however, was returned unpaid by the drawee bank on the ground of "Insufficiency of Fund". The petitioner was informed about the dishonour of the said cheque by its banker vide memo advice dated 19.11.2010. The petitioner, thus, issued a demand notice as envisaged under Section 138, N.I.Act to the respondent firm, which was sent through registered A.D. Post on the correct address of the respondent/accused. The registered A.D. notice was received back undelivered with the remark "unclaimed" on 03rd December, 2010. Since the respondent/accused failed to pay the demanded amount of cheque within the requisite period of 15 days of the said notice, the petitioner filed a complaint under Section 138, N.I.Act against the respondents No.1 & 2.

3. On conclusion of preliminary enquiry, learned Magistrate, vide impugned order dated 28th January, 2011, relying upon the judgments of Supreme Court in **Harman Electronics (P) Ltd. & Anr. Vs. M/s. National Panasonic India Ltd.**, 2009 (1) SCC 720,

Shri Ishar Alloy Sales Ltd. Vs. Jayaswals Neco Ltd., (2001) 3 SCC 609 and judgments of this court, came to the conclusion that no part of cause of action arose within the territory of Delhi, as such, the complaint was returned for being presented before the court of competent jurisdiction.

4. Feeling aggrieved by the impugned order, the petitioner/complainant has approached this court in revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

5. Heavily relying upon the judgment of Supreme Court in the matter of **K.Bhaskaran Vs. Sankaran Vaidhyan Balan,** (1999) 7 SCC 510, learned counsel for the petitioner has submitted that in the aforesaid case, Supreme Court, while dealing with the question of territorial jurisdiction held that the offence under Section 138 of N.I.Act can be completed only with the concatenation of a number of acts namely, (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) return of the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and (5) failure of the drawer to make payment within 15 days of the receipt of the notice. Learned counsel submitted that in K.Bhaskaran case, Supreme Court held that if the five different acts were done in different localities, anyone of the courts exercising jurisdiction in one of those five local

areas would have jurisdiction to try the offence under Section 138, N.I.Act. It is contended that in the instant case, the cheque was presented for encashment by the petitioner/complainant to his banker Punjab & Sind Bank, Jangpura Extension, New Delhi and “cheque dishonoured” advice was also received from the said bank, as such, Delhi Court has got jurisdiction to try this case. Learned counsel for the petitioner has also relied upon the judgment of Coordinate Bench of this Court **173 (2010), Delhi Law Times 185** in the matter of **Religare Finvest Ltd. Vs. State and Anr.** On the strength of aforesaid judgment, it is submitted that Delhi Court has territorial jurisdiction to try the complaint, as such, the impugned order is liable to be quashed.

6. The question of territorial jurisdiction of a court to try an offence under Section 138, N.I.Act came up for the consideration of the Supreme Court in **Harman Electronics (P) Ltd. & Anr. Vs. M/s. National Panasonic India Ltd.**, 2009 (1) SCC 720. In the said matter, Supreme Court considered the earlier judgment in K.Bhaskaran’s case (supra) and held that Delhi Courts have no jurisdiction to try the case, inter alia, observing thus:

“9. Reliance has been placed by both the learned Additional Sessions Judge as also the High Court on a decision of this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan*. This Court opined that the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts, namely, (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. It was opined that if 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 and the complainant would be at liberty to file a complaint petition at any of those places. As regards the requirements of giving a notice as also receipt thereof by the accused, it was stated:

"18. On the part of the payee he has to make a demand by 'giving a notice' in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such 'giving', the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days 'of the receipt' of the said notice. It is, therefore, clear that 'giving notice' in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address."

The Court, however, refused to give a strict interpretation to the said provisions despite noticing *Black's Law Dictionary* in regard to the meaning of the terms "giving of notice" and "receiving of the notice" in the following terms:

"19. In *Black's Law Dictionary* 'giving of notice' is distinguished from 'receiving of the notice': 'A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it'. A person 'receives' a notice when it is duly delivered to him or at the place of his business.

20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure."

For the said purpose, a presumption was drawn as regards refusal to accept a notice.

