

(2013) 12 CAL CK 0041

Calcutta High Court

Case No: CRR No. 1207 of 2009

Prasanta Paul

APPELLANT

Vs

Shriram Transport Finance Co.
Ltd. and Another

RESPONDENT

Date of Decision: Dec. 5, 2013

Citation: (2014) 1 CHN 729

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: ; Ranabir Roy Chowdhury for the opposite party No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Joymalya Bagchi, J.

None appears on behalf of the petitioner. The prayer for transfer has been made firstly on the ground that the cheque was dishonoured at the payee's banker at Sodhpur in North 24-Parganas and that notice of dishonour was also received at such place while no part of the offence was committed within the territorial jurisdiction of the trial Magistrate at Kolkata.

2. I find from the petition of complaint that opposite party No. 1/company carries on business at Kolkata and the cheque was presented for encashment in the Bank situated within the territorial jurisdiction of the concerned Magistrate. Accordingly, a part of the cause of action in respect of the offence had taken place within its territorial jurisdiction.

3. In [K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another](#), it has been held that one of the ingredients of the offence punishable u/s 138 of the Negotiable Instruments Act is the place where the cheque is presented for encashment. Admittedly, such presentation in the instant case was within the territorial jurisdiction of the learned Magistrate. In [Harman Electronics \(P\) Ltd. and Another Vs. National Panasonic India Ltd.](#), the Hon'ble Supreme Court while explaining the ratio

in K. Bhaskaran (supra) held that the sites of issuance of notice of dishonour would vest jurisdiction in the trial Magistrate as cause of action arose upon receipt thereof. However, in Harman (supra) the dishonoured cheque had not been presented for encashment within the territorial jurisdiction of the trial Magistrate.

4. In [Nishant Aggarwal Vs. Kailash Kumar Sharma](#), and [Escorts Limited Vs. Rama Mukherjee](#), , the Apex Court after analysing K. Bhaskaran (Supra) & Harman (supra) unequivocally held that presentation of the cheque for encashment is one of the ingredients of the offence u/s 138 of the Negotiable Instruments Act and if such presentation takes place within the territorial jurisdiction of the learned Magistrate, the latter shall have jurisdiction to try the offence.

5. In view of the law as enunciated above, there can be no dispute that a part of cause of action of the offence took place within the territorial jurisdiction of the learned Magistrate and the latter had jurisdiction to try such offence.

6. It has also been pleaded that as another case has been registered before learned CJM, Barasat, North 24-Parganas by the petitioner against the opposite party No. 1 and his employees for forcibly taking delivery of the vehicle which was under a hire purchase agreement in respect whereof the dishonoured cheque had been issued, the instant case be transferred to the said court and be tried as a counter case.

7. I am of the view that the instant case cannot be said to be a countercase to the case registered by the petitioner and hence the prayer for transfer to Barasat Court on that score is wholly untenable.

8. For the aforesaid reasons, I do not find any merit in the instant application praying for transfer of the instant case.

9. Accordingly, the application is dismissed.

10. The petitioner, however, would be at liberty to agitate all issues before the trial court including the issue that there was no legally enforceable debt or liability in respect of the dishonoured cheque after the vehicle had been taken away from him by the opposite party No. 1/company. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.