

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

Date of decision: 15th January, 2013

+ **CRL. REV. P. 65/2012**

M/S. GEE PEE FOODS PVT. LTD. & ORS. Petitioners

Through: Mr. Ranjeet Kumar Jaiswal, Adv. with
Mr. Sheo Kumar Singh, Adv.

versus

SH. DIGVIJAY SINGH Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The question that falls for determination in this Revision Petition is, *“whether a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act) can be presented at a place where the Complainant deposited the cheque in his Bank (i.e. at the place where the collecting Bank is situated).”*
2. A complaint under Section 138 read with Section 142 of the Act was presented against the Petitioners on the averments that on 01.03.2009, the Respondent was appointed as Chief Executive Officer (CEO) with the First Petitioner on a monthly salary of ₹75,000/- to establish its operations in Northern India. In discharge of the liability to pay the salary, the Petitioners handed over a cheque No.082471 dated 29.04.2009 for ₹74,800/- drawn on IDBI Bank, 44, Shakespeare Sarani Branch,

Kolkata-700 017 to the Respondent. The said cheque when presented with HDFC Bank, New Delhi stood dishonoured with remarks of 'insufficient funds'. In the complaint it was alleged that bouncing of the said cheque was brought to the notice of Petitioners No.2 and 3 and on their instructions, the Respondent presented the cheque again but it was again dishonoured on presentation with the remarks "payment stopped by drawer". When the factum of bouncing of the said cheque again was brought to the notice of Petitioners No.2 and 3 (accused No.2 and 3 before the learned Metropolitan Magistrate) they again apologized and assured to make arrangement for encashment of the cheque. The cheque was again dishonoured when presented on 18.08.2009. A legal notice through the lawyer at New Delhi was dispatched to the Petitioners and on failure to make the payment within the statutory period as laid down under Section 138 of the Act, a complaint under Section 138 read with Section 142 of the Act was filed against the Petitioners.

3. After recording pre summoning evidence, the Petitioners were summoned for the offence punishable under Section 138 of the Act. They moved a Petition before the High Court for quashing of the complaint on the ground that the Delhi Courts had no territorial jurisdiction to try the complaint as no part of the cause of action took place within the jurisdiction of NCT of Delhi. It is stated that the said Petition was withdrawn with liberty to approach the Trial Court. Thus, the Petitioners filed an application under Section 177 of the Code of Criminal Procedure before the Court of learned Metropolitan Magistrate ('MM'). The following averments were made in the application:-

“(a) Applicants/accused are having their residence and office in Kolkata in the State of West Bengal.

(b) *Complainant has been allegedly appointed as a CEO of the accused No.1 – Company in Kolkata.*

(c) *As per para 2 of the complaint, the cheque issued to the complainant which got allegedly bounced was drawn on IDBI Bank, 44, Shakespeare Sarani, Kolkata.*

(d) *As per para 3 of the complaint, the aforesaid cheque was re-presented to the applicants' banks at Kolkata which also stood allegedly returned.*

(e) *As per para 5 of the complaint, a legal notice was allegedly served upon the applicants/accused in Kolkata.*

(f) *The entire cause of action pertaining to the question of employment of the complainant as well as issuance of cheque and service of legal notice, if any, arose in Kolkata and no part of the same arose in Delhi (as per the averments of the complainant in the complaint itself). As such, this Ld. Court does not possess the territorial jurisdiction to try and proceed with the entire complaint."*

4. It was stated that the legal notice allegedly served upon the Petitioners from Delhi will not confer jurisdiction of Delhi Courts.
5. The application moved under Section 177 Cr.P.C. was contested by the Respondent. However, the factum of the cheque in question having not been delivered to the Respondent at Kolkata being drawn on IDBI Bank 44, Shakespeare Sarani Branch, Kolkata-700 017 was not disputed. It was asserted that since the Respondent presented the cheque to HDFC Bank at New Delhi branch for collection, part of cause of action arose within the Union Territory of Delhi and thus, the Delhi Courts did have the jurisdiction.
6. The learned MM relying on a judgment of learned Single Judge of this Court in *Religare Finvest Ltd. v. State & Anr.* 173 (2010) DLT 185

opined that the place where the cheque was presented by the payee was one of the essential ingredients of Section 138 of the Act and thus, part of the cause of action arose within the territory of Delhi, consequently, the application was dismissed.

7. In the Revision Petition, it is stated that in fact the Respondent had worked with the First Petitioner only for one month. It was stated that the first cheque was dishonoured on presentation on the ground of insufficient funds but because of suspicious and unbecoming conduct of the Respondent, they had stopped payment of the cheque and when the Respondent approached the Petitioners, the amount of ₹74,800/- was deposited in the Respondent's account but, thereafter the Respondent maliciously presented the cheque. Obviously, these questions being disputed questions of facts are not to be gone into at this stage. What is to be seen is whether on the basis of the averments made in the complaint, whether some of the essential acts forming part of the offence or cause of action was done within the territory of Delhi so as to confer jurisdiction on Delhi Courts. The question of presentation of the cheque at a place other than the drawee Bank directly came up for consideration before a learned Single Judge of this Court in *Online IT Shoppe India Pvt. Ltd. & Ors. v. State & Anr.* Crl.MC No.2695/2009 decided on 20.11.2009 (V.K.Jain, J.). The learned Single Judge while relying on *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd;* (2001) 3 SCC 609 observed that *Shri Ishar Alloy* had dealt with the issue of "the Bank" referred to in Clause (a) to the proviso to Section 138 of the Act as the drawee Bank on which the cheque is drawn and not all the banks where the cheque is presented for collection including the Bank of the payee, in whose favour

the cheque is issued. In paras 8 and 9, the learned Single Judge held as under:-

“8. As regards presentation of the cheque, the learned counsel for the petitioner has relied upon the decision of the Hon’ble Supreme Court in Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd; (2001) 3 SCC 609. In this case the Hon’ble Supreme Court, inter-alia, held that “The bank” referred to in clause (a) to the proviso of Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all the banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.”

