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(BEFORE T.S. THAKUR, V. GOPALA GOWDA AND
CHOCKALINGAM NAGAPPAN, JJ.)

VINAY KUMAR SHAILENDRA

.. Appellant;

Versus

DELHI HIGH COURT LEGAL SERVICES
COMMITTEE AND ANOTHER

.. Respondents.

Civil Appeals No. 8468 of 2014[†] with No. 8469 of 2014[‡],
decided on September 4, 2014

A. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 — Territorial jurisdiction for filing cheque dishonour complaint under — Applying *Dashrath*, (2014) 9 SCC 129, held, place of issuance of statutory notice or place of deposit of cheque in a bank by payee or place of receipt of notice by accused, demanding payment, would not confer jurisdiction upon courts of that place — What is important is whether drawee bank which dishonoured the cheque, is situate within jurisdiction of court taking cognizance — Thus, there is no reason to interfere with order passed by High Court which simply requires Magistrate to examine and return complaints, if they do not have jurisdiction to entertain the same, in the light of legal position as stated in *Harman Electronics*, (2009) 1 SCC 720 [which has been affirmed in *Dashrath case*] — Further added while examining the question of jurisdiction, Magistrates concerned, to whom High Court has issued directions, shall also keep in view decision in *Dashrath*, (2014) 9 SCC 129

(Para 9)

Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 3 SCC (Cri) 673 : (2014) 4 SCC (Civ) 676, *applied*

Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610, *held, affirmed*

Delhi High Court Legal Service Committee v. Govt. (NCT of Delhi), (2009) 83 AIC 820 (Del), *affirmed*

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, *held, overruled on this point*

Dwarka Nath v. ITO, AIR 1966 SC 81; *Air India Statutory Corpn. v. United Labour Union*, (1997) 9 SCC 377 : 1997 SCC (L&S) 1344; *Adalat Prasad v. Rooplal Jindal*, (2004) 7 SCC 338 : 2004 SCC (Cri) 1927; *Vinay Kumar Shailendra v. Delhi High Court Legal Service Committee*, (2014) 9 SCC 129 (F1), *referred to*

B. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 — Offence under — When committed — Reiterated, it is committed, no sooner a cheque drawn by accused on an account being maintained by him in a bank, for discharge of debt/liability, is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank

(Paras 7 and 8)

Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 3 SCC (Cri) 673 : (2014) 4 SCC (Civ) 676, *applied*

[†] Arising out of SLP (C) No. 29044 of 2009. From the Judgment and Order dated 23-9-2009 passed by the High Court of Delhi at New Delhi in WP (C) No. 11911 of 2009

[‡] Arising out of SLP (C) No. 35762 of 2009

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C. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 & proviso and S. 142 — Cognizance of offence under S. 138, when may be taken — Prosecution of offender, when begins — Legal position, reiterated (Paras 7 and 8)

Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 3 SCC (Cri) 673 : (2014) 4 SCC (Civ) 676, *applied*

Appeals dismissed

Y-D/53859/CRV

b Advocates who appeared in this case :

Vinay Kr. Shailendra-in-Person), Subhro Sanyal, Ms Worthing Kasar, Vaibhav Rai Asithana, K.R. Sasiprabhu, E.C. Agrawala, Ms Puja Sharma, Ms Liz Mathew, K. Datta, Manish Srivastava, Rahul Malhotra and Praveen Agrawal, Advocates, for the Appellant;

Annam D.N. Rao, A. Venketesh, Sudipto Sircar, Ms Neelam Jain, Ms Vaishali R., Shailender Bhardwaj, Subramonium Prasad and Ms Anil Katiyar, Advocates, for the Respondents.

