

**(2012) 11 AP CK 0088**

**Andhra Pradesh High Court**

**Case No:** Criminal P. No. 9187 of 2010

Jannathal Mala

APPELLANT

Vs

S. Bala Ramudu and Another

RESPONDENT

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**Date of Decision:** Nov. 2, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 179, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 139

**Citation:** (2013) 1 ALD(Cri) 435 : (2013) ALLMR(Cri) 184 : (2013) 2 ALT(Cri) 69 : (2013) 2 BC 521 : (2013) CriLJ 940

**Hon'ble Judges:** G. Krishna Mohan Reddy, J

**Bench:** Single Bench

**Advocate:** P. Veera Reddy, for the Appellant; P. Rajani Reddy, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

G. Krishna Mohan Reddy

1. This Criminal Petition is filed u/s 482 Cr.P.C. to quash proceedings in S.T.C. No. 87 of 2009 (STC) on the file of the Court of Judicial Magistrate of First Class, Jammalamadugu, Kadapa District, registered for offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") in favour of the petitioner herein. The petitioner herein is the accused and the first respondent herein is the complainant in the STC. For convenience sake, I refer the parties as arrayed in the STC.

2. The complainant filed the complaint u/s 138 of the Act against the accused on the ground that the accused issued cheques in respect of a legally enforceable debt, but they were dishonoured with an endorsement that the corresponding account of the accused was closed following which the complainant issued statutory notice under

that section to the accused demanding the payment of the amount, but it was not complied with.

3. Learned counsel for the accused mainly contends that long prior to the issuance of the cheques, the account of the accused was closed. By virtue of Section 138 of the Act there should be account in the name of the accused at least by the date of issuing the cheque. Thus the case cannot squarely be brought within the purview of that provision. He further contends that the accused got business at Delhi and the cheques were said to have been drawn on HDFC Bank, Varanasi branch, Uttar Pradesh (UP), and just the complainant presented the cheques in his bank in Andhra Pragathi Grameena Bank, Jammalamadugu whereas the cheques are said to have been returned ultimately with the said endorsement by reason of which no cause of action arose within the jurisdiction of the Court below as a result of which that Court got no territorial jurisdiction to entertain the matter. He also claims that by virtue of Section 177 Cr.PC the Court below will have jurisdiction to entertain the matter provided the alleged offence took place within the territorial limits of the Court below which is not the case here. He claims that the place of issuance of notice u/s 138 of the Act does not determine the jurisdiction of the Court. In support of his contentions, he has placed reliance upon the decisions reported in [Harman Electronics \(P\) Ltd. and Another Vs. National Panasonic India Ltd.](#), and [Jugesh Sehgal Vs. Shamsheer Singh Gogi](#),

4. On the other hand, learned counsel for the complainant would contend that there are debatable points as to whether there was a legally enforceable debt or not whereas by virtue of Section 139 of the Act, when the accused issued the cheques, unless the contrary is proved, it is to be presumed that he issued the cheques in respect of a legally enforceable debt. Apart from that while relying on a decision of the Supreme Court reported in [K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another](#), she has contended that the place of presentation of the cheque in the bank of the complainant and also the place wherefrom the notice was sent determine the territorial jurisdiction of the Court to entertain the matter.

5. So far as the question of presumption of existence of a legally enforceable debt is concerned, importantly as per the allegations made the accused issued the cheques to the complainant. By virtue of Section 139 of the Act, there shall be a presumption thereby that the accused did so only in respect of a legally enforceable debt. With regards to the question of territorial jurisdiction of the Court below to entertain the matter, it is not in dispute that the accused is a businessman at Delhi and the cheques were drawn on HDFC Bank, Varanasi branch, UP and the complainant presented the cheques in Andhra Pragathi Grameena Bank, Jammalamadugu for the collection of the amount in consequence of which the cheques were returned with an endorsement that the account of the accused was closed. It is necessary to extract Section 138 of the Act in the present context. This provision enjoins "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."

