

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

Reserved on: 26th March, 2014

% Date of Decision: 3rd April , 2014

+ CRL. M.C. No. 1521/2013

M/S BACO METALLICS INDUSTRIES Petitioner
Through: Mr.Sanjeev Mahajan, Adv.

versus

M/S ZETA LEATHERS EXPORTS & ANR. Respondents
Through: Mr. Rajat Aneja, Adv.

**CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH**

JUDGMENT

1. By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seek quashing of order dated 23.1.2013 passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi whereby the complaint filed by the petitioner was returned to the complainant.
2. In a nutshell, the facts of the present case are that the petitioner/complainant filed a complaint under Section 138/141 of the Negotiable Instruments Act, 1881 on the grounds, inter alia, that the respondent herein had been purchasing goods from the petitioner. As per books of accounts maintained by the petitioner in due course of business a sum of Rs.13,10,752/- was due and outstanding as on 30.9.2010 which was confirmed by the respondent, vide confirmation letter dated 1.10.2010.

Thereafter, the respondent made payment of Rs.2,75,000/- in four instalments and thereby leaving a balance of Rs.10,35,752/- The respondent issued five cheques bearing numbers 246979 dated 5.11.2010, No.246980 dated 5.12.2010, No.246981 dated 3.1.2011, No.246982 dated 5.2.2011 and No.246983 dated 5.3.2011 for Rs.2.00 lakhs (Rupees two lakhs) each in favour of the petitioner. On presentation the said cheques were dishonoured vide memo dated 3.5.2011. The petitioner served a legal notice dated 11.5.2011 and despite service of notice, the respondent failed to make the payment of amounts of the cheques.

3. The respondents moved an application under Section 177/178 of Cr.P.C. for return of the complaint. The said application was allowed by the trial court vide impugned order dated 23.1.2013.
4. Feeling aggrieved by the said order dated 23.1.2013, the petitioner preferred the present petition.
5. Learned counsel for the petitioner contended that the complainant has its registered office at New Delhi. The petitioner has its bank account at New Delhi, cheques were deposited by the petitioner at New Delhi through clearing house of RBI, New Delhi and returned unpaid at New Delhi and the notice was also served from Delhi, therefore, Delhi courts have jurisdiction to entertain and try the present complaint.
6. Per contra, learned counsel for the respondents urged that the drawer bank has the jurisdiction to entertain and try the present complaint. Relying upon the judgment in **Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd. (2009) 1 SCC 720**, counsel for the respondents submitted that the Delhi courts have no jurisdiction to entertain and try the present complaint.

7. The primary question which arises for consideration in this case is whether Delhi courts have territorial jurisdiction to entertain and try the complaint under Section 138 of the Negotiable Instruments Act. This controversy has been set at rest by the Supreme Court of India in **Nishant Aggarwal vs. Kailash Kumar Sharma (2013) 10 SCC 72** and **Escorts Limited vs. Rama Mukherjee (2014) 2SCC 255**. In **Nishant Aggarwal's case** (supra) the Hon'ble Supreme Court after considering **Harman Electronics Pvt. Ltd.** (supra) and **Shri Ishar Alloy Steels Ltd. vs. Jayaswals NECO Ltd. (2001) 3 SCC 609**, reaffirmed the jurisdiction of the Court where the cheque is presented for collection. In the said case it was observed:

“1.....The question which has to be decided in this appeal is whether the Court, where a cheque is deposited for collection, would have territorial jurisdiction to try the accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short “the N.I.Act”) or would it be only the Court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn?

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22. This Court in *Harman Electronics case* considered Section 138 of the NI Act and also referred to *K. Bhaskaran case* and quoted the five components of offence under Section 138 which have been noted in paragraph supra. This Court reiterated that the five different acts which are the components of offence under Section 138 of the NI Act 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 NI Act and the complainant would be at liberty to file a complaint at any of those places. Ultimately, this Court held that the Chandigarh court had jurisdiction to entertain the complaint because the

parties were carrying on business at Chandigarh, branch office of the complainant was also in Chandigarh, the transactions were carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. This Court pointed out that the complaint did not show that the cheque was presented at Delhi, because it was absolutely silent in that regard and, therefore, there was no option but to presume that the cheque was presented at Chandigarh. It is not in dispute that the dishonour of the cheque also took place at Chandigarh and, therefore, the only question which arose before this Court for consideration was whether the sending of notice from Delhi itself would give rise to a cause of action in taking cognizance under the NI Act. In such circumstances, we are of the view that *Harman Electronics* is only an authority on the question where a court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction and it does not deviate from the other principles laid down in *K. Bhaskaran*. This Court has accepted that the place where the cheque was presented and dishonoured has jurisdiction to try the complaint. In this way, this Court concluded that issuance of notice would not by itself give rise to a cause of action but communication of the notice would. In other words, the Court clarified that only on the service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, the commission of an offence completes.

23. We are of the view that this Court in *Harman Electronics* affirmed what it had said in *K. Bhaskaran* that 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. It is also relevant to point out that while holding that the Chandigarh court has jurisdiction, this Court in *Harman Electronics* observed that in the case

before it, the complaint was silent as to whether the said cheque was presented at Delhi. In the case on hand, it is categorically stated that the cheque was presented at Bhiwani whereas in *Harman Electronics* the dishonour had taken place at Chandigarh and this fact was taken into account while holding that Chandigarh court has jurisdiction. In the complaint in question, it is specifically stated that the dishonour took place at Bhiwani. We are also satisfied that nothing said in *Harman Electronics* had adverse impact on the complainant's case in the present case.

24. As observed earlier, we must note that in *K. Bhaskaran* this Court has held that Section 178 of the Code has widened the scope of jurisdiction of a criminal court and Section 179 of the Code has stretched it to still a wider horizon. Further, for the sake of repetition, we reiterate that the judgment in *Ishar Alloy* does not affect the ratio in *K. Bhaskaran* which provides jurisdiction at the place of residence of the payer and the payee. We are satisfied that in the facts and circumstances and even on merits, the High Court rightly refused to exercise its extraordinary jurisdiction under Section 482 of the Code and dismissed the petition filed by the appellant-accused.”

8. Further, the Apex Court in **Escorts Limited** (supra) has observed that the Court within whose jurisdiction the cheque was presented for encashment has the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act.
9. In the present case in para 8 of the complaint the petitioner has mentioned that the cheques in question were present to the centralised clearing house of the banker of the accused at New Delhi by the banker of the complainant which were returned unpaid by the banker of the complainant at Connaught Circus,

New Delhi. The complainant has its registered office situated in New Delhi. The notice was served upon the accused from Delhi and after service of notice the amount was payable at Delhi inasmuch as the accused had been making payments by way of electronic transfer in the account of the complainant and whenever payments were made through demand drafts the same were payable at Delhi and, therefore, Delhi courts have jurisdiction to try and entertain the present complaint.

10. Thus, applying the law laid down in **Nishant Aggarwal's case** (supra) and **Escorts Ltd.** (supra), Delhi courts have jurisdiction to entertain and try the present complaint.

11. In the light of the above discussion, the petition is allowed and the impugned order dated 23.1.2013 passed by learned Metropolitan Magistrate, New Delhi is set aside. The trial court is directed to proceed with the matter in accordance with law. Both the parties are directed to appear before Chief Metropolitan Magistrate, New Delhi on 1.5.2014 who may try the case himself or assign the same to some other court.

12. The petition stands disposed of.

Crl.M.A. No.4746/2013

In view of the aforesaid, the application stands disposed of.

**(VED PRAKASH VAISH)
JUDGE**

April 3rd 2014
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