M/S Escorts Ltd vs Rama Mukherjee on 17 September, 2013

Equivalent citations: 2013 AIR SCW 5477, (2013) 132 ALLINDCAS 156 (SC), AIR 2013 SC (CRIMINAL) 2208, 2014 ACD 567 (SC), 2013 (4) AIR KANT HCR 557, AIR 2014 SC (SUPP) 1026, (2014) 1 PUN LR 249, (2014) 1 CIVILCOURTC 216, 2013 CRILR(SC MAH GUJ) 1001, (2014) 2 MPLJ 301, (2013) 4 RECCIVR 838, (2014) 1 MH LJ (CRI) 520, 2014 CALCRILR 3 317, (2014) 1 ALLCRIR 420, 2014 (1) SCC (CRI) 808, (2014) 3 MAH LJ 284, (2014) 1 BOM CR 169, (2014) 2 CURCC 66, (2014) 57 OCR 85, 2014 (2) SCC 255, (2013) 4 MAD LJ(CRI) 50, (2013) 2 NIJ 453, (2013) 4 BANKCAS 191, (2013) 11 SCALE 487, (2013) 4 BOMCR(CRI) 646, (2013) 2 MADLW(CRI) 721, (2013) 4 DLT(CRL) 211, (2013) 4 JCR 324 (SC), (2013) 4 RECCRIR 771, (2013) 4 ALLCRILR 574, (2013) 83 ALLCRIC 966, 2013 CRILR(SC&MP) 1001, (2013) 3 CHANDCRIC 402, (2013) 116 CORLA 97, 2013 ALLMR(CRI) 4060, (2013) 4 CRIMES 187

Author: Jagdish Singh Khehar

Bench: Jagdish Singh Khehar, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1457 OF 2013
(Arising out of SLP (Criminal) No. 7325 of 2012)

M/s. Escorts Limited … Appellant

Versus

Rama Mukherjee … Respondent

J U D G M E N T

Jagdish Singh Khehar, J.

1. This Court on 21.2.2013 directed that the instant SLP (Crl.) No.7325 of 2012 be listed after the pronouncement of judgment in Criminal Appeal no. 808 of 2013 (arising out of SLP (Crl.) No. 9434 of 2011), titled Nishant Aggarwal vs. Kailash Kumar Sharma. Nishant Aggarwal's case (supra) was

disposed of by this Court on 1.7.2013. The pointed question, which arose for consideration in this Court's aforesaid determination was, whether the Court within the jurisdiction whereof, the complainant had presented the dishonoured cheque (issued by an accused), had the jurisdiction to entertain a petition filed under Section 138 of the Negotiable Instruments Act. While disposing Criminal Appeal No.808 of 2013, this Court returned a finding in the affirmative by observing as under:

> "(7) We have already narrated the case of both the parties in the pleadings portion. In order to answer the only question, it is relevant to note that the undisputed facts in the context of territorial jurisdiction of the learned Magistrate at Bhiwani are that the drawee of the cheque i.e., the respondent/complainant is a resident of Bhiwani. The native village of the respondent, namely, village Barsana is situated in District Bhiwani. The respondent owns ancestral agricultural land at village Barsana, District Bhiwani. It is also asserted that the respondent is running his bank account with Canara Bank, Bhiwani and is also residing at the present address for the last about two decades. In view of the same, it is the claim of the respondent that he bonafidely presented the cheque in his bank at Bhiwani which was further presented to the drawer's Bank at Guwahati. The cheque was returned uncashed to the respondent's bank at Bhiwani with the endorsement "payment stopped by drawer". The respondent received the bounced cheque back from his bank at Bhiwani. Thereafter, the respondent sent a legal notice under Section 138 of the N.I. Act to the appellant from Bhiwani. In turn, the appellant sent a reply to the said notice which the respondent received at Bhiwani. In view of non-payment of the cheque amount, the respondent filed a complaint under Sections 138 and 141 of the N.I. Act before the learned Magistrate at Bhiwani.
>
> (8) Inasmuch as the issue in question is directly considered by this Court in K. Bhaskaran (supra), before going into the applicability of other decisions, it is useful to refer the relevant portion of the judgment in paras 10 and 11 of the said case which reads thus:
>
> "10. Learned counsel for the appellant first contended that the trial court has no jurisdiction to try this case and hence the High Court should not have converted the acquittal into conviction on the strength of the evidence collected in such a trial. Of course, the trial court had upheld the pleas of the accused that it had no jurisdiction to try the case.
>
> 11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed".

