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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 1st October, 2013

+ CRL.REV.P. 271/2010

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES
LTD. Petitioner

Through Ms. Worthing Kasar, Advocate

versus

AJIT TARMOHAMAD MAJOTHI PROP. AJIT TARMOHAMAD
GODHIA Respondent

Through None

+ CRL.REV.P. 286/2010

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES
LTD. Petitioner

Through Ms. Worthing Kasar, Advocate

versus

AJIT TARMOHAMAD MAJOTHI Respondent

Through None

+ CRL.REV.P. 288/2010

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD.
..... Petitioner

Through Ms. Worthing Kasar, Advocate

versus

SATAPAL SINGH Respondent

Through None

+ **CRL.REV.P. 293/2010**

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD.
..... Petitioner

Through Ms. Worthing Kasar, Advocate

versus

AJIT TARMOHMAD MAJOTHI Respondent

Through None

+ **CRL.REV.P. 294/2010 & Crl. M.A. No. 7228/2010**

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD.
..... Petitioner

Through Ms. Worthing Kasar, Advocate

versus

SATPAL SINGH Respondent

Through None

+ **CRL.REV.P. 295/2010**

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD
..... Petitioner

Through Ms. Worthing Kasar, Advocate

versus

SATPAL SINGH Respondent

Through None

+ **CRL.REV.P. 375/2010 & Crl.M.A.Nos.12644-45/2010**

GE CAPITAL TRANSPORTATION FINANCIAL SERVICES LTD.
..... Petitioner

Through Ms. Worthing Kasar, Advocate

versus

SATPAL SINGH

..... Respondent

Through None

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common order, I shall dispose of CRL.REV.P. 271/2010, CRL.REV.P. 286/2010, CRL.REV.P. 288/2010, CRL.REV.P. 293/2010, CRL.REV.P. 294/2010, CRL.REV.P. 295/2010 & CRL.REV.P. 375/2010 as the question which has to be decided in all these Revision Petitions is: Whether a place where a cheque is deposited for collection and returned dishonoured and the place where legal notice of demand under Section 138 of Negotiable Instruments Act, 1881 is issued, claiming the amount and failure to pay the amount covered by the cheque, would have territorial jurisdiction to try the accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short NI Act) or would it be only the Court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn?

2. These Revision Petitions are directed against the order dated 30th March, 2010 passed by learned Metropolitan Magistrate, in the complaint filed by the Revisionist under Section 138 of NI Act on the ground that the Court does not have the jurisdiction to entertain and try the complaint. The complainant was directed to file the complaint before the Court of competent jurisdiction. The complaint was returned under Section 201 of the Code of Criminal Procedure.

3. Criminal Revision Petition bearing No.288/2010, 375/2010, 294/2010 and 295/2010 have been filed by the petitioner against the same respondent, namely, Satpal Singh whereas Criminal Revision Petition bearing No. 271/2010, 286/2010 & 293/2010 have been filed by the petitioner against Ajit Tar Mohd. Majothi.

4. Revision petitions are filed on the ground that complainant is Non-Banking Financial Company incorporated and existing under the Companies Act, 1956 having its registered office at AIFACS Building, 1 Rafi Marg, New Delhi. The respondent in Crl.Rev.bearing No.288/2010, 294/2010, 295/2010 and 375/2010 resides/works for gain at House No.140, Village Kheda, Gujjar Tehsil, Rohtak whereas respondent in Crl.Rev. No.271/2010, 286/2010 and 293/2010 resides/works for gain at Jay Ambe

Society at Aram Bada, Post Mitha Pur, Jam Nagar. In all the cases, the respondent approached the petitioner company for availing loan facility and pursuant to their request, a loan facility was granted and the loan amount was disbursed to the respondent which was to be repaid along with interest. In discharge of their liabilities, the respondents issued the cheques which were presented by the complainant through its bank (Collecting Bank) to the accused Bank (Drawee Bank) through the clearing house of the Reserve Bank of India at New Delhi but the cheques were dishonoured at New Delhi by the bank of the respondent with the remarks INSUFFICIENT FUNDS IN ACCOUNT. A statutory notice was sent to the respondent by registered AD post from New Delhi demanding the payment of the cheque amount, however, the respondent failed to repay the cheque amount despite service of statutory notice and expiry of the mandatory period of 15 days, thus, the complaint under Section 138 r/w Section 142 of NI Act was filed against the respondent.

5. The petitioner also led evidence of an expert witness Sh. Raja Maingi, Asstt. Manager, Citibank, Jeevan Bharti Building, Connaught Circus, New Delhi, who deposed on oath that in the return memo of Drawee Bank, LOC, Delhi means presentation of the cheque was made in

Delhi to the bank of the accused and the cheque was dishonoured due to the reasons mentioned by the accused bank and returned unpaid to the bank in Delhi. Even in case the accused is having account outside Delhi, the cheque physically never goes there under core bank system. The accused bank participate as the member of core banking system, accordingly, these cheques were presented as per RBI guidelines to the bank of accused. Under core banking system, any cheque of the bank participating in CBS can be cleared locally subject to the condition that the bank participates as a member of the clearing house of the local area even when the cheque is outstation cheque.

6. The complaint was, however, ordered to be returned on the ground that the Court had no territorial jurisdiction to entertain the complaint. Feeling aggrieved by the same, revision petitions have been filed.

