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

+ CRL.REV.P. 483/2011

INTERNATIONAL TRADE EXPO CENTRE LTD

..... Petitioner

Through : Mr. Deepak K. Vijay, Adv.

versus

TRILOK CHAND SHARMA & ORS

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

ORDER

% **02.11.2011**

Crl.M.A. No.12829/2011

Exemption allowed subject to just exceptions.

Crl.M.A. No.12830/2011

Delay of 26 days in refilling the petition is condoned.

Crl.M.C. No.483/2011

1. Vide the instant petition, the petitioner has challenged the order dated 7.7.2011 passed by the learned MM (N.I. Act) 03, South East, Saket.

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2. The petitioner filed the complaint under Section 138 before the learned MM on the grounds that (i) the registered and corporate office of the petitioner is at New Delhi; (ii) the petitioner presented the cheques for encashment to its bankers situated at Delhi; and (iii) the cheques were returned to petitioner/complainant through its bankers at Delhi; (iv) the legal notice for discharge was issued by the complaint to respondent at Delhi.

3. The learned MM has directed to return the complaint on the ground of territorial jurisdiction relying on the Harman Electronics (P) Ltd. & Anr. Vs. M/s. National Panasonic India Ltd., AIR 2009 SC 1168. The learned MM has also relied upon the judgment of this Court decided on 24.11.2010 in Crl.M.C. No.2172/2010 titled as Dhananjay Johri Vs. Naveen Sehgal.

4. The same issue has been dealt with by me in the case of GE Capital Transportation Financial Services Limited Vs. Rahisuddin Khan. Vide Criminal Writ Petition No.170/2010 decided on 9th September, 2011 relying on the judgment of K. Bhaskaran Vs. Sankaran Vaidyan Balan & Anr., (1999) 7 SCC 510, of the Hon'ble Supreme Court.

5. As per the judgment, the five ingredients for offence under Section 138 NI Act are as under:-:-

"The Offence u/s 138 NI Act can be completed only with the concatenation of a number of acts. 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 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."

"If the five different acts were done in different localities any one of the courts exercising jurisdiction in one of the five local areas can become place of trial for offence u/s 138 NI Act."

6. In the facts and circumstances, the impugned order dated 7.7.2011 is set aside. The petition is allowed.

7. The petitioner is directed to appear on 19th November, 2011 for directions before the learned MM (N.I. Act) 03, South East, Saket.



SURESH KAIT, J

NOVEMBER 02, 2011

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