It was further observed that “the payee of the cheque has the 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 drawee or Payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued.”

In para 10 of the judgment the Hon’ble Supreme Court further observed that “Sections 3, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable.”

9. The ratio of the above referred judgment of the Hon’ble Supreme Court is that a cheque is deemed to have been presented to the banker of the drawer irrespective of the fact whether it is deposited by the payee in his own bank. The banker of the payee, after receiving the cheque from him, is required to present it to the banker of the drawer and therefore if the cheque issued from a bank in Ernakulam is deposited in Delhi, the bank in which it is deposited in Delhi, is required to present it to the bank at Ernakulam, for the purpose of encashment. Therefore, it cannot be said that the cheques issued by the petitioners were presented in Delhi, despite the fact that the bank in which the respondent No. 2 had an account was in Delhi, the cheque shall be deemed to have been presented only to the bank at Ernakulam on which they were

drawn. Therefore, deposit of cheques in Delhi would not confer jurisdiction of Delhi court to try this complaint.”

8. Another Single Judge of this Court in *Mahika Enterprises & Anr. v. State (NCT of Delhi) & Anr.* 173 (2010) DLT 361 relied on the judgment of the Supreme Court in *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd;* (2001) 3 SCC 609 and the judgment of this Court in *Shroff Publishers & Distributors Pvt. Ltd. v. Springer India Pvt. Ltd.* 143 (2007) DLT 661; *ICICI Bank Limited v. Subhash Chand Bansal & Ors.*, 160 (2009) DLT 379; and *Online IT Shoppe India Pvt. Ltd. & Ors. v. State & Anr.* I (2010) DLT (Crl.) 110 and held that to attract the criminal liability of the drawer of the cheque, the collecting bank is obliged to present the cheque in the drawer's bank and the Courts where the collecting Bank is situated on this ground itself will not have jurisdiction to entertain the complaint. Para 12 of the report is extracted hereunder:-

“12. In Shroff publisher and Distributors Pvt. Ltd. vs. Springer India Pvt. Ltd. 2008 Criminal Law Journal 1217, it has been 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 Ishar Alloy Steel Ltd. vs. Jayaswals NECO Ltd. 2001 II AD (S.C.) 330, Supreme Court 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 held that the court in whose territorial jurisdiction drawee bank is situated would have territorial jurisdiction to entertain the complaint in question. Similar view has been taken in Online IT Shoppee India Pvt. Ltd., and V.S. Thakur (reports cited supra).

9. Yet another learned Single Judge of the Court in *Ramaswamy S. Iyengar v. The State (NCT of Delhi) & Anr.* Crl.MC No.4140/2009 decided on 16.03.2011; *Grandlay Electricals (India) v. ESS ESS Enterprises & Ors.* CRP No.313/2011 decided on 18.07.2011; and *Dushyant Verma v. Tek Chand* Crl.MC No.3531/2010 decided on 30.08.2011 also relied on *Shri Ishar Alloy (supra)* and held that the place where the cheque is presented by the payee for collection by itself will not have any jurisdiction.
10. In *Ramaswamy S. Iyengar*, the learned Single Judge opined that the judgment passed by the learned Single Judge of this Court in *Religare Finvest Ltd.* would be of no avail to the Complainant in view of the judgment of the Supreme Court in *Shri Ishar Alloy and M/s. Harman Electronics (P) Ltd. & Anr. v. M/s. National Panasonic India Ltd., 2009 (1) SCC 720*.
11. To confer jurisdiction on a Court for an offence of dishonour of the cheque, one or the other act which constitute the offence must be done within the jurisdiction of the Court where the complaint under Section 138 of the Act is filed. In the instant case all the acts, that is, the handing over of the cheque to the payee, that is, the Respondent, was at Kolkata; the cheque was drawn at IDBI Bank having its branch at Kolkata; the cheque was dishonoured by the earlier said branch at Kolkata which was the drawee of the cheque. The drawer of the cheque in spite of the receipt of notice at Kolkata failed to make the payment within the stipulated period.
12. It is *no longer res integra* that service of notice from any place, in the instant case Delhi, would not confer jurisdiction on Delhi Courts (See *M/s. Harman Electronics (P) Ltd. & Anr. v. M/s. National Panasonic*

India Ltd., 2009 (1) SCC 720.). Similarly, on the strength of the judgment of the Supreme Court in *Shri Ishar Alloy*, the presentation of the cheque for collection at HDFC Bank New Delhi would not confer jurisdiction on Delhi Courts.

13. The learned MM erred in holding that the Delhi Courts have jurisdiction to entertain the complaint under Section 138 of the Act.
14. The Revision Petition, therefore, has to succeed; the same is accordingly allowed. Consequently, the complaint stands dismissed on the ground that Delhi Courts did not have any territorial jurisdiction.

(G.P. MITTAL)
JUDGE

JANUARY 15, 2013

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