6. In K. Bhaskaran's case (3 supra) the Supreme Court observed that the offence u/s 138 of the Act could be completed only with the concatenation of the following acts: (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, and (5) Failure of the drawer to make payment within 15 days of the receipt of the notice as contemplated under the Act. However, there is no specific classification as to whether the presentation of the cheque is to be made in the drawer bank or drawee bank.

However it is clarified by the Supreme Court that 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 could become the place of trial for the offence u/s 138 of the Act. In other words, the complainant could 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. So this provides that the place where the corresponding notice was issued to the drawer of the cheque demanding payment of the cheque amount would also be taken into consideration for the purpose of deciding the territorial jurisdiction of the concerned Court to entertain the matter.

7. On the other hand in M/s. Harman Electronics's case (1 supra) the accused, therein a resident of Chandigarh who was carrying on business at the same place. The respondent therein entered into a business transaction. The accused issued a cheque in respect of a legally enforceable debt to the complainant at Chandigarh

where the complainant also got branch office although his Head Office was at Delhi. The complainant presented the cheque in his bank at Chandigarh where it was returned with an endorsement "Payment stopped by drawer" vide corresponding memo dated 3012-2000. There was a dispute as to whether the said cheque was sent for collection to Delhi or not. Consequently the complainant issued a notice to the accused from Delhi asking him to pay the corresponding amount. The accused having received the notice failed or neglected to pay the amount within 15 days from the date of communication of the notice. Therefore, the complainant filed complaint before a Court at Delhi to punish the accused u/s 138 of the Act. Under those circumstances, a question was raised as to whether the Court at Delhi got jurisdiction to entertain the matter. The Supreme Court had considered various aspects including the decision reported in K. Bhaskaran's case (3 supra), and ultimately held "It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence u/s 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would." The Supreme Court also observed as follows.

Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. The court ordinarily will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary.

8. Thereby the Supreme Court clarified that by virtue of the provisos (a), (b) and (c) appended to Section 138 of the Act, there could be no doubt that the receipt of the notice would ultimately give rise to the cause of action for filing a complaint.

9. Apart from that Section 177 Cr.PC determines the jurisdiction of the Court. It enjoins "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." Subject to the provisions of Section 177 Cr.PC the application of those provisions does not arise here at all. When a statutory provision prescribes the procedure with regards to the place of trial accordingly that should be followed by reason of which any deviation therefrom is not permitted.

10. Further the provisions (a), (b) and (c) of Section 138 of the Act make it categorical that the bank before which the cheque is presented refers to only the drawer bank in the name of which the said cheque was issued. This provision does not include the bank of the payee to determine the question of jurisdiction of the Court in the present context. In respect of the question of closure of the account, no evidence is placed before the Court, hence the matter cannot be disposed of in that context.

These observations appear to be somewhat different from the observation made in K. Bhaskaran's case (3 supra) that the place of giving notice to the drawer of the cheque demanding payment of the cheque amount would also constitute for deciding the territorial jurisdiction of the Court.

11. In addition to that what is significant is that under the provisos contained in Section 138 of the Act that nothing contained in the body of the 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 was 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 payment of the amount of money by giving a notice in writing to the drawer of the cheque within thirty days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid (c) the drawer of such cheque fails to make the payment of the 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.

12. What is important is that the body of Section 138 of the Act makes it clear that such cheque should have been 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, in order to constitute the offence against such person. Thereby the words "Presented to the bank" as used in proviso (a) should be taken as meant only the drawer bank and not the drawee bank.

13. For the reasons discussed above, the Court below does not have any jurisdiction to entertain the matter on the ground that no cause of action arose within the jurisdiction of the Court. Hence the prosecution of the accused for the alleged offence before the Court below is not proper. In the result, the criminal petition is dismissed. Miscellaneous petitions pending if any shall stand closed.