**(2011) 05 BOM CK 0033**

**In the Bombay High Court**

**Case No :** Criminal Application No. 314, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 337, 338, 339 and 340 of 2011

Mr. Jambu Kumar Jain and Mr. Prafull Kumar Jain — APPELLANT

Vs

TATA Capital Limited and Others — RESPONDENT

**Date of Decision :** 04-05-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 178, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** AIR 2012 Bom 10 : (2012) 1 CivCC 131 : (2012) 1 Crimes 390 : (2011) 6 MhLj 149 : (2012) 1 RCR(Civil) 109 : (2012) 1 RCR(Civil) 109 : (2011) 4 RCR(Criminal) 773 : (2011) 4 RCR(Criminal) 773

**Hon'ble Judges :** J.H. Bhatia, J

**Bench :** Single Bench

**Advocate :** Prabhjit Jauhar, Arun Arora, Atman Mehta and Sharandeep Garchaq, instructed by Haresh Mehta and Co, for the Appellant; Subodh Desai, for the Respondent No. 1. and V.B. Konde Deshmukh, APP for the Respondent No. 6-State, for the Respondent

**Final Decision :** Allowed

## Judgement

J.H. Bhatia, J.—Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties.

2. This group of applications filed u/s 482 of Code of Criminal Procedure the processes issued by by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, u/s 138 of the Negotiable Instruments Act against the applicants in different complaint cases, are sought to be quashed on the ground that the Magistrate at Mumbai has no jurisdiction.

3. The Respondent No. 1 has filed different complaint cases u/s 138 of Negotiable Instruments Act against the accused No. 1/Respondent No. 2 - Nanesh Foods Ltd. (formerly known as Samta Foods Ltd.) and its directors. The present applicants are the accused Nos. 4 and 5 and they are also said to be

directors of said Nanesh Foods Ltd. According to the complainant, it is a registered company having its head office at Fort, in Mumbai. It had advanced cash credit facility, term loan facility and working capital loan facility to the accused No. 1 company. In discharge of part of the liability, said company had issued cheques in favour of the complainant. Those cheques were dishonoured on presentation and inspite of service of statutory notice, the company and its directors had failed to make payment. Therefore, the complaints were filed in the Court of Metropolitan Magistrate, Ballard Pier, Mumbai.

4. The Petitioners have contended that the complainant/Respondent No. 1 has its Head Office at Mumbai and has a network of branches all over the country. The accused No. 1 - Nanesh Foods Ltd. is situated in Madhya Pradesh and the directors are also residing at Indore. Whole of the transaction had taken place at Indore. The agreement for the said loans and cash credit facility was also executed at Indore. The cheques in question were also drawn by the accused No. 1 company in favour of the complainant on its account maintained with Andhra Bank, Jawahar Nagar Branch, Indore. The cheques were presented and dishonoured by the drawee Bank at Indore. Only the notice was issued by the complainant from Mumbai, where its head office is situated. It is contended that merely because the head office of the complainant is situated at Mumbai and notice was issued from Mumbai, the Magistrate at Mumbai does not get jurisdiction.

5. On the other hand, the learned Counsel for the complainant/Respondent No. 1 vehemently contended that the cheques were deposited by the complainant with its bankers i.e. HDFC Bank, Kanjurmarg Mumbai and the cheques were presented to Andhra Bank Cheque Processing Centre, Mumbai and the cheques were dishonoured by Andhra Bank Cheque Processing Centre, Mumbai and intimation of the same was also given by Andhra Bank from Mumbai to the head office of the complainant at Mumbai. After that the complainant issued notices from its head office at Mumbai making demand at Mumbai which the accused persons failed to comply and to make the payment and as part of the transaction had taken place at Mumbai, the Metropolitan Magistrate at Mumbai has got jurisdiction.

6. In K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , the Supreme Court had observed thus in paras 14, 15 and 16:

14. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. The 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

 

five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence u/s 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 u/s 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 u/s 138 of the Act.

However, in Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., , the Supreme Court made it clear that the presentation has to be to the bank with which the drawer has an account and against which account the cheque had been issued. The Supreme Court made it clear that "the bank" referred to in proviso (a) to Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not any bank where the cheque is presented for collection. This position has been made clear by this Court in number of cases including Ahuja N. Dongre v. State of Maharashtra 2007 (1) Bom.C.R. 1031 and in Prabhu Dayal Modi v. Euro Developers Pvt. Ltd. and Anr. 2010 (3) Bom.C.R. 801. The payee may deposit the cheque with its banker for presentation to the drawee bank but depositing the cheque by the payee with his own banker does not amount to presentation for encashment. The payee bankers may be acting only as an agent on behalf of the payee for the purpose of presentation and encashment of the cheque, but the cheque has to be always presented to the drawee Bank with whom the account is maintained and against which account the drawer has issued the cheque.

