

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

Date of decision: 31st January, 2013

+ **CRL. M.C. 3008/2011**

SMT. MADHUMITA KAUR Petitioner
Through: Mr. Naushad Ahmed Khan, Adv.
Mr. Naseem Anwar, Adv.

versus

SHRI ZILE SINGH Respondent
Through: Mr. Prashant Jain Adv. with
Mr. Atul Rawat, Adv.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioner invokes the inherent powers of this Court under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for quashing of a Complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act) filed by Respondent No.2 for dishonour of the cheque for ₹9,70,000/-.
2. The Petitioner's plea is that apart from the fact that cheque was issued only towards delivery of a Tata Safari car and since it was actually delivered, the cheque was required to be returned by Respondent No.2; on admitted averments, the cheque delivered to Respondent No.2 in Lucknow, was drawn at ICICI Bank Limited, Gomti Nagar, Lucknow. Thus, mere presentation of the cheque at the Delhi Bank would not confer any jurisdiction at Delhi Courts. Reliance is placed on a judgment of the

Supreme Court in *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* (2001) 3 SCC 609.

3. It is well settled that for the purpose of quashing of a Complaint or FIR, the High Court cannot look into the defence of the accused. The Court is only required to see whether on the basis of the averments and the evidence produced by the Complainant, prima facie, there are grounds for proceeding against the accused.
4. In a recent report of the Supreme Court in *State of Orissa & Ors. v. Ujjal Kumar Burdhan* (2012) 4 SCC 547, the investigation initiated by the Vigilance Department of the State Govt. of Orissa into allegations of irregularities in receipt of excess quota, recycling of rice and distress sale of paddy by one M/s. Haldipada Rice Mill, Proprietorship concern of the Respondent was quashed by the High Court. The Supreme Court reversed the order passed by the High Court and observed that extraordinary power under Section 482 of the Code has to be exercised sparingly with circumspection and as far as possible for extraordinary cases where allegations in the complaint or the FIR taken on its face value and accepted in their entirety do not constitute the offence alleged. The Supreme Court relying on its earlier decision in *State of West Bengal v. Swapan Kumar Guha* (1982) 1 SCC 561 held that the Court will not normally interfere with the investigation and will permit an inquiry into the alleged offence to be completed. Paras 8 and 9 of the report are extracted hereunder:-

“8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary

power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In State of W.B. v. Swapan Kumar Guha (1982) 1 SCC 561, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (Paras 65-66)

“65. ... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed.

...

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation

into the offence to be completed for collecting materials for proving the offence.”

5. In *State of Haryana & Ors. v. Ch. Bhajan Lal & Ors.* AIR 1992 SC 604 the Supreme Court considered its earlier decision on quashing of the FIR and observed that it would not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Some of the cases where the powers to quash FIR could be exercised were enumerated as under:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. On the strength of the judgment in *Ishar Alloy Steels Ltd.* it can very well be said that if cheque is presented by the Payee at a place other than the drawee Bank, the Court at the place of Payee's Bank simply on presentation of the cheque will not have jurisdiction to entertain a Complaint under Section 138 of the Act.
7. At this juncture, it would be apposite to refer to the Complaint under Section 138 of the Act read with Section 420 IPC by the Complainant. The Complainant specifically averred that the cheque for ₹9,70,000/- was delivered to the Respondent no.2 in discharge of Petitioner's liability towards a friendly loan of ₹9,50,000/-. The loan was obtained by the Petitioner at Delhi in the last week of May, 2010. It is also stated in the Complaint that the cheque of ₹9,70,000/- which included ₹20,000/- towards interest was also delivered at Delhi. Thus, the Petitioner's averments that the cheque was towards the amount for Tata Safari won by Respondent No.2 as a result of bonus points in respect of the business deal between the parties which had no connection with Delhi, cannot be

looked into at this stage in view of the judgments of the Supreme Court in *Ch. Bhajan Lal*.

8. It has to be borne in mind that this Complaint is not only under Section 138 of the Act but is also under Section 420 IPC. For the purpose of determining the jurisdiction, at this stage, it has to be accepted that the Petitioner obtained a loan of amount of ₹9,50,000/- at Delhi and that the cheque for ₹9,70,000/-, which included interest of ₹20,000/- was delivered to Respondent No.2 at Delhi. Thus, part of cause of action did take place at Delhi.
9. In *Rajendra Ramchandra Kavalekar v. State of Maharashtra & Anr.* (2009) 11 SCC 286, the Supreme Court referred to its earlier judgment in *N. Majithia v. State of Maharashtra & Ors.*, (2000) 7 SCC 640 and held that the Court where part of cause of action took place would have jurisdiction to inquire into and try a Complaint. Paras 19 and 20 of the report in *Rajendra Ramchandra Kavalekar* are extracted hereunder:-

19. It is also relevant to state that in Navinchandra N. Majithia case (2000) 7 SCC 640 the Court at para 22 of the judgment has observed:

“22. So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed.”

The territorial jurisdiction of a court with regard to criminal offence would be decided on the basis of the place of occurrence of the incident and not on the basis of where the complaint was filed and the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another court. The venue of enquiry or trial is primarily to be determined by the averments contained in the complaint or the chargesheet.

20. Section 177 of the Criminal Procedure Code provides that:-

“177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.”

Reference can be made to the observations made by this Court in Asit Bhattacharjee v. Hanuman Prasad Ojha (2007) 5 SCC 786. This Court at para 23 has stated as under:

“23. The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under clause (2) of Article 226 of the Constitution of India but its definition stricto sensu may not be applicable for the purpose of bringing home a charge of criminal offence. The application filed by the appellant under Section 156(3) of the Code of Criminal Procedure disclosed commission of a large number of offences. The fact that major part of the offences took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the appellant Company was committed within the jurisdiction of the said court, the High Court of Allahabad should not have interfered in the matter.”

10. In view of the above discussion, without giving an opportunity to the parties as to where the transaction took place, it would be difficult to hold that Delhi Court did not have jurisdiction to try the complaint.
11. The Petition, therefore, has to fail; it is accordingly dismissed.
12. The observations made above were necessary for disposal of the Petition under Section 482 Cr.P.C. The same would not tantamount to expression of my opinion on the merits of the case. The learned ‘MM’ shall be at

liberty to go into the question of jurisdiction at the appropriate stage when the evidence is led by the parties.

13. CrI.M.A.10583/2011 for stay also stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 31, 2013

vk