

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

+ CRL. M.C. NO.4054/2012 & CRL.M.A. NO.19281/2012

Reserved on: 23rd January, 2014

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Date of Decision: 4th February, 2014

M/S ROYAL PALACE IN HOTEL Petitioner

Through: Mr. Sarvesh Bisaria & Mr. Prakash
Chand Sharma, Adv.

Versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr.Karan Singh, APP for the State.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') the petitioner seeks quashing of complaint case No.2506/1/10 titled as M/s Ali Trading Exposition vs. M/s Royal Place in Hotel.

2. Briefly stating the facts of the case are that respondent No.2 herein filed a complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') against the petitioner on the allegations, inter alia, that in the month of November, 2008 the petitioner herein approached the respondent/complainant for purchase of LPG heaters. The petitioner after being satisfied with the product, quality and price placed an order of LPG heaters being 167 in

number for a total price of Rs.11,25,000/- (Rupees eleven lakhs and twenty five thousand). The petitioner issued two posted dated cheques bearing No.14681031 dated 17.12.2008 for Rs.5.00 lakhs (Rupees five lakhs) and the other bearing No.14681032 dated 27.12.2008 for Rs.6,25,000/- (Rupees six lakhs and twenty five thousand) both drawn on The Jammu & Kashmir Bank Limited towards the price of the heaters. In the month of December, 2008, the petitioner approached respondent No.2 and requested not to present the said cheques on accounts of financial difficulties and requested to present the same only after confirmation. However, despite repeated follow up, the petitioner had been avoiding payment on one pretext or the other. The respondent No.2 presented the said two cheques which were dishonoured due to 'insufficient funds' on 4.4.2009. Respondent No.2 sent a legal notice dated 30.4.2009 by registered A.D. post which was replied by the petitioner by reply dated 15.5.2009. Despite service of notice, the petitioner failed to make the payment of cheques within stipulated period. With respect to jurisdiction of the courts at Delhi, it was pleaded that the complainant's bank is at Delhi and intimation of dishonour of cheques has been received at Delhi. Thus, the offence has been committed at Delhi within the territorial jurisdiction of Delhi.

3. Taking cognizance of the complaint, learned Metropolitan Magistrate, New Delhi summoned the petitioner to face trial for an offence under Section 138 of the Act on 18.12.2009. Vide order dated 23.4.2012, the process under Section 82 Cr.P.C. was issued against the petitioner.

4. Failing aggrieved by the said orders, the petitioner has preferred present petition, inter alia, stating that the courts at Delhi have no

jurisdiction to take cognizance of the complaint, there is no cause of action against the petitioner. According to the petitioner, the entire transaction took place at Srinagar. The drawee bank of the petitioner is also at Srinagar and courts at Delhi have no jurisdiction to entertain and try the complaint.

5. At the outset, it may be mentioned that the petitioner filed a Criminal Revision petition bearing No.13/2013 against order dated 4.2.2013 whereby process under Section 82 Cr.P.C was issued, which was dismissed by learned Additional Sessions Judge, Saket Courts, Delhi, vide order dated 4.3.2013.

6. Short question involved in the present petition is regarding territorial jurisdiction of the courts at Delhi to entertain and try the complaint under Section 138 of the Negotiable Instruments Act.

7. 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. 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.

8. 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."

9. In **Bhaskaran**'s case (supra) the Supreme Court had occasion to deal with the issue of territorial jurisdiction in relation to Section 138 of the Act and of necessity, the discretion required the Supreme Court to identify the various acts of omission and commission which constitute the offence punishable under Section 138 of the Act. In para 14 of the judgment, Hon'ble Supreme Court of India highlighted the following components of the offence under Section 138 of the N.I. Act:

- (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.

10. In para 15 & 16 of the **K. Bhaskaran**'s case (supra) it was observed as under:

“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 5 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.”

11. Further, in **Shri Ishar Alloy Steels Ltd. vs. Jayaswals NECO Ltd.** (2001) 3 SCC 609 it was held that the bank referred to in Proviso (a) to Section 138 of the Act would mean the drawee bank on which the cheque was 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.

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 **Shri Ishar Alloy Steels Ltd.** (supra), **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 in **Shri Ishar Alloy Steels Ltd.** (supra), therefore, it does not affect the ratio in the case of **K. Bhasakran's** (supra).

14. In **Shri Ishar Alloy Steels Ltd.** (supra), the Supreme Court defined the term “the Bank” appearing in proviso (a) to Section 138 of the Act would mean the drawee bank on which the cheque is drawn. It was defined in the context of statutory period of six months as mentioned in proviso (a), hence, it was held that the date of presentation of the cheque for calculating statutory period of six months will be the date of presentation of the cheque to the drawer bank i.e. payee bank and not drawee's bank i.e. collecting bank.

15. In **Nishant Aggarwal's** case (supra) the Apex Court reaffirmed the jurisdiction of the Court where the cheque is presented for collection. In this 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.”

16. In the instant case the respondent/complainant has its office at Greater Kailash, Part-I, New Delhi and the cheque in question was deposited by the respondent No.2 in their bank account at Lajpat Nagar, New Delhi. Applying the law laid down in the case of **Nishant Aggarwal** (supra), therefore, the learned Metropolitan Magistrate at Delhi has the jurisdiction to entertain and try the complaint under Section 138 of the Act.

17. In view of the aforesaid discussion, the present petition deserves to be dismissed and the same is hereby dismissed.

Trial court record be sent back forthwith

Crl.M.A.No.19281/2012

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

FEBRUARY 4th, 2014
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