

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

% **Reserved on : 13.08.2012**
Pronounced on : 22.08.2012

+ **CRL.M.C. 1688/2011**

RAJNEESH SINGHAL Petitioner
Through: Mr.Rajiv K.Garg, Advocate.

versus

M/S. DIG VIJAY SEEDS PVT. LTD. Respondent
Through: Mr.P.K.Jha, Advocate.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

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1. This is a petition under Section 482 Cr.P.C. filed by the petitioner praying for quashing of criminal complaint bearing No.3193/1 titled M/s. Dig Vijay Seeds Pvt. Ltd. vs. Rajneesh Singhal and the summoning order dated 06.01.2011 passed by the learned M.M. in the said complaint.

2. The petitioner is seeking quashing of the complaint as well as the summoning order mainly on the ground that the Courts at Delhi lack the necessary territorial jurisdiction to try and entertain the present complaint. The second ground, on which quashing has been sought, is that the cheque in question was given as a security in terms of Memorandum of Understanding dated 27.01.2010 and after communicating to the complainant vide letter dated 06.10.2010 that the MoU has become redundant, the complainant was asked to return the cheque. However, he dishonestly presented the

same with his banker which was dishonoured.

3. Notice of the petition was issued to the respondent which entered appearance through its counsel.

4. I have heard learned counsel for the parties and gone through the records as well as the impugned order. I have also perused the brief synopsis filed by the parties.

5. Perusal of the complaint dated 30.11.2010, which is annexed as Annexure P-1 to the present petition, reveals that after referring to the details of the transaction between the parties and execution of Memorandum of Understanding dated 27.01.2010, to show that the Courts at Delhi had the territorial jurisdiction, necessary averments were made in paragraph-18 of the complaint as under:-

"18. That the Memorandum of Understanding executed between the parties at the head office of the complainant and the cheque in dispute was issued by the accused at the office of the complainant to the complainant at Delhi and the same was placed for encashment through its account at Syndicate Bank, Laxmi Nagar, New Delhi and later on dishonoured by the accused bank of the accused. The complainant had its head office at 9(II) Sagar Apartment, 6, Tilak Marg, New Delhi which is situated within the jurisdiction of P.S. Tilak Marg, New Delhi and the Hon'ble Court of Police Station Tilak Marg, Delhi has jurisdiction to entertain, try and punish the accused as per law."

6. Learned counsel for the petitioner referred to the MoU dated 27.01.2010 executed between the parties which shows that the stamp paper was purchased from Uttrakhand; the petitioner is resident of Uttrakhand; the cheque in question was drawn on Bank of Baroda at Dehradun. Not only that, the land transacted between the parties is also situated in Uttrakhand. Learned counsel for the petitioner has emphasized on the last paragraph of the MoU dated 27.01.2010 which reads as under:-

*“In WITNESS WHEREOF the parties have set their respective hands to this agreement on the date, month and the year first mentioned above at **Dehradun.**”*

7. Learned counsel for the petitioner also submitted that the alleged notice is also addressed to the petitioner at Dehradun. It has been urged that mere sending of notice from Delhi or office of the complainant/respondent being situated at Delhi is not sufficient to confer the territorial jurisdiction on the Courts at Delhi, hence the complaint as well as the summoning order may be quashed. In support of his contentions, learned counsel for the petitioner has relied upon the following judgments:-

- (i) III(2011) BC 180 Ramaswamy S. Iyengar vs. The State (NCT of Delhi) and Anr.*
- (ii) 2011(6) AD (Delhi) 143 Grandlay Electricals (India) vs. ESS ESS Enterprises & Ors.*
- (iii) 173 (2010) Delhi Law Times 361 Mahika Enterprises & Anr. vs. State (NCT of Delhi) & Anr.*
- (iv) 173 (2010) Delhi Law Times 185 Religare Finvest Ltd. vs. State and Anr.*
- (v) (2009) 1 Supreme Court Cases 720 Harman Electronics Pvt. Ltd. vs. National Panasonic India Pvt. Ltd.*
- (vi) 71 (2010) DLT 51*
- (vii) (2011) 2 SCC 772*

8. On behalf of the respondent, it has been submitted that the MoU has been signed by witness Gajanand Agarwal who is resident of D-317, Nirman Vihar, Delhi-110 092; the cheque has been presented by the complainant at Delhi and the MoU was also signed between the parties at Delhi, the

said cheque was presented for encashment in the account of the complainant at Delhi; it was dishonoured at Delhi; legal notice was also sent through his lawyer from Delhi hence the Courts at Delhi have the necessary territorial jurisdiction to try and entertain the present complaint.

9. In the decision **III(2011) BC 180 Ramaswamy S. Iyengar vs. The State (NCT of Delhi) and Anr.** relied upon by counsel for the petitioner, the petitioner and his co-accused agreed to purchase a flat from the complainant who was owner of flat No.204 B-Wing, Mohana Building, Doordarshan Employees Cooperative Housing Society Ltd., Gokuldham, Dindoshi, Goregaon (East), Mumbai for Rs.31 lacs. Against the consideration amount, two cheques one bearing No.826206 for Rs.15 lacs dated 3rd November, 2006 and other bearing No.826209 dated 8th November, 2006 for Rs.16 lacs were drawn on M/s. The North Kanara G.S.B. Co-op Bank Ltd. , Branch Dindoshi, Mumbai and delivered to the complainant which were dishonoured on presentation and after serving the required notice on the petitioner, the complaint was filed at Delhi. After recording pre-summoning evidence, the petitioner and his co-accused were summoned for committing offences punishable under Section 138 N.I. Act.

