

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 615 OF 2008

M/S. RUCHI SOYA INDUSTRIES LTD.)
a Company incorporated under the)
provisions of Indian Companies Act 1956)
having its Registered Office at:)
408, Tulsiani Chambers, Nariman Point,)
Mumbai 400 021.).. Petitioner
(Orig. Complainant)

Versus

1. THE STATE OF MAHARAHTRA)
2. M/s. Madan Oil & Fat Pvt.Ltd.)
having its address at: E-172(B),)
M.I.A. Alwar, Rajasthan.)

3. Shri Nirbhay kumar Mahawar)
residing at: Deepali Society,)
Near Gate No.2, Kothi No.3,)
Pitampura, Delhi.)
4. Mrs. Urmila Mahawar,)
residing at: Deepali Society, Near)
Gate No.2, Kothi No.3, Pitampura,)
Delhi.).. Respondents

Mr. S.V.Marwadi i/b.Mr.D'Souza, Advocate, for the petitioner.

CORAM: J.H.BHATIA, J.

DATE : 17th June, 2010.

JUDGMENT

1. Notice was issued to respondent Nos. 2 to 4, who are the original

accused clearly indicating that this Writ Petition may be disposed of at the stage of admission. The notice was served as per the affidavit of service filed on behalf of the petitioner along with the postal receipts. However, none appeared for the respondent Nos. 2 to 4.

2. To state in brief, the writ petitioner is the original complainant. The respondents Nos. 2 to 4 are the original accused Nos. 1, 2 and 3. Accused No.1 is a company situated at Alwar in Rajasthan. Accused Nos. 2 and 3 were the directors of accused No.1 and both of them were residing at Delhi. The complainant used to purchase mustard oil and packing material and to hand over the same to the accused at Alwar for the purpose of packing the same. The accused company used to charge packing charges from the complainant and hand over packed material to the complainant. However, some oil was not packed and the oil and packing material were not returned to the complainant. Therefore, the accused were liable to pay the price of the remaining oil and packing material. To discharge that liability, the accused persons issued a cheque No.712059 dated 27.1.2004 for Rs.15,63,381/- drawn on State Bank of Bikaner & Jaipur, Lawrence Road, Delhi Branch in favour of the complainant company. The cheque was signed by accused No.2. The complainant deposited the said cheque with its Bank at Mumbai for presentation to State Bank of Bikaner & Jaipur, Delhi Branch, for

encashment. However, the drawee Bank returned the cheque on 11.5.2004 with the endorsement "funds insufficient". After getting an intimation of the same, on 27.5.2007, the complainant issued a notice to the accused and asked to make payment of the amount of the cheque. However, they failed to make payment. Therefore, the complainant filed a complaint under Section 138 of the Negotiable Instruments Act against all the three accused in the Court of Metropolitan Magistrate, Mumbai. It was registered as Criminal Case No.2575/SS/2005. Process was issued. Plea was recorded and the matter proceeded for trial. After the prosecution evidence was over and even the defence evidence was led by the accused persons, on the date when the case was fixed for arguments, the accused persons filed an application Exhibit 57 before the trial Court contending that the Metropolitan Magistrate in Mumbai had no jurisdiction to take cognizance of the complaint because no part of transaction had taken place in Mumbai and merely because the notice was issued from Mumbai and that cheque was deposited with the complainant's banker at Mumbai is not sufficient to give jurisdiction to the Metropolitan Magistrate at Mumbai. That application was opposed. After hearing the parties, the learned Special Metropolitan Magistrate, Mumbai, by impugned order dated 8.2.2008 allowed that application holding that the Metropolitan Magistrate, Mumbai had no jurisdiction. He directed the complaint to be returned to the complainant for presentation to the proper Court. That order

is challenged in the present Writ Petition.

3. Mr. Marwadi, the learned Counsel for the complainant/petitioner vehemently contended that the trial Court had committed error in holding that it had no jurisdiction to entertain the complaint. According to him, consistent view had been taken by this Court that the payee can issue notice for payment of the cheque amount after the cheque is dishonoured from the place where the payee is living or carrying on business for gain and in case it is a company from the place where its registered office is situated. It is contended that the registered office of the complainant company is situated at Mumbai. The cheque was presented at Mumbai and after it was dishonoured, notice was issued from Mumbai for payment and it was expected that the accused would make payment of the amount to the complainant at Mumbai. It is contended that in view of the Judgment of the Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510**, the Court within whose jurisdiction the notice in writing to the drawer of the cheque demanding payment of the cheque amount is given has also jurisdiction to entertain the complaint. The learned Counsel contended that in view of the authority in **K. Bhaskaran**, the Bombay High Court has held in number of cases that such a Court had jurisdiction.

4. Under Section 177 Cr.P.C. every offence shall be ordinarily tried by a Court within whose jurisdiction it was committed. However, there are exceptions to the same. Under Section 178, if there is an uncertainty as to where, among different localities, the offence would have been committed, the trial can be held in a Court having jurisdiction in any of those localities. Under Section 179 Cr.P.C. when an act is an offence by reason of anything which has been done and of a consequence which has been ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. After having considered the different provisions of Cr.P.C., in **K. Bhaskaran (Supra)**, the Supreme Court observed as follows :-

"14. The offence under section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence:

(1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of the drawer to make payment within 15 days of the receipt of the notice.