The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the

failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act." It is clear that this Court also discussed the relevant provisions of the Code, particularly, Sections 177, 178 and 179 and in the light of the language used, interpreted Section 138 of the N.I. Act and laid down that Section 138 has five components, namely,

i) drawing of the cheque;

ii) presentation of the cheque to the bank;

iii) returning the cheque unpaid by the drawee bank;

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

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

After saying so, this Court concluded that the complainant can choose any one of the five places to file a complaint. The further discussion in the said judgment is extracted hereunder:

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence:
>
> (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, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"178. (a)-(c) * * *

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus it is clear, 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 can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can 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. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act." (9) Para 11 of K. Bhaskaran (supra), as quoted above, clarified the place in the context of territorial jurisdiction as per the fifth component, namely, "failure of the drawer to make payment within 15 days of the receipt." As rightly pointed out by learned senior counsel for the respondent, the place of failure to pay the amount has been clearly qualified by this Court as the place where the drawer resides or the place where the payee resides. In view of the same and in the light of the law laid down by this Court in K.Bhaskaran (supra), we are of the view that the learned Magistrate at Bhiwani has territorial jurisdiction to try the complaint filed by the respondent as the respondent is undisputedly a resident of Bhiwani. Further, in K. Bhaskaran (supra), while considering the territorial jurisdiction at great length, this Court has concluded that the amplitude of territorial jurisdiction pertaining to a complaint under the N.I. Act is very wide and expansive and we are in entire agreement with the same.

*** *** *** (12) Mr. Ahmadi, learned senior counsel for the appellant has also relied on a decision of this Court in Harman Electronics Private Limited and Another vs. National Panasonic India Private Limited, (2009) 1 SCC 720. In Harman Electronics (supra), the complainant and the accused entered into a business transaction. The accused was a resident of Chandigarh. He carried on the business in Chandigarh and issued a cheque in question at Chandigarh. The complainant had a Branch Office at Chandigarh although his Head Office was at Delhi. He presented the cheque given by the accused at Chandigarh. The cheque was dishonoured at Chandigarh. The complainant issued a notice upon the accused asking him to pay the amount from New Delhi. The said notice was served on the accused at Chandigarh. On failure on the part of the accused to pay the amount within 15 days from the date of the communication of the said letter, the complainant filed a complaint at Delhi. In the complaint, it was stated that the Delhi Court has jurisdiction to try the case because the complainant was carrying on business at Delhi, the demand notice was issued from Delhi, the amount of cheque was payable at Delhi and the accused failed to make the payment of the said cheque within the statutory period of 15 days from the date of receipt of notice. It is further seen that the cognizance of the offence was taken by the learned Magistrate at Delhi. The accused questioned the jurisdiction of the Magistrate at Delhi before the Addl. Sessions Judge, New Delhi. The Sessions Judge held that the Magistrate at Delhi had jurisdiction to entertain the complaint as, admittedly, the notice was sent by the complainant to the accused from Delhi and the complainant was having its Registered Office at Delhi and was carrying on business at Delhi. The learned Judge has also observed that the accused failed to make payment at Delhi as the demand was made from Delhi and the payment was to be made to the complainant at Delhi. The Delhi High Court dismissed the petition filed by the accused. Thereafter, the accused approached this Court. This Court considered Section 138 of the N.I. Act and also referred to K.Bhaskaran's case (supra) and quoted the five components of offence under Section 138 which have been noted in paragraph supra. This Court reiterated that the five different acts which are the components of offence under Section 138 of the N.I. 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 under Section 138 of the N.I. 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 N.I. Act. In such circumstances, we are of the view that Harman Electronics (supra) 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 (supra). 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 only on the service in 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. We are of the view that this Court in Harman Electronics (supra) affirmed what it had said in K. Bhaskaran (supra) 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 under Section 138 of the N.I. Act. It is also relevant to point out that while holding that the Chandigarh Court has jurisdiction, this Court in Harman Electronics (supra) 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 (supra) 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 (supra) had adverse impact on the complainant's case in the present case.

