

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

+ **CrI.M.C. No. 3172/2012 & CrI.M.A. No. 16348/2012**

Reserved on: 3rd February, 2014

% **Date of Decision: 18th February, 2014**

M/S BALAJI SALES CORPORATION & ORS. Petitioner
Through: Mr.Nanda K. Jha, Adv.

Versus

HIM ALLOYS & STEELS PRIVATE LIMITED & ANR
..... Respondents
Through: Mr. Anil Gera, Adv. for R-1
Mr. Karan Singh, APP for the State.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.) against the impugned order dated 11.11.2010 passed by the learned Metropolitan Magistrate (C-02), Delhi whereby the petitioners have been summoned for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act') in a complaint case No.2587/1/11 titled as `M/s Him Alloys & Steels Pvt. Ltd. Vs. M/s Balaji Sales Corporation & Ors.' and order dated 11.1.2012 whereby notice under Section 251 Cr.P.C. was given to the petitioners.

2. In a nutshell, the facts of the present case are that respondent No.1/complainant filed a complaint for the offence under Section 138

of the Act against the petitioners on the allegations, inter alia, that the petitioners entered into an agreement dated 31.1.2009 for supply of 30,000 MT of heavy melting steel scrape i.e. CR/HR trimming & cut pieces, miss roll of TMT bars, Angle/channel etc. to the respondent/complainant company within a period of six months from the date of the agreement. It was agreed that 200 tonnes of scrap would be loaded and remitted to the respondent company on daily basis. As per the agreement price of Rs.16,000/- (Rupees sixteen thousand) per MT included CST at the rate of 2% was settled. The respondent complainant paid a sum of rupees one crore and sixty lakhs to the petitioner vide two multicity cheques bearing No.155142 dated 31.1.2009 and 155143 dated 2.2.2009 for Rs.1,00,00,000/- (Rupees one crore) and Rs.60,00,000/- (Rupees sixty lakhs) respectively both drawn on Syndicate Bank in favour of the petitioner. The respondent company also paid an amount of Rs.15,00,000/- (Rupees fifteen lakhs) towards advance payment of freight charges vide multicity cheque No.155144 dated 3.2.2009 drawn on Syndicate Bank. The petitioners/accused failed to supply the material in terms of agreement and merely supplied 547 MT of scrape upto 23.6.2009. After deducting the amount for the material supplied by the petitioner, a sum of Rs.70,42,960/- (Rupees seventy lakhs forty two thousand nine hundred and sixty) remained as excess payment which was made by the respondent and the said amount was refundable by the petitioners. The petitioners repaid the said amount vide cheques bearing No.000047, 48, 49 and 50 dated 23.6.2009, three cheques of Rupees twenty lakhs each and one cheque for Rs.10,42,000/- (Rupees ten lakhs and forty two thousand) drawn on Kotak Mahindra Bank Ltd., payable at all

branches of the said Bank. The respondent/complainant presented the said four cheques with its banker Syndicate Bank, Punjabi Bagh Branch, New Delhi on 13.11.2009 and on presentation, all the four cheques were dishonoured with the remarks 'Funds insufficient'. The fact of dishonour was conveyed to the respondent by their banker on 16.11.2009. The respondent again presented said four cheques with their banker on 18.12.2009 and the same were dishonoured with the remarks 'funds insufficient'. The respondent served a legal notice of demand dated 15.1.2010. Despite service of the said notice, the petitioner failed to make payment of the cheques within stipulated period.

3. With respect to the jurisdiction of the courts at Delhi, it was pleaded in the complaint that the cheques issued by the petitioners were payable at Delhi and were deposited for collection by the respondent/complainant with the Syndicate Bank, Punjabi Bagh Branch, New Delhi and were received back dishonoured by Syndicate Bank, Punjabi Bagh Branch, New Delhi. Thus, the offence has been committed at Delhi.

4. Taking cognizance of the complaint vide order dated 11.1.2010 Metropolitan Magistrate (C-02), Delhi summoned the petitioners for the offence under Section 138 of the Act. Vide order dated 11.1.2012, notice under Section 251 of the Cr.P.C. was given to the petitioners.

5. Feeling aggrieved by the said orders the petitioners have preferred the present petition.

6. I have given my thoughtful consideration to the submission made by the learned counsel for both the parties and carefully perused the material on record.