10. We may, before proceeding to advert to the contentions raised by the parties hereto, refer to another decision of this Court in *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.* wherein this Court categorically held:

"7. Section 27 of the General Clauses Act deals with the presumption of service of a letter sent by post. The dispatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But as the presumption is a rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he, in fact, received the notice. It is open to the dispatcher to adopt either of the options. If he opts the former, he can afford to take appropriate steps for the effective service of notice upon the addressee. *Such a course appears to have been adopted by the appellant Company in this case and the complaint filed, admittedly, within limitation from the date of the notice of service conceded to have been served upon the respondents.*"

It was furthermore held:

"8. ... The payee or holder of the cheque may, therefore, without taking pre-emptory action in exercise of his right under clause (b) of Section 138 of the Act, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once a notice under clause (b) of Section 138 of the Act is 'received' by the drawer of the cheque, the payee or the holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account. This Court emphasised that 'needless to say the period of one month from filing the complaint will be reckoned from the date immediately falling the day on which the period of 15 days from the *date of the receipt of the notice by the drawer expires*'."

13. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main

provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act are intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

21. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure."

20. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary.

21. In *Mosaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd.* [(2006) 3 SCC 658], this court held:

"30. In terms of Section 177 of the Code of Criminal Procedure every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. 178 provides for place of inquiry or trial in the following terms:

'178. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) Where it consists of several acts done in different local areas.

31. A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the district courts of Birbhum and in that view of the matter it is that court which will have jurisdiction to take cognizance of the offence. In fact the jurisdiction of the court of CJM, Suri, Birbhum is not in question. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 of the Code of Criminal Procedure is attracted, the court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter.

32. Sending of cheques from Ernakulam or the respondents having an offence at that place did not form an integral part of 'cause of action' for which the complaint petition was filed by the appellant and cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri."

7. In **Shri Ishar Alloy Sales Ltd. V. Jayaswals Neco Ltd., (2001)**

3 SCC 609, the Supreme Court held that the expression "the bank" occurring in proviso (a) to Section 138 of the N.I. Act means the drawee bank and not the collecting bank. Hence, in order to attract the criminal liability under Section 138, N.I. Act, the cheque must be presented to the drawee bank within the statutory period either personally or through a collecting bank. That being the law, the place of location of collecting bank through which cheque was sent to some other branch jurisdiction would not confer jurisdiction on the courts having territorial jurisdiction over that place.

8. In the instant case, undisputedly, respondents are resident of and are located at Ludhiana. The cheque which is the subject

matter of the complaint under Section 138 N.I. Act is also drawn at State Bank of Patiala, Ludhiana where respondent No.1 is maintaining its bank account. The cheque in question, though it was deposited for collection by the petitioner with his banker Punjab and Sind Bank, Jangpura Extension, New Delhi, was sent for collection to the drawee bank at Ludhiana where it was allegedly dishonoured. Even the notice of demand under Section 138 N.I. Act was served on the respondents at Ludhiana. Thus, in view of the law laid down by the Supreme Court in the case of **M/s Harman Electronics (P) Ltd.** (supra) and **Shri Ishar Alloy Sales Ltd.** (supra), the entire cause of action for filing the complaint under Section 138 N.I. Act has arisen at Ludhiana. As such, I find no infirmity in the order of learned Metropolitan Magistrate holding that Delhi Courts have no jurisdiction to try the complaint filed under Section 138 N.I. Act. The judgment in the matter of **Religare Finvest Ltd. Vs. State & Anr.** (supra) is of no avail to petitioner in view of the law laid down by the Supreme Court in the judgments discussed above.

9. In view of the discussion above, I am of the considered view that entire cause of action relating to the alleged offence under Section 138 N.I. Act has arisen within the territorial jurisdiction of Ludhiana Courts and merely by issuing notice from Delhi and submitting the cheque for collection with his bankers at Delhi, the petitioner cannot confer jurisdiction on Delhi Courts when all the

acts constituting ingredients of offence under Section 138 of the N.I. Act took place at Ludhiana.

10. Thus, I find that learned Metropolitan Magistrate has rightly returned the complaint to the petitioner to be filed before the Court of competent jurisdiction and there is no cause for interference with the order in revision.

11. Petition is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

JULY 18, 2011
akb/anb