

(2014) 03 DEL CK 0158
In the Delhi High Court
Case No : Crl. M.C. No. 612 of 2013

Neeraj Parashar

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178, 179, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 2 JCC(NI) 64

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Sandeep Kumar, Advocate for the Appellant; Karan Singh, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.P. Vaish, J.—This is a petition filed by the petitioner u/s 482 Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") against the impugned order dated 23.1.2012 passed by learned Metropolitan Magistrate (West), Tis Hazari Courts, Delhi in complaint Case No. 81/1 P.S. Paschim vihar u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") titled Krishan Kumar Singh Vs. Neeraj Parashar. The respondent No. 2/complainant herein filed a complaint for the offence u/s 138 of the Act inter alia on the grounds, that in the month of December, 2010, the petitioner herein approached the respondent No. 2 for financial assistance of Rs. 2.00 lakhs (Rupees two lakhs). The petitioner issued cheque bearing No. 011896 for Rs. 2.00 lakhs (Rupees two lakhs) dated 20.5.2011 drawn on ICICI Bank, Tagore Town, Allahabad Branch, 19A, Tagore Town, Allahabad-211002 towards repayment of the said amount. On presentation the said cheque was dishonoured with the remarks "funds insufficient". The respondent No. 2 sent a legal demand notice on 8.12.2012. Despite service of notice, this petitioner failed to make the payment of the amount of cheque. Hence respondent No. 2/complainant filed the complaint.

2. The short question involved in the present petition is whether courts at Delhi have jurisdiction to entertain and try the complaint. Learned counsel for the petitioner submits that according to respondent No. 2 money was paid in Allahabad, the cheque in question was handed over at Allahabad and, therefore, courts at Delhi have no jurisdiction to entertain and try the present complaint.

3. I have carefully considered the submissions made by learned counsel for the petitioner.

4. The controversy with respect to the territorial jurisdiction of the courts u/s 138 of the Act has been set at rest by the Supreme Court of India in Nishant Aggarwal Vs. Kailash Kumar Sharma, wherein the Hon'ble Supreme Court after considering Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., , reaffirmed the jurisdiction of the Court where the cheque is presented for collection. In the said case it was held:

"1.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 u/s 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 u/s 138 which have been noted in paragraph supra. This Court reiterated that the five different acts which are the components of offence u/s 138 of the N.I. 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 u/s 138 of the N.I. 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 u/s 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 u/s 482 of the Code and dismissed the petition filed by the appellant-accused."

5. Recently in Escorts Limited Vs. Rama Mukherjee, it was observed that the Court within whose jurisdiction the cheque was presented for encashment has the jurisdiction to entertain the complaint u/s 138 of the Act.

6. In the instant case, in para. 18 of the complaint, respondent No. 2/ complainant has averred that the cause of action for filing the complaint arose within the jurisdiction of police station Paschim vihar, since the banker of the complainant i.e. State Bank of Bikaner and Jaipur, Paschim Vihar Branch, New Delhi is situated within its jurisdiction. The cheque in question was presented for encashment with the said banker and the same was returned dishonoured at Delhi and, therefore, the cause of action to file the complaint has arisen at Delhi.

7. Applying the law laid down in Nishant Aggarwal's case (supra) and Escorts Ltd. (supra), Delhi courts have jurisdiction to entertain and try the present

complaint. There is no merit in this petition and the same is hereby dismissed.
Crl. M.A. No. 1980/2013

The application is dismissed as infructuous.