10. In the above referred case, a petition under Section 482 Cr.P.C. was filed and the territorial jurisdiction of the Courts at Delhi was challenged by the petitioners contending that the entire cause of action pertaining to the offence under Section 138 N.I. Act arose within the territory of Mumbai for the reason that the agreement to sell the flat in question was entered into in Mumbai; the flat in question was situated in Mumbai and the cheque in question which

was drawn on a Bank in Mumbai was also given to the complainant at Mumbai. Not only that, the petitioners were also resident of Mumbai and the notice sent by the complainant was also received by them at Mumbai address. The contention of the petitioners was that merely by issuing the notice from Delhi, the complainant could not have conferred the territorial jurisdiction on Delhi Courts.

11. The contention of the respondent in the above case was to the effect that Section 178 Cr.P.C. provides that if an offence consists of several acts done in different local areas, then the offence can be tried by the Courts having jurisdiction of any of such local areas. It was contended that since the respondent/complainant was located at Delhi, the payment of the cheque amount was required to be made at Delhi, the Courts at Delhi had the necessary territorial jurisdiction to try and entertain the complaint.

12. After referring to the decisions of *Harman Electronics (P) Ltd. and Anr. vs. National Panasonic India Ltd.* 2009(1) SCC 720; *K.Bhaskaran v. Sankaran Vaidhyan Balan* (1999) 7 SCC 510; *Musaraf Hossain Khan vs. Bhagheeratha Engg. Ltd.* (2006) 3 SCC 658; *Shri Ishar Alloy Sales Ltd. vs. Jayaswals Neco Ltd.* (2001) 3 SCC 609, in the above-noted case, it was held as under:-

“9. In the instant case, undisputedly the Petitioner is located at Mumbai. The cheques in question were issued at Mumbai, the cheques were sent for collection to the drawee bank at Mumbai and even the notice of demand under Section 138 N.I. Act was served upon the petitioner at Mumbai address. Therefore, it is apparent that the entire cause of action for filing a complaint under Section 138 N.I. Act has arisen at Mumbai.”

13. In another case ***Grandlay Electricals (India) vs. ESS***

ESS Enterprises & Ors. 2011(6) AD (Delhi) 143, the facts as narrated in criminal complaint under Section 138 N.I. Act to confer territorial jurisdiction on the Courts at Delhi were to the effect that the petitioner filed a criminal complaint claiming that it had supplied some material to respondent No.1-firm for which cheque No.153379 dated 26.10.2010 for `15,99,770/- was issued by the respondent-firm against payment of the goods supplied. The cheque was presented by the petitioner with its Banker at New Delhi which was returned unpaid for insufficiency of funds. After issuing demand notice, the complaint was filed. After recording pre-summoning evidence, relying upon the judgments of the Supreme Court in *Harman Electronics (P) Ltd. & Anr. vs. M/s. National Panasonic India Ltd. 2009 II AD (S.C.) 21* and *Shri Ishar Alloy Sales Ltd. vs. Jayaswals Neco Ltd. 2001 11 AD (SC) 330*, the learned M.M. came to the conclusion that no part of cause of action arose within the territory of Delhi and the complaint was ordered to be returned to the complainant. The order passed by the learned M.M returning the complaint was impugned before this Court by filing a revision petition under Section 397 read with Section 401 Cr.P.C.. After considering the case law on the subject, in paragraphs 8 & 9 of the report, it was held as under:-

“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 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 the 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."*

14. Adverting to the facts of the present case, so far as taking cognizance of the offence is concerned, the learned M.M was competent to take cognizance on the basis of averments made in the complaint and pre-summoning evidence adduced by the complainant.

15. In ***Trisuns Chemical Industry vs. Rajesh Agarwal and Ors. (1999) 8 SCC 686***, while examining the judgment of the Gujarat High Court, the Apex Court observed as under:-

"13.....Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the 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. Anyway this is a different matter.

14. The jurisdictional aspect becomes relevant only when the question of enquiry or 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 restriction. 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. However, it is undisputed that the cheque in question was issued by the petitioner in terms of Clause-3 of the MoU and that the MoU was executed at Dehradun, Uttrakhand. It is clear from the documents placed on record that the subject matter of the MoU dated 27.01.2010 is situated in Uttrakhand; stamp paper for execution of the MoU was purchased in Uttrakhand and the cheque in question bearing No.976875 was also drawn on Bank of Baroda, Krishna Nagar, Dehradun. The notice is also sent by the complainant to the petitioner at Dehradun. Thus, the entire cause of action has arisen at Dehradun. Merely because the notice was sent from New Delhi or the cheque was presented by the complainant with its banker at Delhi is not sufficient to confer the necessary territorial jurisdiction on the Delhi Courts to try and entertain the complaint.

17. Taking into consideration the above-referred decisions delivered by the Coordinate Bench of this Court which squarely cover the case of the petitioner, this Court has no reason to take a different view. Since the entire cause of action relating to offence under Section 138 N.I. Act has arisen within the territorial jurisdiction of Uttrakhand, the

Courts at Delhi have no territorial jurisdiction to try and entertain the complaint.

18. The revision petition stands disposed of. The learned M.M. is directed to return the complaint to the complainant for presenting the same with the Courts having appropriate territorial jurisdiction to try and entertain the same.

19. A copy of this order be sent to the learned Trial Court for necessary compliance.

PRATIBHA RANI, J

AUGUST 22, 2012
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