(13) As observed earlier, we must note that in K. Bhaskaran (supra), 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 (supra) does not affect the ratio in K. Bhaskaran (supra) 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 under Section 482 of the Code and dismissed the petition filed by the appellant-accused.

(14) In the light of the above discussion, we hold that the ratio laid down in K.Bhaskaran (supra) squarely applies to the case on hand. The said principle was correctly applied by the learned Sessions Judge as well as the High Court. Consequently, the appeal fails and the same is dismissed. In view of the dismissal of the appeal, the interim order granted by this Court on 09.12.2011 shall stand vacated." (emphasis is ours)

2. Leave granted.

3. We have heard learned counsel for the rival parties. The reason for posting the instant matter for hearing after the disposal of Nishant Aggarwal's case (supra) was, that the controversy arising herein, was exactly the same as was sought to be determined by this court in Nishant Aggarwal's case (supra). The factual position necessary for the disposal of the instant Civil Appeal, was noticed in paragraph 13 of the impugned order, passed by the Delhi High Court. The same is being extracted hereunder:

> "13. Thus M/s Religare Finvest (supra) relied on by the Petitioner was a case where even the drawer bank's clearing branch which dishonoured the cheque was also situated at New Delhi. In the said case, the jurisdiction was vested in the Courts at Delhi because of the drawer's bank's clearing branch being at Delhi and not because the cheque was presented in the payee bank or that the legal notice of demand was issued from a place at Delhi. Applying the decisions aforementioned to the facts of the present case, I do not consider it fit to state that just because the cheques were presented at Delhi or the demand notice was sent from Delhi, Courts at Delhi would have jurisdiction to try the present case." (emphasis is ours)

4. Having taken into consideration the fact that the cheque was presented for encashment by the complainant at Delhi, and having referred to the judgments rendered by this Court in K. Bhaskaran vs. Shankaran Vaidhyam Balan & Anr., (1999) 7 SCC 510, Shri Ishar Alloys Steels Ltd. Vs. Jayaswal NECO Ltd., (2003) 3 SCC 609, and Harman Electronics Private Ltd. Vs. National Panasonic India Pvt. Ltd., (2009) 1 SCC 720, the High Court accepted the prayer made by the drawee of the cheque (i.e. the respondent herein) to conclude, that the Courts at Delhi did not have the jurisdiction to try the complaint filed by the appellant, under Section 138 of the Negotiable Instruments Act. Having so concluded, the Metropolitan Magistrate before whom the matter was pending, was directed to return the complaint to the respondent. Liberty was granted to the appellant, to file the returned petition before the jurisdictional Court at Kolkata.

5. It is apparent, that the conclusion drawn by the High Court, in the impugned order dated 27.4.2012, is not in consonance with the decision rendered by this Court in Nishant Aggarwal's case (supra). Therein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act.

6. In addition to the judgment rendered by this Court in Nishant Aggarwal's case, another bench of this Court has also arrived at the conclusion drawn in Nishant Aggarwal's case, on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in FIL Industries 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. This Court in the above matter held as under:

> "3. The facts very briefly are that the respondent delivered a cheque dated 23rd December, 2010 for an amount of `29,69,746/-(Rupees Twenty Nine lakhs sixty nine

thousand seven hundred forty six only) on Jammu and Kashmir Bank Limited, Branch Imam Saheb, Shopian, to the appellant towards some business dealings and the appellant deposited the same in UCO Bank, Sopore. When the cheque amount was not encashed and collected in the account of the appellant in UCO Bank Sopore, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Chief Judicial Magistrate, Sopore. The respondent sought dismissal of the complaint on the ground that the Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint. By order dated 29th November, 2011, the learned Chief Judicial Magistrate, Sopore, however, held that he had the jurisdiction to entertain the complaint. Aggrieved, the appellant filed Criminal Miscellaneous Petition No. 431 of 2011 under Section 561A of the Jammu and Kashmir Criminal Procedure Code and by the impugned order dated 2nd June, 2012, the High Court quashed the complaint saying that the Court at Sopore had no jurisdiction to receive and entertain the complaint.

