
K. Srinivasulu Vs International Panaacea Limited

Crl. M.C. No. 273/2013

Court: Delhi High Court

Date of Decision: Aug. 4, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 171, 177, 178, 179, 482#Negotiable Instruments Act, 1881 (NI) â€” Section 138

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

Bench: Single Bench

Advocate: Rajesh Gogna, Advocate for the Respondent

Final Decision: Dismissed

Judgement

V.P. Vaish, J.

The petitioner, Mr. K. Srinivasulu has filed the present petition u/s 482 of the Code of Criminal Procedure Code, 1973

(hereinafter referred to as `Cr.P.C.") against the order dated 19.12.2012 passed by learned Metropolitan Magistrate/CJ-02, Patiala House

Courts, New Delhi in Complaint Case No.12/2012 titled `M/s. International Panaacea Limited vs. Mr. K. Srinivasulu" for the offence u/s 138 of

the Negotiable Instruments Act (for short `the Act").

2. Briefly stated the facts of the case are that respondent No.1/ complainant filed a complaint for the offence punishable u/s 138 of the Act against

the petitioner on the allegations, inter alia, that the petitioner/ accused being the proprietor of M/s. Sonalika Agri Bio Crop Science was appointed

as a dealer by the complainant company for the sale of its products on outright sale basis and an agreement for the said purpose was executed on

16.11.2010. In terms of agreement, the complainant company supplied various bio-fertilizers and bio- pesticides products to the petitioner on

credit from time to time as per order placed by the petitioner. As per the books of accounts being maintained by the complainant company in the

ordinary course of business, accused firm was liable to pay a sum of Rs.4,49,636/- (Rupees four lakhs, forty nine thousand six hundred and thirty

six only). The accused issued cheque bearing no.875509 for Rs.4,49,636/- dated 20.10.2011 drawn on Oriental Bank of Commerce, Bhagya

Nagar Branch, Kurnool, Andhra Pradesh in favour of complainant towards the payment of outstanding dues. The respondent No.1 deposited the

said cheque with its banker, namely, Royal Bank of Scotland, New Delhi. On presentation, the said cheque was dishonoured with the remarks

funds insufficient", vide return memo dated 21.10.2011 which was received by the complainant company on 25.10.2011. Thereafter, the

respondent No.1 served a legal notice dated 12.11.2011. Despite service of the said notice, the petitioner failed to make payment of the cheque in

question within the stipulated period.

3. Taking cognizance of complaint, learned Metropolitan Magistrate, New Delhi summoned the petitioner for the offence u/s 138 of the Act.

4. The petitioner moved an application u/s 177 of Cr.P.C. which was dismissed by learned trial court vide impugned order dated 19.12.2012.

Against the said order, the petitioner preferred the present petition.

5. I have given my thoughtful consideration to the submission made by counsel for the respondent and carefully gone through the material placed on

record. I have also perused the brief synopsis filed on behalf of the petitioner on 15.4.2013 and on behalf of respondent No.1 on 27.4.13.

6. The petitioner has filed the present petition on the ground that the courts at Delhi have no territorial jurisdiction to entertain and try the complaint.

It is alleged by the petitioner that neither any part of the offence or transaction falls within the jurisdiction of Delhi courts nor cause of action arose

within the jurisdiction of Delhi courts and, therefore, Delhi courts have no jurisdiction to entertain and try the complaint.

7. The short question involved in the present case is whether Delhi courts have jurisdiction to entertain and try the complaint u/s 138 of the Act.

The issue regarding territorial jurisdiction is to be considered with reference to Section 138 of the Act and the applicable provisions of Cr.P.C. i.e.

Sections 171, 178 and 179 of Cr.P.C.

8. Section 138 of the Act reads as under:

138. 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 provision of this Act, be punished with imprisonment for a term

which may extend 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.

9. Sections 177, 178 and 179 Cr.P.C. read as follow:

177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was

committed.

