

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

+ **CRL.REV.P. 643/2015**

Date of Decision : June 13th, 2016

MAYANK PATHAK

.....Petitioner

Through Mr.Nasir Aziz and Mr.Vinay
Srivastava, Advs.

versus

M/S ELCOME TRADING COMPANY PVT LTD & ANR

.....Respondents

Through Mr.Kamal Kumar Ghei, APP.
Mr.Ritesh Bahri and Mr.Vinay Kr.
Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition under Section 397(3) read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner against the common judgment of conviction dated 10.12.2014 and common order on sentence dated 09.01.2015 passed by the learned Metropolitan Magistrate which has been confirmed by the learned Additional Sessions Judge vide common order dated 03.09.2015.

2. The facts, in brief, are that two complaints bearing CC No. 140/2012 and 141/2012 under Section 138 of the Negotiable Instruments Act, 1881 were filed by the respondent no.1-company. The complainant company-M/s Elcome Trading Company Pvt. Ltd. (respondent no.1-herein) is a private limited company duly registered

under the Companies Act, 1956 which was engaged in the business of computer hardware/software, computer peripheral and other computer related articles. The petitioner was having business dealings with the complainant company. The petitioner had purchased various items from the complainant. To discharge his liability, the petitioner had issued six post dated cheques of different dates. When the said cheques were presented by the complainant/respondent no.1 for encashment, the same were returned unpaid with the remarks “funds insufficient”. The complainant issued legal notice dated 05.11.2012, but despite its service, the petitioner did not make any payment.

3. Notice under Section 251 Cr.P.C. was framed against the petitioner to which he pleaded not guilty and claimed trial. The petitioner was allowed to cross-examine the complainant. The learned MM vide common judgment dated 10.12.2014 convicted the petitioner for offence under Section 138 of the N.I. Act. Vide common order on sentence dated 09.01.2015, the petitioner was sentenced to undergo simple imprisonment for one month and to pay fine of Rs.1,00,000/-. Out of the fine amount, a sum of Rs.90,000/- was ordered to be paid to the complainant as compensation and in default of same, the petitioner was to further undergo simple imprisonment for 15 days.

4. Thereafter, the petitioner filed two separate criminal appeals bearing Criminal Appeal Nos.07/2015 and 08/2015 before the Court of Sessions which were dismissed vide common judgment dated 03.09.2015.

5. I have heard the learned counsel for the petitioner, learned Additional Public Prosecutor for the State as well as learned counsel

for the respondent no.1.

6. Argument advanced by the learned counsel for the petitioner is that no cause of action had arisen within the territorial jurisdiction of the learned MM as the place of issuance of notice cannot create the jurisdiction. It was further argued that the parties are located at South Delhi and the transactions had taken place in South Delhi. Further, it was argued that the legal notice was not served upon the petitioner as it was not sent on the correct address of the petitioner. It is submitted that the presumption drawn by the Trial Court regarding service of notice upon the petitioner is erroneous. It was further argued that the cheques in question were never given by the petitioner to discharge his liability, rather the same were given as security.

7. The contention of the petitioner is that the learned MM had no jurisdiction to try and entertain the complaint as all the business transactions had taken place in South Delhi, whereas the complaint case was filed and instituted in East Delhi where the Courts had no jurisdiction to try the same. The petitioner has raised the contention regarding territorial jurisdiction for the first time in the present revision petition. Perusal of record shows that no such plea had been raised by the petitioner before the Trial Court or before the Appellate Court. Neither in the cross-examination of the complainant witness nor in his statement under Section 313 Cr.P.C., had the petitioner raised this plea.

8. It is apparent from the record that the legal notice was issued by the complainant to the petitioner-herein from Karkardooma Courts, East Delhi and the Courts in East Delhi were having territorial

jurisdiction to try and entertain the complaints filed under Section 138 of the Negotiable Instruments Act, 1881. The contention of the petitioner that the Courts of South Delhi were having exclusive jurisdiction to try the complaint, is without any basis inasmuch as the amendment to the Negotiable Instruments Act, 1881 came in the year 2015, whereas the cause of action to file the complaint arose in the year 2012. As per the Amended Act of 2015, the following sub-section (2) has been inserted in Section 142 of the Act, which reads as under :

“(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

9. The petitioner cannot take recourse to the above mentioned Amended Act for the reasons that the complaint was filed in the year 2012 when the Amended Act did not come into force. Secondly, the petitioner has raised entirely a new plea of territorial jurisdiction,

whereas the record reveals that during the entire trial or before the appellate Court no such plea was ever raised by the petitioner. It is only after his conviction by the Trial Court and upholding of the same by the appellate Court, the petitioner has come up with such a new plea. It appears that the said plea has been raised just for the sake of a plea without having any justification.

10. Other limb of argument advanced by the counsel for the petitioner is that the legal notice sent to the petitioner was never received by the petitioner as the same was never sent to the correct address of the petitioner.

11. Perusal of record shows that legal notice Ex.CW1/9 was sent on two addresses of the petitioner i.e. L-7, Back Side Ground Floor, Lajpat Nagar-II, New Delhi and I-90, Lower Ground Floor, Lajpat Nagar, Delhi. The legal notice sent on the former address was received back with the report that the addressee had left the address. Whereas, the notice sent on the latter address was not received back. The contention of the petitioner is that his address was never of I-90, Lajpat Nagar but was L-90, Lajpat Nagar-II. Even if for the sake of arguments, it is believed that the address was not correctly mentioned on the legal notice, the judgment of Hon'ble Apex Court in the case of ***C.C. Alavi Haji v. Papaletty Muhammed & Anr. 2007 (2) JCC (NI) 25*** makes it clear that a if person does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot contend that there was no proper service of notice as required under Section 138 of the Act. Relevant para from the judgments is quoted hereunder:

“It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 17 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran’s case (supra), if the “giving of notice” in the context of Clause (b) of the proviso was the same as the “receipt of notice” a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.”

12. In *C.C. Alavi Haji’s* case (supra), it is made clear that drawer of the cheque is having option to make the payment within 15 days of the receipt of the summons of the Court along with the copy of the complaint under Section 138 of the Act. But in the present case, it is nowhere the case of the petitioner that despite having received the

copy of the summons of the Court along with a copy of the complaint under Section 138 of the Act, he had made the payment. So, the service of legal notice was not mandated and the petitioner was having the opportunity to make the payment within 15 days of the receipt of the summons of the Court. Now, he cannot contend that there was no proper service of notice.

13. So far the merits of the case, this Court is not sitting as a Court of appeal to scrutinize the evidence and material on facts brought before the Trial Court and the appellate Court. The revision jurisdiction of this Court is very limited to the extent as to whether there is correctness, legality or propriety in the findings delivered by the Courts below.

14. In view of the above facts and circumstances, the petitioner has failed to show any error apparent on the face of it or any exceeding of jurisdiction or failure to exercise the jurisdiction vested in the Courts below while passing the orders under challenge.

15. Consequently, the present revision petition is hereby dismissed.

(P.S.TEJI)
JUDGE

JUNE 13, 2016
dd