

(2014) 03 DEL CK 0329

In the Delhi High Court

Case No : Crl. Rev. No. 433 of 2013 and Crl. M.A. No. 11254 of 2013

Shilpi Communication Pvt. Ltd.

APPELLANT

Vs

Delicia Foods India Pvt. Ltd.

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178, 179, 201, 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 2 JCC 69

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

Bench : Single Bench

Advocate : Amit Dayal, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

V.P. Vaish, J.—This revision petition filed by the petitioner Shilpi Communication Pvt. Ltd. u/s 397 read with section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") against the impugned order dated 21.6.2013 passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi whereby the complaint filed by the petitioner was returned as per the provisions of Section 201 of Cr.P.C. for presentation in the court of competent jurisdiction. Learned counsel for the petitioner submits that the respondents availed the loan of Rs. 60.00 lakhs (Rupees sixty lakhs) from the complainant and in discharge of the said liability, the respondents issued cheque bearing No. 221343 dated 25. L2013 for Rs. 50.00 lakhs (Rupees fifty lakhs). The petitioner presented the said cheque for encashment with its banker, namely, Punjab National Bank, SME Branch, 372, Patparganj industrial Area, New Delhi-110092 which was dishonoured with the remarks "insufficient funds". The petitioner served a legal demand notice dated 6.5.2013 and despite service of notice respondent failed to make payment of amount of the cheque.

2. Learned counsel for the petitioner contends that the cheque was presented for encashment by the petitioner with its banker at Delhi, the cheque was payable at

par and was presented for encashment to the drawee bank through the clearing house of Reserve Bank of India at New Delhi, the petitioner received, the information regarding dishonour of the cheque at Delhi and, therefore, Delhi courts have jurisdiction to entertain and try the present complaint.

3. The controversy involved in the present petition regarding territorial jurisdiction of the courts u/s 138 of the Negotiable Instruments Act, 1881 has been set at rest by the Supreme Court of India in Nishant Aggarwal Vs. Kailash Kumar Sharma, and Escorts Limited Vs. Rama Mukherjee, . in Nishant Aggarwal's case (supra) 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 observed:

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 NI 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 NI 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.

4. A similar view was taken by the Apex Court in Escorts Limited (supra) wherein it was held 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.

5. In the instant case in para 12 of the complaint the petitioner has averred that the loan was provided by the petitioner to respondent No. 1 through cheques at Delhi. Cheque in question was handed over and received by the complainant at New Delhi. The cheque was also deposited by the complainant for collection with its banker at Delhi and the same was returned by the drawee bank at New Delhi and the petitioner received information regarding dishonour of the cheque at Delhi and demand notice was also sent from Delhi, therefore, Delhi courts have jurisdiction to entertain and try the present complaint.

6. Thus, 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.

7. In view of the above, the petition is allowed and the impugned order dated 21.6.2013 passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi is set aside. The trial court is directed to proceed with the matter in accordance with law. The petitioner is directed to appear before the trial court on 15.4.2014. The revision petition and the Crl. M.A. No. 11254/2013 stand disposed of.