178. Place of inquiry or trial.-

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such

local areas.

179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a

consequence which has 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.

10. The Hon"ble Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , after considering Sections 178 and 179 of

Cr.P.C. has opined that an offence may be committed in different localities and thus can be tried in any court having jurisdiction over said localities.

To put it pithily, law recognizes more than one court having territorial jurisdiction and the issue of territorial jurisdiction would have to be decided

with reference to whether a particular offence was committed within the territorial jurisdiction of a Court.

11. A bare perusal of Section 138 of the Act highlights the following essential components of the offence:

(i) drawing of the cheque;

(ii) presentation of the cheque to the bank;

(iii) returning of the cheque unpaid by the drawee bank;

(iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount;

(v) Failure of the drawer to make the payment within 15 days of the receipt of the notice.

12. In the brief synopsis filed on behalf of the petitioner, it is stated that the agreement between the parties was executed at Kurnool, Andhra

Pradesh and the transactions took place at Kurnool and the cheque was issued from the bank account of the petitioner at Kurnool but respondent

No.1 has filed the complaint at Delhi. The petitioner has relied upon the judgment in the case of Harman Electronics (P) Ltd. and Another Vs.

National Panasonic India Ltd., , wherein it was held that the court where the cheque is deposited for collection, has jurisdiction to try the case u/s

138 of the Act in terms of principles laid down in K. Bhaskaran" case (supra). It was further observed that a notice of dishonour u/s 138 of the

Act alone would not confer the jurisdiction to try the accused at the place of issuance of the notice.

13. A similar question cropped up before the Hon"ble Supreme Court of India in Nishant Aggarwal Vs. Kailash Kumar Sharma, , wherein after

considering the judgment in K. Bhaskaran (supra) and Harman Electronics Pvt. Ltd. (supra), it was observed that issue of territorial jurisdiction of

the courts did not even arise for consideration, therefore, it does not affect the ratio in the case of K. Bhaskaran"s (supra).

14. In Nishant Aggarwal"s case (supra), the Apex Court reaffirmed the jurisdiction of the Court where the cheque is presented for collection. In

the said case it was observed as under:

...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?

xxxx xxxx xxxx xxxx xxxx xxxx xxxx

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.

15. In another case ""FIL Industrial Limited vs. Imtiyaz Ahmed Bhat"", Criminal Appeal No.1168 of 2013 (arising out of SLP (Crl.) No.8096 of

2012), decided on 12.8.2013, wherein the Apex Court followed the dictum in Nishant Aggarwal's case (supra).

16. In view of the authoritative pronouncement of the Apex Court in Nishant Aggarwal's case (supra) and FIL Industrial Limited vs. Imtiyaz

Ahmed Bhat (supra), it is clear that more than one act compose the offence u/s 138 of the Act and if any one of these five different acts are done in

a particular locality, the court having jurisdiction at that locality can become the place of trial for the offence u/s 138 of the Act, therefore, the

complainant can choose any one of that courts having jurisdiction or any one of the local area within the territorial jurisdiction of which any one of

the five acts was done.

17. In the instant case, respondent No.1/complainant has alleged in the complaint that as per clause 18 of the agreement dated 16.11.2010, in

case of any dispute, Delhi courts have jurisdiction. The head office and corporate office of complainant are situated in Delhi, the cheque was

handed over to the complainant at Delhi and the cheque was deposited with Royal Bank of Scotland, New Delhi. The information regarding

dishonour of the cheque was received in Delhi and the legal notice was also sent from Delhi, and therefore Delhi Courts have jurisdiction to

entertain and try the complaint. Applying the law laid down in Nishant Aggarwal's case (supra), to the facts of the present case, Delhi courts have

jurisdiction to entertain and try the complaint filed u/s 138 of the Act.

18. In the light of the above discussion, the petition fails, deserves to be dismissed and the same is hereby dismissed.