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 concatenation of all the above five is a sine qua non for the completion of the offence under section 138 of the Act. In this context a reference to section 178(d) of the Code is useful. It is extracted below:*

"Where the offence consists of several acts done indifferent local areas, it may be inquired 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 by 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 area 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."*

5. In the present case, admittedly, the cheque was drawn on State Bank of Bikaner & Jaipur, Delhi Branch and it was admitted during the evidence that the cheque was handed over by the accused

No.2 to the complainant at Delhi. The payment was to be made in respect of the transaction which had taken place at Jaipur. The cheque was to be presented to the drawee Bank at Delhi and the cheque was dishonoured by the drawee Bank at Delhi and it was returned to the complainant. However, the cheque was deposited by the complainant with its banker at Mumbai for presentation to the drawee Bank at Delhi for encashment. Admittedly, after the cheque was dishonoured, the complainant gave a notice from its registered office at Mumbai demanding the payment of the cheque amount.

6. In **Ahuja Nandkishore Dongre v. State of Maharashtra & anr.** **2007(1) Bom. C.R. (Cri.) 1031**, the complainant was a resident of village Soyjana, taluka Manora, Dist. Wasim. He was working at Bhandara. The accused was also resident of Bhandara and the complainant had given a hand loan to the accused at Bhandara. The accused had issued a cheque drawn on Bank of India, Bhandara Branch, which was dishonoured. The complainant presented the cheque at Digras Branch of Yavatmal Urban Co-operative Bank and the cheque was returned as dishonoured a account was closed with the drawee Bank. After that, Advocate of the complainant issued a notice to the accused from Digras and the complaint was filed at Digras. In such circumstances, it was held that merely

issuance of notice by the lawyer from Digras would not give jurisdiction to the Court at Digras. The learned Judge held that mere presentation of cheque at some other place where the complainant does not reside and issuance of notice from the said place would not give jurisdiction. The learned Judge observed that the payment is expected to be made at the place where the complainant ordinarily resides or if the complainant is a company or a firm where its registered office is situated. In **Jinraj Paper Udyog v. Dinesh Associates & Anr. 2009 (2) Bom.C.R.81**, the learned Judge of this Court observed as follows in para 6:

"6. Since "the payee" is required to issue a notice demanding payment, such place of giving notice would be where, if payee is a company (or other registered establishment) it has a registered office, and in other cases, normally, where the payee ordinarily resides or work for gain, and not any place from where the payee may choose to despatch a notice."

The same view was taken in number of cases, including a recent Judgment in Criminal **Application No. 2674 of 2008 (Hemlata Raghunath Pendharkar vs. Jaswantsingh Rajaram Sonawane & Anr.**

7. In **Mrs. Preetha S.Babu vs. Voltas Ltd. & Anr. 2010 ALL MR (Cri) 1025**, a contract for supply of air-conditioners had taken place between the accused company situated at Ernakulam in Kerala. Towards payment and discharge of their liability, the accused had issued a cheque on Syndicate Bank, Angamaly Branch, Ernakulam, Kerala. The head office of the complainant was situated in Mumbai. The cheque was deposited with Citibank, Fort Branch, Mumbai, which was duly presented to the drawee Bank and was dishonoured. The complainant issued a notice to the accused from Mumbai demanding payment. In spite of notice, payment was not made and the complaint was filed in the Court of Metropolitan magistrate at Mumbai. After referring to several authorities, the Division Bench of this Court dismissed the writ petition filed by the accused challenging the jurisdiction of the Metropolitan Magistrate. Holding that admittedly the complainant's registered office is situated at Mumbai and the notice was issued from Mumbai and accused was called upon to make payment in Mumbai and therefore Metropolitan Magistrate Mumbai has jurisdiction. In the present case, the registered office of the complainant is at Mumbai and after the cheque was dishonoured, the notice was issued from Mumbai for making payment. Naturally, the payment was expected to be made

to the complainant at Mumbai. In view of these two facts which took place at Mumbai, the Metropolitan Magistrate, Mumbai would get jurisdiction to entertain the complaint in view of the law settled in above referred authorities which are based on **K.Bhaskaran**.

8. In **M/s. Harman Electronics (P) Ltd. v. National panasonic India Ltd. 2009 (1) ALL MR (Cri) 280 (S.C.)**, the cheque was issued at Chandigarh. The complainant also had a branch office at Chandigarh, though its head office was at Delhi. The cheque was presented at Chandigarh and was also dishonoured at Chandigarh. However, the complainant issued a notice upon the accused asking to make payment from New Delhi. The notice was served upon the accused at Chandigarh. Thereafter, the complaint was filed at Delhi. The trial Court held that it had jurisdiction since the payment was to be made to the complainant at Delhi and the accused had failed to make payment. The Supreme Court held that mere issuance of notice from Delhi would not by itself give rise to the cause of action but communication of the notice would. The Supreme Court observed in para 25 thus :-

"25. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-a-vis the provisions of the Code of Criminal Procedure."

In fact, it would appear that in **Harman Electronics**, whole of the transaction had taken place at Chandigarh and the complainant had also its branch office at Chandigarh but only to cause harassment to the accused, the notice was issued from Delhi and complaint was filed in Delhi. In these circumstances, the Supreme Court held that merely issuance of notice from Delhi would not give jurisdiction to the Delhi Court. Therefore, on facts, the authority in Harman Electronics would not be applicable to the facts of the present case.

9. In view of the above facts and the legal position, I find that the Metropolitan Magistrate at Mumbai has jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act.

Therefore, the impugned order passed by the trial Court at the stage of final arguments of the case to return the complaint to the complainant was not correct and needs to be set aside.

10. For the aforesaid reasons, the Writ Petition is allowed. The impugned order is set aside and the Criminal Case No. 2575/SS/05 is remanded back to the Special Metropolitan Magistrate, Mumbai, for proceeding with the trial from the stage where it was discontinued and to dispose of the same on its own merits, as early as possible.

(J.H.BHATIA,J.)