Nishant Aggarwal vs Kailash Kumar Sharma on 1 July, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2634, 2013 (10) SCC 72, 2013 AIR SCW 4322, AIR 2013 SC (CRIMINAL) 1787, 2013 ACD 959 (SC), (2013) 3 CRILR(RAJ) 664, (2013) 4 ALLCRILR 996, 2013 CRILR(SC&MP) 664, 2013 CRILR(SC MAH GUJ) 664, 2013 (7) SCALE 753, (2013) 128 ALLINDCAS 188 (SC), (2013) 5 MAD LW 889, 2014 (1) SCC (CRI) 189, (2013) 3 CHANDCRIC 233, (2013) 4 JCR 15 (SC), (2013) 3 BANKCAS 391, (2013) 2 ALLCRIR 2156, (2013) 201 DLT 573, (2013) 2 MADLW(CRI) 406, (2013) 2 UC 1261, (2013) 3 DLT(CRL) 435, (2013) 3 RECCRIR 697, (2013) 3 BOMCR(CRI) 307, (2013) 3 KER LJ 322, (2013) 3 MAD LJ(CRI) 570, (2013) 56 OCR 139, (2013) 4 PUN LR 224, (2013) 3 RAJ LW 2338, (2013) 3 CURCRIR 241, (2013) 3 RECCIVR 685, (2013) 7 SCALE 753, (2013) 2 NIJ 117, (2013) 83 ALLCRIC 174, AIRONLINE 2013 SC 345

Author: P.Sathasivam

Bench: P. Sathasivam, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1 CRIMINAL APPEAL No. 808 OF 2013

(Arising out of S.L.P. (Crl.) No. 9434 of 2011)

Nishant Aggarwal .... Appellant(s)

Versus

Kailash Kumar Sharma .... Respondent(s)

2

J U D G M E N T

P.Sathasivam,J.

1) Leave granted.
2) 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 under Section 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?

3) This appeal is directed against the final judgment and order dated 31.10.2011 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. M-32542 of 2011 whereby the High Court dismissed the petition filed by the appellant herein on the ground that it is not a fit case for invoking Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

4) Brief facts:
a) The appellant herein is the Director of M/s Byrni Steel Private

Limited and his father Mr. B.L. Aggarwal is the Managing Director of M/s Mechfeb Engineering Industries Private Limited situated at Meghalaya and Guwahati. The respondent was associated with both the abovementioned firms as he used to bring business from various private firms and Government Departments on commission basis.

b) During the course of business, the appellant herein issued a post- dated cheque bearing No. 925504 dated 01.08.2009 drawn on Standard Chartered Bank, Guwahati, for Rs. 28,62,700/- in favour of the complainant- respondent herein in order to discharge his legal enforceable liabilities. Vide letter dated 21.01.2006, the appellant informed the Branch Manager, Standard Chartered Bank, Guwahati, as well as the officer in-charge, Dispur Police Station, Guwahati regarding missing of the said cheque. Thereafter, on 28.03.2008, the appellant wrote a letter to the Standard Chartered Bank for stop payment of the said cheque as the same was missing.

c) According to the respondent, on 13.08.2009, when he presented the same for collection through its bankers, viz., Canara Bank, Bhiwani, Haryana, it was returned unpaid on 11.09.2009 due to stop payment by the appellant. When the respondent approached the appellant about dishonour of the same, he was told to present the same again for collection after one month. On 15.10.2009, the respondent again presented the cheque for collection but the same was again returned unpaid on 14.12.2009.

d) On 11.01.2010, the respondent sent a legal notice to the appellant asking him to pay Rs. 28,62,700/- within a period of 15 days from the date of the receipt of the notice along with the interest, failing which, he shall be liable to be prosecuted under Section 138(b) of the N.I. Act.

e) On 05.02.2010, the appellant herein filed a complaint petition being C.R. No. 340 of 2010 in the Court of Addl. Chief Judicial Magistrate, Kamrup at Guwahati under Sections 379, 381,411 and 420 of the Indian Penal Code, 1860 (in short "the IPC") against the respondent. On 05.03.2010, the respondent filed a complaint being C.R. No. 9 of 2010 before the Court of J.M.I.C., Bhiwani under

Section 190 of the Code for taking cognizance of the offence committed by the appellant under Sections 138 and 141 of the N.I. Act.

f) The Additional Chief Judicial Magistrate, Kamrup, by order dated 15.06.2010, in C.R. No. 340 of 2010, issued bailable warrants against the respondent. Thereafter, on 06.08.2010, the respondent filed an application for recall of the bailable warrants issued against him. Ultimately, learned Judicial Magistrate, Bhiwani, vide order dated 05.03.2011, accepted the application with the observation that the Court at Bhiwani has no jurisdiction and the complaint was returned for presentation before the proper Court having jurisdiction.

g) Dissatisfied with the order dated 05.03.2011, the respondent filed Criminal Revision Petition being No. 35 of 2011 before the Court of Additional Sessions Judge IV, Bihwani. By order dated 12.05.2011, the Additional Sessions Judge set aside the order of the Judicial Magistrate, Bhiwani and allowed the revision.

h) Aggrieved by the said order, the appellant herein filed Crl. Misc. No. M-32542 of 2011 before the High Court. The High Court, by impugned order dated 31.10.2011, dismissed the petition.

i) Against the said order, the appellant has preferred this appeal by way of special leave before this Court.

5) Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellant- accused and Mr. Mahabir Singh, learned senior counsel for the respondent- the complainant.

6) It is the claim of the appellant that the present case is not covered by the judgment of this Court in K. Bhaskaran vs. Sankaran Vaidhyan Balan and Another, (1999) 7 SCC 510. On the other hand, it is the specific claim of the respondent that insofar as territorial jurisdiction of the case on hand, namely, complaint filed under Section 138 of the N.I. Act is concerned, the decision of this Court in K. Bhasaran (supra) squarely applies, accordingly, the Court at Bhiwani is competent to try and dispose of the complaint filed by him. It is also pointed out that the said issue was rightly considered and accepted by the Additional Sessions Judge, Bhiwani as well as by the High Court.

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.

10) Mr. Ahmadi, learned senior counsel for the appellant in support of his claim that the Court at Bhiwani has no jurisdiction heavily relied on the decision of this Court in Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd., (2001) 3 SCC 609. We were taken through the entire judgment. Though the case is also related to N.I. Act, the issue of territorial jurisdiction was not the subject-matter thereof. In Ishar Alloy Steels (supra), a three-Judge Bench of this Court defined the term "the bank"

appearing in clause (a) of Section 138 of the N.I. Act as the drawer's bank. It was defined in the context of the statutory period of six months as mentioned in clause (a), hence, this Court held that the date of presentation of the cheque for calculating the statutory time period of six months will be the date of presentation of the cheque to the drawer's bank i.e. payee bank and not the drawee's bank i.e. collecting bank. This Court has correctly applied the principle of strict interpretation appreciating that Section 138 of the N.I. Act creates an offence as the drawer of the cheque cannot be expected or saddled with the liability to hold the cheque amount in his account beyond six months. The reading of the entire decision in Isher Alloy Steel (supra) shows that jurisdiction of the Court to take cognizance arises only where cheque is presented to the bank of drawer either by drawee's bank or the drawee/payee personally within six months. In other words, the analysis of the said decision, the ratio of Isher Alloy Steel (supra) deals with such a situation where the cheque has been presented within six months to the drawer's bank by the payee in any manner. Inasmuch as the interpretation relates to filing of complaint within the statutory time period of six months, we are of the view that the reliance on the law laid down in Isher Alloy Steel (supra) has no relevance as far as the present case is concerned. In fact, that is the reason that in Isher Alloy Steel (supra), the judgment in K.Bhaskaran (supra) was not discussed since territorial jurisdiction was not the issue in that case. In view of the same, the definition of the term "the bank" envisaged in Isher Alloy Steel (supra) cannot be employed to decide the jurisdictional aspect and dilute the ratio of the judgment in K. Bhaskaran (supra). Hence, we are of the view that on the strength of the judgment in Isher Alloy Steel (supra) defining the term "the bank", it cannot be said that jurisdiction to file a complaint under Section 138 of the N.I. Act does not lie at the place of drawee's bank. To put it clearly, the judgment in Isher Alloy Steel (supra) does not affect the ratio of the judgment in K.Bhaskaran (supra) which provides for jurisdiction at the place of residence of the payer and the payee. In such circumstances, we are of the view that the judgment in Isher Alloy Steel (supra) as well as judgments of various High Courts relied on by the appellant cannot be read against the respondent to hold that the Magistrate at Bhiwani does not have the jurisdiction to try the complaint.

11) Though several decisions of various High Courts were cited before us, we deem it appropriate to refer only one Division Bench decision of the Bombay High Court rendered in Criminal Writ Petition No. 3158 of 2009, Mrs. Preetha S. Babu vs. Voltas Limited and Another, reported in 2010 (3) Maharashtra Law Journal 234. The Division Bench, after analyzing the factual position of both sides, correctly applied the ratio laid down in K. Bhaskaran (supra) finding that the Mumbai Court has jurisdiction to entertain the complaint, dismissed the said writ petition.

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, admitedly, 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.

.....J. (P. SATHASIVAM) .....J. (JAGDISH SINGH KHEHAR) NEW DELHI;

JULY 01, 2013.
