

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 2610/2010

% Judgment decided on: 4th May, 2011

YOGESH KUMAR MALHOTRA

....PETITIONER

Through: Mr. Rajat Aneja and Ms. Shweta
Singh, Advs.

Versus

M/s PARAMOUND SURGIMED LTD. & ANR. RESPONDENTS

Through: Mr. Rajesh Yadav and
Ms. Ruchira, Advs.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. PATHAK, J. (Oral)

1. By this petition under Section 482 of the Code of Criminal Procedure petitioner seeks quashing of summoning order as well as the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as 'the Act') titled as M/s Paramount Surgimed Ltd. vs. Yogesh Malhotra filed by respondent no. 1 against the petitioner, which is pending trial before the Trial Court.

2. Learned counsel for the petitioner has contended that entire business transaction between the parties took place at Bassi

Pattnam, District Fatehpur Sahib, Punjab where petitioner is carrying on business of sale and purchase of medical surgical goods. Orders for supply of goods were placed by the petitioner from Bassi Pattnam, inasmuch as, goods were supplied by the respondent no. 1 at the said business place of petitioner. Petitioner had issued cheque drawn on its banker namely State Bank of Patiala, Bassi Pattnam. Thus, Delhi courts have no territorial jurisdiction to try the complaint as no cause of action had arisen in Delhi. Merely because cheque had been deposited by the respondent no. 1 with its banker at Delhi for encashment and notice of demand had been issued from Delhi, would not attract the jurisdiction of Delhi courts to entertain and try the complaint under Section 138 of the Act. Reliance has been placed on **V.S. Thakur vs. State & Anr. 2010 (114) DRJ 423** and **Harman Electronics Private Ltd. & Anr. vs. National Panasonic India Private Ltd. (2009) 1 SCC 704**. It is further contended that cheque was not issued in discharge of any debt or other liability but was given towards security. During the course of business dealings three blank cheques were issued towards security which included the cheque in question. Mr. Hardeep Singh, Authorized Representative of respondent no. 1, had given in writing on 12th March, 2007 to the effect that three blank cheques were taken towards security. According to the petitioner, for this reason also prosecution cannot continue.

3. Per contra, learned counsel for the respondent no. 1 has vehemently contended that the cheque had been issued by the petitioner to discharge his part liability towards supply of goods made by the respondent no. 1. Cheque had been handed over by the petitioner to respondent no. 1 at New Delhi, thus, Delhi courts had jurisdiction to try and entertain the complaint under Section 138 of the Act. Reliance has been placed on an unreported judgment dated 25th January, 2011 passed by this Court in Criminal M.C. No. 2366/2007 titled Devendra Gupta vs. Shree Rathee Steels Ltd. As regards the plea taken by the petitioner that the cheque had been issued towards the security, it is contended that the same is a disputed question of fact which needs to be proved during the trial. In nutshell, contention of counsel for respondent no. 1 is that complaint case cannot be quashed.

4. I have considered the rival contentions of both the parties. Perusal of complaint, a copy whereof has been placed on record, clearly shows that specific averment has been made to the effect that cheque had been issued and handed over to respondent no. 1 at New Delhi. In para 5 of the complaint, it is stated that “.....it is pertinent to mention that cheque was issued and handed over to the concerned person of the complainant at New Delhi.” This averment has been reiterated in para 12 of the complaint wherein it is stated “.....The cheque was issued and handed over to the complainant at New Delhi.....” It is, thus, evident that a specific averment has been made that cheque had

been issued in Delhi. Issuance of the cheque at Delhi would mean that cheque had been drawn at Delhi. In ***K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr. (1999) 7 SCC 510***, Supreme Court has held that 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. It is further held that 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 Act. 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.

5. Perusal of complaint shows that the cheque had been drawn at Delhi and if that is so then jurisdiction of Delhi courts gets attracted. Learned counsel for the petitioner denies that the

cheque had been issued at Delhi. If that is so, then it is a disputed question of fact and allegations and counter allegations have to be proved during the trial. But the fact remains that at this stage averments made in the complaint cannot be disregarded.

6. As regards second contention of learned counsel for the petitioner that the cheque had been issued towards security and not in discharge of any legally enforceable debt or any other liability as a whole or in part is concerned, the same is also subject matter of trial since it is a disputed question of fact in view of the specific averment made in the complaint that the cheque had been issued in discharge of part liability.

7. For the foregoing reasons, I do not find any merit in this petition and the same is dismissed.

8. It is made clear that the observation made in this petition touching merits of the case shall not affect the final outcome of the complaint case.

9. Parties shall bear their own costs.

Crl.M.A.13714/2010 (Stay)

Dismissed as infructuous.

A.K. PATHAK, J.

May 04, 2011

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