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

\+ CRL.M.C. 1394/2017 & Crl.M.A.No. 5697/2017 (stay)

JHELUM GOPAL DALVI ..... Petitioner

Through Ms.Nandini Sharma, Mr. Ajay Pratap Singh and Mr. M.Sharma, Advocates

versus

STATE & ANR. ..... Respondents

Through Mr. Ashok Kumar Garg, Addl. PP for State

Mr. Sushil Shukla, Advocate for respondent No.2

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 16.05.2017

By the petition filed under Section 482 Cr.PC, the petitioner seeks quashing of the order dated 4.4.2016 passed by the learned MM in a complaint case filed under Section 138 NI Act. The impugned order is, as under:-

> **"Learned counsel for the complainant submits that the complainant maintains his/its bank account at Panchsheel Park, which is within the jurisdiction of this Court. Pre-summoning evidence by way of affidavit tendered. Complaint alongwith documents perused. The same is within limitation and jurisdiction of this Court. Arguments heard on the point of summoning.**
>
> **From perusal of the record, there are sufficient grounds for proceeding forward.**
>
> **I take cognizance of the offence u/s 138 NI Act. Issue summons to the accused on filing PF/speed post charges/RC within 5 working days returnable on 11.07.2016. Complainant is directed to file the copy of complaint alongwith its relevant documents with the PE. Complainant to file tracking report of speed post delivery on next date of hearing.**

Process server is directed to affix the process in case of refusal."

At the time of hearing of the instant petition, this court observed, as under:

"<u>Crl.M.As. 5698-5699/2017</u>

Exemptions allowed subject to just exceptions.

<u>CRL.M.C. 1394/2017 & Crl.M.A. 5697/2017 (stay)</u>

The limited grievance of the petitioner is that despite the cheque having been presented at the bank at Noida and issued from a bank at Mumbai the Trial Court at Delhi which had no jurisdiction to entertain the complaint entertained the same and issued summons against the petitioner. When this objection was taken by the petitioner in an application filed under Section 145(2) of the Negotiable Instruments Act, no appropriate order thereon was passed by the learned Trial Court. He seeks to place on record the application under Section 145(2) NI Act and the order passed by the learned Trial Court. The documents be filed within a week.

In the meantime issue notice to the respondent No.2 on the petitioner taking steps through ordinary and dasti process, registered AD and speed post returnable on 16th May, 2017."

The only question agitate in the instant petition is with regard to the jurisdiction of the learned MM to entertain the complaint and proceed further in the matters.

Sub-clause 2(a) of Section 142 of the NI Act reads, as under:-

> **"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**
>
> **………………………………………………………"**

From the bare reading of the subject provision, in relation to the jurisdiction of the MM to entertain a complaint filed under Section 138 NI Act, it is clear that the jurisdiction would come with the branch of the bank where the payee or the holder in due course of the cheque maintains the account. In para 19 of the complaint, the specific averments are, as follows:-

> **"The complainant most respectfully submits that the cause of action for filing the present complaint against the Accused arose in New Delhi and the offence as defined under Section 138 of the Negotiable Instruments Act, 1881 is also being committed and constituted within the territorial jurisdiction of this Hon'ble Court, because the Complainant's banker i.e. HDFC Bank, Panchshila Park Branch, New Delhi is within the territorial jurisdiction of this Hon'ble Court."**

As per the said averments, the complainant maintains his bank account with HDFC Bank, Panchshila Park Branch, within the territorial jurisdiction of the MM, where the complaint has come to be filed, is not in dispute. Not only that, the counsel for the complainant/respondent has also drawn attention to the fact that the cheques were presented on HDFC Bank, Okhla branch, Delhi. In the given facts and circumstances, prima facie, it cannot be said that the learned MM was not vested with the jurisdiction to entertain the complaint and proceed further in the matter.

Keeping in view the totality of the facts and circumstances, I do not find any merit in the petition, and the same is dismissed.

A.K.CHAWLA, J

MAY 16, 2017/mw