7. Notice of the petitions was duly served upon the respondent. On behalf of respondent Satpal, his counsel appeared on few dates. Thereafter, none appeared for him. Despite service, none appeared on behalf of respondent Ajit Tarmohmad Majothi. I have heard Ms. Worthing Kasar, learned counsel for the petitioner and have perused the record.

8. Learned counsel for the petitioner relied upon a judgment passed by this Court in Criminal Revision Petition No.170/2010 filed by the present petitioner against another respondent titled as ***G.E. Capital Transportation Financial Service Limited vs. Raisuddin Khan***, reported in 182 (2011) DLT 385 and latest pronouncement of Supreme Court reported as ***Nishant Aggarwal vs. Kailash Kumar Sharma***, 2013 (7) SCALE 753 for submitting that Delhi Courts have territorial jurisdiction to try the complaint. As such, the impugned order be set aside.

9. In ***Nishant Aggarwal*** (supra), the facts were substantially the same. The appellant was the Director of the company, situated at Meghalaya and Guwahati. During the course of business, the appellant issued post dated cheque drawn on Standard Chartered Bank, Guwahati in favour of the complainant-respondent. When the cheque was presented for collection by the respondent through its banker with Canara Bank, Bhiwani, Haryana, it was returned unpaid due to stop payment by the appellant. Thereafter, a legal notice was sent by the respondent to the appellant asking him to pay the amount within a period of 15 days, failing which he was liable to be prosecuted under Section 138 (b) of the NI Act. On failure of the appellant to pay the amount, a complaint

under Section 138 and 141 of the NI Act was filed at Bhiwani but the complaint was returned by the learned Judicial Magistrate, Bhiwani on the ground that Bhiwani Court has no jurisdiction and the complaint be presented before the appropriate Court having jurisdiction. A revision petition was filed which was allowed. Aggrieved by the said order, the appellant approached the High Court which dismissed the petition. Thereafter, the appellant preferred appeal by way of Special Leave Petition before the Hon'ble Supreme Court. Hon'ble Supreme Court observed that the issue in question as to whether the Bhiwani Court had the territorial jurisdiction to entertain the complaint, was considered in *K Bhaskaran vs. Sankaran Vaidhyan Balan and Another*, (1999) 7 SCC 510 and relevant portion of the judgment in paras 10 and 11 of the said case was reproduced as under:-

10. Learned Counsel for the Appellant first contended that the trial court has no jurisdiction to try this case and hence the High Court should not have converted the acquittal into conviction on the strength of the evidence collected in such a trial. Of course, the trial court had

upheld the pleas of the accused that it had no jurisdiction to try the case.

11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence Under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in Clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence Under Section 138 of the Act.

It is clear that this Court also discussed the relevant provisions of the Code, particularly, Sections 177, 178 and 179 and in the light of the language used, interpreted Section 138 of the N.I. Act and laid down that Section 138 has five components, namely,

- i) drawing of the cheque;
- ii) presentation of the cheque to the bank;

- iii) returning the cheque unpaid by the drawee bank;
- iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and
- v) failure of the drawer to make payment within 15 days of the receipt of the notice.

After saying so, this Court concluded that the complainant can choose any one of the five places to file a complaint. The further discussion in the said judgment is extracted hereunder:

14. 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.

15. 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 Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

“178. (a)-(c) * * *

(d) where the offence consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas.”

16. Thus it is clear, 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. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.”

10. It was further observed that *K. Bhaskaran* (supra) has clarified the place in the context of territorial jurisdiction as per the fifth component, namely, “failure of the drawer to make payment within 15 days of the receipt.” As such, it was observed that the learned Magistrate at Bhiwani had territorial jurisdiction to try the complaint filed by the respondent. In *K. Bhaskaran*(supra), it was observed that the Court within whose jurisdiction the cheque is presented and in whose jurisdiction there is failure to make payment within 15 days of the receipt of notice can have jurisdiction to try the offence under Section 138 of the NI Act.

11. In the instant case, the cheque was presented at Delhi and was dishonoured. Thereafter, the legal notice of demand was also sent from

Delhi calling upon the respondent to make payment within 15 days of the receipt of the notice. As such, even in view of *Harman Electronics Private Limited and Anr. Vs. National Panasonic India Pvt. Limited*, (2009) 1 SCC 720 affirmed in *K Bhaskaran* and in *Nishant Aggarwal*, Delhi Courts have jurisdiction to entertain the complaint.

12. In *G.E. Capital Transportation Financial Services Limited* (supra) also where the facts were substantially the same, it was observed that the learned Metropolitan Magistrate has the power and jurisdiction to entertain the complaint and take cognizance of the offence mentioned in the complaint and direction was given to the learned Metropolitan Magistrate to issue summons to the respondent/accused accordingly.

13. Having perused the complaint filed by the petitioners/complainants since part of cause of action has arisen at Delhi, with dishonour of the cheque, failure on the part of the respondent to pay the amount despite service of legal notice of demand, the learned Metropolitan Magistrate has the power and jurisdiction to entertain the complaint and take cognizance of the offence.

14. Accordingly, all the revision petitions are allowed. Petitioner is directed to appear before the learned Chief Metropolitan Magistrate

concerned on 21st October, 2013, who may either keep the case with himself or assign it to appropriate Court of jurisdiction for proceeding further in the matter in accordance with law.

**SUNITA GUPTA
(JUDGE)**

OCTOBER 01, 2013

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