7. The submission of learned counsel for the petitioner is two fold. Firstly, all the transactions/dealing took place at Nagpur (Maharashtra), no part of the transactions took place at Delhi and the bank account of the petitioner is at Nagpur and notice of demand was also received at Nagpur, therefore, cause of action with respect to dishonor of the cheques in question does not arise at Delhi. Secondly, the cheques were not issued in discharge of any legally enforceable liability as required by Section 138 of the Act but were given as security.

8. The issue regarding territorial jurisdiction is to be considered with reference to Section 138 of the Act and the applicable provisions of Cr.P.C. i.e. Sections 177, 178 and 179.

9. Section 138 of the Negotiable Instruments Act, 1881 reads as under:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid. either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice. to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years] , or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.- For the purposes of this section," debt or other liability" means a legally enforceable debt or other liability."

10. The Hon'ble Supreme Court in **K. Bhaskaran vs. Shankarn Vaidhyan Balan & Anr.** (1999) 7 SCC 510 after considering Sections 178 and 179 of Cr.P.C. has opined that an offence may be committed in different localities and thus can be tried in any court having jurisdiction over said localities. To put it pithily, law recognizes more than one court having territorial jurisdiction and the issue of territorial jurisdiction would have to be decided with reference to whether a particular offence was committed within the territorial jurisdiction of a Court.

11. A bare perusal of Section 139 of the Act highlights the following essential components of the offence:

- (i) drawing of the cheque;
- (ii) presentation of the cheque to the bank;
- (iii) returning of the cheque unpaid by the drawee bank;
- (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount;
- (v) Failure of the drawer to make the payment within 15 days of the receipt of the notice.

12. In **Harman Electronics Pvt. Ltd.&Anr. vs. National Panasonic India Private Limited** (2009) 1 SCC 720, it was held that the court where the cheque is deposited for collection, has jurisdiction to try the case under Section 138 of the Act in terms of principles laid down in **K. Bhaskaran**' case (supra). It was further observed that a notice of dishonour under Section 138 of the Act alone would not confer the jurisdiction to try the accused at the place of issuance of the notice.

13. The law regarding territorial jurisdiction of the Court in a case under Section 138 of the Act is no longer res integra in view of law laid down by the Apex Court in **Nishant Aggarwal vs. Kailash Kumar Sharma** (2013) 10 SCC 72 wherein after considering the judgment in **K. Bhasran** (supra) and **Harman Electronics Pvt. Ltd.** (supra), it was observed that issue of territorial jurisdiction of the courts did not even arise for consideration, therefore, it does not affect the ratio in the case of **K. Bhasakran's** (supra).

14. In **Nishant Aggarwal**'s case (supra) the Apex Court reaffirmed the jurisdiction of the Court where the cheque is presented for collection. In the said case it was observed as under:

“...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.”

15. In this regard, reference with advantage may be made to the decision in case *FIL Industries Limited vs. Imtiyaz Ahmed Bhat*, Criminal Appeal No.1168 of 2013 (arising out of SLP (Crl.) No.8096 of 2012), decided on 12.8.2013, wherein the Apex Court followed the dictum in **Nishant Aggarwal**’s case (supra).

16. It is clear from the law laid down in aforesaid judgments that more than one act compose the offence under Section 138 of the Negotiable Instruments Act and if any one of these five different acts was done in a particular locality, the Court having territorial jurisdiction on that locality can become the place of trial for the offence under Section 138 of the Negotiable Instruments Act and, therefore, the complainant can choose any one of those courts having

jurisdiction over any one of the local area within the territorial limits of which any one of the five acts was done.

17. Applying the law laid down in Nishant Aggarwal's case (supra) to the facts of the present case, Delhi courts have jurisdiction to entertain and try the complaint filed under Section 138 of the Act. In the instant case, respondent/complainant has its office at Delhi, the cheques were deposited for collection with Syndicate Bank, Punjabi Bagh Branch, New Delhi and received back dishonoured at Delhi.

18. As regard the other submission of counsel for the petitioner that the cheque was given as security and not in discharge of any liability, it may be mentioned that according to the case of complainant the cheque was given in discharge of liability whereas according to the petitioner the cheque was given as security. The same raises a triable issue which cannot be gone into at this stage and the same would be considered during the course of trial.

19. In view of the aforesaid, the petition fails, deserves to be dismissed and the same is hereby dismissed.

20. Trial court is directed to dispose of the case expeditiously.

21. The petition stands disposed of.

Crl.M.A. No. 16348/2012

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

FEBRUARY 18, 2014

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