

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

**+ CRL. M.C. No. 2882/2010**

% Judgment decided on: 24<sup>th</sup> February, 2011

M/S. MAHALAXMI EMBROIDERY .....PETITIONER

Through: Mr. Manik Arora, Adv.

Versus

M/s. SHIVAM DEVANSH FAB. PVT. ....RESPONDENTS  
LTD. & ORS.

Through: Mr. Alamgir, Adv.

**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?                    | Yes |

**A.K. PATHAK, J. (Oral)**

1. By way of present petition under Section 482 of Code of Criminal Procedure, petitioner has prayed that the order dated 28<sup>th</sup> July, 2010 passed by Metropolitan Magistrate, Delhi, whereby it has been held that the courts at Delhi had no territorial jurisdiction to entertain the complaint, be set aside.

2. Briefly stated, facts of the case are that the petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as "the Act") before Metropolitan Magistrate, Delhi. It was alleged

therein that the complainant (petitioner) was a proprietorship firm, having its registered office at Delhi and works at Faridabad, Haryana. Petitioner was engaged in the embroidery business. Respondent got various jobs of embroidery done from the petitioner at Faridabad, Haryana from time to time. In discharge of its liability, respondent tendered cheque bearing No. 465488 dated 23<sup>rd</sup> April, 2010 amounting to Rs.45,551/- drawn on Indian Overseas Bank, Faridabad, Haryana. The said cheque was deposited by the petitioner with its banker, i.e., Syndicate Bank, Khan Market, New Delhi on 24<sup>th</sup> April, 2010 for encashment. However, cheque was returned dishonored with the remarks "payment stopped". Demand notice dated 21<sup>st</sup> May, 2010 was served upon the respondent through registered AD post thereby calling upon it to pay the cheque amount within 15 days. Despite service of demand notice, cheque amount was not paid.

3. From the facts narrated above, it is abundantly clear that the business dealings took place between the parties at Faridabad; cheque had been drawn at Faridabad. Perusal of notice dated 21<sup>st</sup> May, 2010 shows that same had been sent to the respondent at its Faridabad address. Drawer's bank is also situated at Faridabad.

4. In ***K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. (1999) 7 SSC 510***, Supreme Court has held that the offence under Section 138 of the Act can be completed only

with the concatenation of number of acts, i.e., (i) drawing of

the cheque, (ii) presentation of the cheque to the bank, (iii) returning of cheque unpaid by the drawee bank, (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (v) failure of the drawer to make payment within 15 days of the receipt of the notice. In case the five different acts were done in five different locations, 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 have been done.

5. The question which needs to be redressed in this petition is whether the jurisdiction of Delhi courts would be attracted merely on account of (a) issuance of notice by the petitioner to the drawer of the cheque demanding payment of the cheque amount from Delhi; (b) presentation of the cheque by the petitioner to its banker at Delhi.

6. In this case, admittedly, drawer's bank is situated at Faridabad, Haryana. The cheque had to be presented with the drawer's bank where account is being maintained. Even if, the same is deposited by the payee in its account, it is only the banker of drawer, which will be in a position to say that the payment of cheque had been stopped or that the amount in the account exceeds the arrangement. Only drawer's bank can

return the cheque unpaid on its presentation. The payee of the

cheque has an 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 drawer's bank on which the cheque is drawn. In **Sh. Ishar Alloy Steel Ltd. vs. Jayaswals NECO Ltd. AIR 2001 II AD (SC) 330**, Supreme Court has held that 'the bank' referred to in Clause (a) to the proviso to Section 138 of the Act means 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. In **ICICI Bank Ltd. Vs. Subhash Chand Bansal & Ors. 160 (2009) Delhi Law Times 379**, this Court has held that the court in whose territorial jurisdiction drawee bank is situated would have jurisdiction to entertain the complaint. Similar is the view expressed in **Shroff Publisher and Distributors Pvt. Ltd. vs. Springer India Pvt. Ltd. 2008 Criminal Law Journal 1217**, wherein it was held that the payee has an 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 drawer's bank, on which cheque is drawn. In this case, drawer's bank is situated in Faridabad. Mere deposit of cheque by the petitioner in its account at Delhi would not be sufficient to show that he had presented the cheque at Delhi.

Thus, question (a) is answered against the petitioner.

7. Notice of demand had been issued by the petitioner from Delhi to the respondent at its Faridabad address through registered A.D post. In ***Harman Electronics (P) Ltd. & Anr. vs. M/s. National Panasonic India Ltd. AIR 2009 SC 1168***, Supreme Court, in somewhat similar facts, has held that issuance of notice from Delhi would not by itself give rise to a cause of action under the Act but communication of notice would give. Giving of notice cannot have any precedence towards the service. In ***Som Sugandh Industries Ltd. & Anr. vs. UOI & Anr. 2010 (I) JCC (NI) 105***, a Single Judge of this Court has held that 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. Mere sending of notice from Delhi at the address of the accused outside Delhi does not confer the power to Delhi Courts to try and entertain the case under Section 138 of the said Act. Thus, I am of the view that mere issuance of notice by the petitioner from Delhi by itself would not vest jurisdiction in Delhi courts.

8. In Criminal Jurisprudence, place of residence or business of complainant or for that matter of accused would not attract the jurisdiction of that court, it is the place where offence or part offence had been committed, which would vest the jurisdiction with that court. In Harman's case (supra) Supreme Court has held that jurisdiction of the court to try a criminal case is governed by the provisions of the Criminal Procedure

Code and not on common law principle. Thus, merely because petitioner has its head office at Delhi or that respondent has its registered office at Delhi would not make much difference. In this case, both petitioner as well as respondent were having its works at Faridabad; whole business transactions took place at Faridabad; cheque was drawn by drawer bank at Faridabad; cheque is deemed to have been presented by the drawer bank at Faridabad, notice, though was dispatched from Delhi, but was addressed to the respondent at Faridabad office and is deemed served at Faridabad. Whole cause of action had arisen at Faridabad in terms of K. Bhaskaran's case.

9. For the foregoing reasons, I do not find any perversity or patent illegality in the impugned order. Petition is dismissed being devoid of merits.

**A.K. PATHAK, J.**

**FEBRUARY 24, 2011**

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