4. We have heard learned counsel for the parties and we find that in K.Bhaskaran v. Sankaran Vidyabalan and Another, (1999) 7 SCC 510, this Court had the occasion to consider as to which Court would have the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and in paras 14, 15 and 16 of the judgment in the aforesaid case held as under:-

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (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, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities.

But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"Where the offence 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."

16. Thus it is clear, 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 can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can 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.

As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

5. It will be clear from the aforesaid paragraphs of the judgment in K. Bhaskaran's case (Supra) that five different acts compose the offence under Section 138 of the Negotiable Instruments Act and if any one of these five different acts was done in a particular locality the Court having territorial jurisdiction on that locality can become the place of trial for the offence under Section 138 of the Negotiable Instruments Act and, therefore, the complainant can choose any one of those courts having jurisdiction over any one of the local area within the territorial limits of which any one of the five acts was done. In the facts of the present case, it is not disputed that the cheque was presented to the UCO Bank at Sopore in which the appellant had an account and, therefore the Court at Sopore had territorial jurisdiction to entertain and try the complaint.

6. Learned counsel for the respondent, however, relied on the decision of this Court in Harman Electronics Private Limited and Another v. National Panasonic India Private Limited to submit that the Court at Shopian would have the territorial jurisdiction. We have perused the aforesaid decision of this Court in Harman Electronics Private Limited (Supra) and we find on a reading of paragraphs 11 and 12 of the judgment in the aforesaid case that in that case the issue was as to whether sending of a notice from Delhi itself would give rise to a cause of action for taking cognizance of a case under Section 138 of the Negotiable Instruments Act when the parties had been carrying on business at Chandigarh, the Head Office of the respondent-complainant was at Delhi but it had a branch at Chandigarh and all the transactions were carried out only from Chandigarh. On these facts, this Court held that Delhi from where the notice under Section 138 of the Negotiable Instruments Act was issued by the respondent would not have had jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act. This question does not arise in the facts of the present case.

7. For the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the High Court and remand the matter to the Chief Judicial Magistrate, Sopore for decision in accordance with law." (emphasis is ours)

7. In view of the above, having taken into consideration the factual position noticed by the High Court in paragraph 13 of the impugned judgment, we are of the view, that the High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138 of the Negotiable Instruments Act. The impugned order dated 27.4.2012 passed by the High Court is accordingly liable to be set aside. The same is, therefore, hereby set aside.

8. Despite the conclusion drawn by us hereinabove, it would be relevant to mention, that our instant determination is based on the factual position expressed by the High Court in paragraph 13 of the impugned order. During the course of hearing, whilst it was the case of the learned counsel for the appellant (based on certain documents available on the file of the present case) to reiterate that the

cheque in question, which was the subject matter of the appellant's claim under Section 138 of the Negotiable Instruments Act, was presented for encashment at Delhi; it was the contention of the learned counsel for the respondent, that the aforesaid cheque was presented for encashment at Faridabad. It was accordingly submitted, that the jurisdictional issue needed to be decided by accepting, that the dishonoured cheque was presented at Faridabad. It is not possible for us to entertain and adjudicate upon a disputed question of fact. We have rendered the instant decision, on the factual position taken into consideration by the High Court. In case, the respondent herein is so advised, it would be open to him to raise an objection on the issue of jurisdiction, based on a factual position now asserted before us. The determination rendered by us must be deemed to be on the factual position taken into consideration by the High Court (in paragraph 13, extracted above), while disposing of the issue of jurisdiction. In case the respondent raises such a plea, the same shall be entertained and disposed of in accordance with law.

9. Allowed in the aforesaid terms.

.....,CJI (P. Sathasivam) .....,J.

(Jagdish Singh Khehar) New Delhi;

September 17, 2013.