

Sumson Exports Pvt. Limited and Others Vs Jeyessar International Pvt. Ltd.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 24, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 201, 482
Negotiable Instruments Act, 1881 (NI) â€” Section 118, 138, 139

Hon'ble Judges: Ritu Bahri, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ritu Bahri, J.

This petition u/s 482 of the Code of Criminal Procedure is for quashing criminal complaint No. 12395 of 2010 (Annexure P4), summoning order dated 23.8.2010 and the revisional order dated 28.1.2011.

2. The complainant company is incorporated under the Indian Companies Act, 1956 having its registered office at TG-2B/10, Garden Estate, DLF

City, Phase 1, Meharuli, Gurgaon Road, Gurgaon Haryana. The company has been carrying on the business of trading in steel since 2003-04. The

accused company has its registered office at 33A, Manohar Pukar Road, Kolkata - 700029 (West Bengal) and is engaged in the distribution and

wholesale of Indian made Foreign Liquor and Beer in Kolkata. The complainant has been approached by the accused person since 1998 seeking

loan for the purposes of investment into the business. The loan was repayable along with interest. The loan taken by the accused is Rs.

72,50,000/- and the accused was to repay the loan jointly. A sum of lacs stood outstanding towards the above mentioned loan. The balance sheet

of the complainant for the financial year ending 31.3.2009 reflected Rs. 9,98,145/- as loan advance to the accused plus interest which remained

outstanding and includes the principal of lacs and interest of Rs. 1,98,145/-. The accused persons gave the complainant cheques totalling to lacs.

The cheques issued by the complainant were drawn by the accused on the account maintained by them with the State Bank of India, Kalighat,

79C, Shyama Prosad Mukherjee Road, Kolkata, West Bengal - 700026. These cheques were presented during their validity by the complainant

to its bank namely HDFC Bank Ltd., Global Business Park, Gurgaon. The Bank sent the cheques for collection but the same were returned

dishonored by the bank of the accused namely State Bank of India, Kalighat, 79C, Shama Prasad Mukherjee Road Kolkata, West Bengal-

700026. The cheque return memos of bank gave the reason for dishonor as under:

Exceeds Arrangement.

3. Thereafter notices were sent on 9.7.2010 on behalf of the complainant informing the accused that the above cheques had been returned unpaid.

A demand on behalf of the complainant was made for payment of the money. This notice was despatched on 9.7.2010 to the accused by means of

Registered Post and Courier. The Courier was duly delivered to all the accused persons on 10.7.2010. The accused persons refused to accept the

notices by Registered Post which shows the mala fide intention of the accused to commit cheating.

4. In view of the above background, the complainant have been constrained to file the complaint u/s 138 of the Negotiable Instruments Act.

5. Vide order dated 23.8.2010 (Annexure P2) the accused had been summoned to face trial. The revision filed by the accused has been dismissed

on the ground that the cheques issued by the company bear the printed stamp of the accused-company which shows that these cheques are MICR

cheques. By virtue of Section 139 of the Act, a presumption is liable to draw that the holder of the cheques i.e. the complainant had received the

same qua the discharge in whole or in part of a debt or other liability. Further, by virtue of Section 118 of the Act, a presumption can be drawn

that the cheque was issued for consideration. An application was filed u/s 201 Code of Criminal Procedure by the accused that the cheques in

question were issued and delivered in Gurgaon and that the accused company is having its registered office at Kolkata and they are having their

account with State Bank of India, Kalighat, 79C, Shama Prasad Mukherjee Road Kolkata, West Bengal-700026. The case of the complainant is

that the accused have questioned the territorial jurisdiction of the Courts at Gurgaon where the complainant merely handed over the cheques to the

agent/collecting bank. This application u/s 201 Code of Criminal Procedure was dismissed by the Judicial Magistrate Ist Class, Gurgaon on

28.1.2011.

6. Mr. Suhail Sehgal, learned Counsel for the Petitioners, has vehemently argued that as per the law laid down in K. Bhaskaran Vs. Sankaran

Vaidhyan Balan and Another, , Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., and M/s Harman Electronics (P) Ltd. And Anr. v. M/s

National Panasonic India Ltd. 2009 (1) RCR (Cri.) 458. The presentation of the cheques by the complainant at Gurgaon will not create territorial

jurisdiction at Gurgaon because the business transaction doing place is Kolkata and the cheques were issued by the accused from their account in

State Bank of India, Kalighat, 79C, Shama Prosad Mukherjee Road Kolkata, West Bengal-700026. The cause of action does not accrue at

Gurgaon.

7. Heard learned Counsel for the Petitioners. After going through the complaint, the ratio in M/s Harman Electronics (P) Ltd."s case (supra) is not

applicable to the facts of this case. In M/s Harman Electronics (P) Ltd."s case (supra) the Supreme Court had noted that;

I. The complainant had a branch office at Chandigarh.

II. Transactions were carried on only from Chandigarh.

III. Cheque were issued and presented at Chandigarh; and

IV. Dishonour of the cheques took place at Chandigarh. Hence, Delhi Court had no jurisdiction to entertain a complaint under Section 138 of the Negotiable Instruments Act. Section 138 of the Act is reproduced as under:

Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a

banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other

liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the

cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to

have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be

extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity,

whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by

giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of

the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due

course of the cheque, within fifteen days of the receipt of the said notice.

Explanation - For the purposes of this section, ""debt or other liability "" means a legally enforceable debt or other liability.

In the present case;

I. the complainant had registered office at Gurgaon.

II. The transaction of giving loan to the extent of Rs. 72,50,000/- was sanctioned from this office to the accused. The accused had made all the

payment to the complainant at Gurgaon.

III. The last payment of lacs had been sent by the cheques with the description "MICR". As per Section 139 of the Negotiable Instruments Act

this description relates to repayment of debt.

IV. The cheque was presented as per Section 138 of the Negotiable Instruments Act within six months at the HDFC Bank at Gurgaon for

collection from the parent bank of the accused in Kolkata.

V. The cheques were returned back with the comments ""Exceeds Arrangement"".

VI. Thereafter, the notice was sent to the accused by Registered Post/Courier on 9.7.2010 and on 10.7.2010 it was received back unserved.

8. Therefore, the Court at Gurgaon has the jurisdiction to enteratin the complaint u/s 138 of the Negotiable Instruments Act.

9. Finding no merit, the criminal miscellaneous is dismissed.