7. The record shows that in the present case, the agreement for loan had taken place at Indore and the deed of agreement was executed at Indore by both the parties. Admittedly, the complainant has a network of branches all over the country, including at Indore. The cheques in question were issued by the accused company at Indore against its account maintained with Andhra Bank, Jawahar Nagar Branch, Indore and, therefore, the cheques were required to be presented to the drawee Bank i.e. Andhra Bank, Jawahar Nagar Branch, Indore and not at any other branch of the said Bank. The contention of the complainant that the cheque was presented to Andhra bank, Cheque Processing Centre, Mumbai and from there it was dishonoured cannot be accepted. The Cheque Processing Centre at Mumbai may be a facility available for early clearance of the cheques but the Cheque Processing Centre at Mumbai cannot be equated with the drawee

Bank to which the cheque is required to be presented. It appears that the complainant deposited the cheques with its bankers i.e. HDFC, Kanjurmarg, which in turn forwarded the said cheque to Cheque Processing Centre of Andhra Bank at Mumbai. The Cheque Processing Centre would eventually send the said cheques to Jawahar Nagar Branch of Andhra Bank being the drawee bank, and only after getting intimation from that Bank, the cheque could be returned as dishonoured. Thus, the cheques were presented to the drawee bank at Indore and they were also dishonoured from Indore, though the intimation of the same might have been issued by the Cheque Processing Centre of Andhra Bank at Mumbai.

8. In view of the above facts, merely because the notice was issued by the complainant from Mumbai, where its head office is situated, the Magistrate at Mumbai does not get the jurisdiction. The case is squarely covered by M/s. Harman Electronics (P) Ltd. and Anr. v. National Panasonic India Ltd. 2009 ALL MR 280 (S.C.) where the question was, if the company has head office at one place and branches at different places and whole of the transaction had taken place within the area where its branch is situated and not where the head office is situated, whether the notice could be issued from the place where its head office is situated. In that case, accused/Appellant was resident at Chandigarh and was carrying on business at Chandigarh. Complainant had its head office at Delhi but also had branch office at Chandigarh. Transaction between the parties had taken place at Chandigarh and the accused had issued cheque in favour of the complainant at Chandigarh against its banker situated at Chandigarh and thus, the bank at Chandigarh was drawee bank. However, the complainant deposited the cheque with its banker at Delhi, which in turn presented the same to the drawee bank at Chandigarh. Cheque was dishonored and the complainant issued a notice for payment from Delhi. As the payment was not made, the complainant filed a complaint u/s 138 of the Negotiable Instruments Act before the Magistrate at Delhi. The Supreme Court held that a company or financial institution having several branches has to file the complaint at the place where the transaction had taken place, cheque was drawn, presented and dishonored. Merely because company issued a notice from the place where its head office is situated and where no part of the transaction had taken place, it could not file the complaint before the Magistrate having jurisdiction over the area where the head office is situated. The Supreme Court in M/s. Harman Electronics (P) Ltd. (supra), observed thus in para 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 provisons of the Code of Criminal Procedure.

 

Thus, all these cases are squarely covered by M/s. Harman Electronics (P) Ltd. and the territorial jurisdiction is with the Court at Indore and not with the Metropolitan Magistrate at Mumbai. Therefore, the process issued by the Magistrate at Mumbai in each of these cases is liable to be quashed and set aside.

9. For the aforesaid reasons, all these Applications are allowed and the impugned orders are hereby set aside. The process issued by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai is hereby quashed. The Metropolitan Magistrate shall within three weeks from this day return the complaints to the complainant for presentation before the competent Court having jurisdiction and the complainant may file the complaints before the Magistrate having jurisdiction within three weeks thereafter. If the complaint is taken back and presented within the stipulated period, the accused shall not take objection on the ground of limitation. The complainant shall be at liberty to move the Metropolitan magistrate for refund of Court fee and if such an application is moved, he shall decide as per law.

Rule made absolute accordingly.

10. Parties to act on authenticated copy of this order.