c **Chronological list of cases cited** **on page(s)**

1. (2014) 9 SCC 129 : (2014) 3 SCC (Cri) 673 : (2014) 4 SCC (Civ) 676,
Dashrath Rupsingh Rathod v. State of Maharashtra 711c, 712e-f, 712g-h
2. (2014) 9 SCC 129 (F1), *Vinay Kumar Shailendra v. Delhi High Court Legal Service Committee* 711a-b
- d** 3. (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610,
Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd. 710b, 710b-c, 710c, 711c, 712g
4. (2009) 83 AIC 820 (Del), *Delhi High Court Legal Service Committee v. Govt. (NCT of Delhi)* 709f, 710f, 711b
5. (2004) 7 SCC 338 : 2004 SCC (Cri) 1927, *Adalat Prasad v. Rooplal Jindal* 710e-f
6. (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, *K. Bhaskaran v. Sankaran Vaidhyan Balan (held, overruled on this point)* 710b-c, 711c-d
- e** 7. (1997) 9 SCC 377 : 1997 SCC (L&S) 1344, *Air India Statutory Corpn. v. United Labour Union* 710d-e
8. AIR 1966 SC 81, *Dwarka Nath v. ITO* 710d

The Judgment of the Court was delivered by

f **T.S. THAKUR, J.**— Leave granted. These appeals arise out of a judgment dated 23-9-2009 passed by a Division Bench of the High Court of Delhi in *Delhi High Court Legal Services Committee v. Govt. (NCT of Delhi)*¹ whereby the High Court has invoked its jurisdiction under Article 226 of the Constitution of India read with Section 482 CrPC and directed return of all complaints filed under Section 138 of the Negotiable Instruments Act, 1881 in which the Metropolitan Magistrates in Delhi have taken cognizance only because the statutory notices in terms of proviso to Section 138 of the Act **g** have been issued to the drawers of the cheque from Delhi.

h **2.** The matter arose out of a writ petition filed by the Delhi High Court Legal Services Committee in public interest pointing out that a very large number of complaints under Section 138 of the Act were pending in the Courts of Metropolitan Magistrates in Delhi in which cognizance had been taken although the courts concerned had no territorial jurisdiction to do so.

¹ (2009) 83 AIC 820 (Del)

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The Committee's case before the High Court was that such complaints were filed among others by financial institutions and banks only on the ground that the statutory notices demanding payment against the dishonoured cheque had been issued from Delhi. Issue of a notice demanding payment of the dishonoured cheque was not, however, sufficient to confer jurisdiction upon the courts in Delhi, argued the Committee. Reliance in support was placed upon the decision of this Court in *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*²

3. The Committee's grievance was that notwithstanding a clear exposition of law on the subject by this Court in *Harman case*², complaints had been filed and cognizance taken by the courts in Delhi, relying upon the decision of this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan*³. It was in terms contended before the High Court that in the light of the pronouncement of this Court in *Harman case*² the complaints could not have been entertained nor could the accused persons be summoned for trial in the courts in Delhi. It was also argued that number of such complaints is so large that the Magistrates in Delhi were unable to handle and effectively manage the docket explosion and attend to what was otherwise within their jurisdiction and called for their immediate attention.

4. The contentions urged by the Committee found favour with the High Court which relying upon the decisions of this Court in *Dwarka Nath v. ITO*⁴ and *Air India Statutory Corpn. v. United Labour Union*⁵ held that the Constitution did not place any fetters on the extraordinary jurisdiction exercisable by the High Court in a situation where courts are flooded with complaints which they had no jurisdiction to entertain. The High Court further held that a direction for return of the complaints for presentation before the competent courts was in the circumstances necessary, as Magistrates who had issued the summons were unable to dismiss the complaints suo motu in the light of the decision of this Court in *Adalat Prasad v. Rooplal Jindal*⁶. The High Court accordingly allowed the writ petition with the following directions: (*Delhi High Court Legal Service Committee case*¹, AIC p. 823, para 11)

"11. Consequently, in exercise of power under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure, we direct return to the complainants for presentation in the court of competent jurisdiction all those criminal complaints filed under Section 138 of the NI Act that are pending in the courts of Metropolitan Magistrates in Delhi in which cognizance has been taken by them without actually having territorial jurisdiction."

2 (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610

3 (1999) 7 SCC 510 : 1999 SCC (Cri) 1284

4 AIR 1966 SC 81

5 (1997) 9 SCC 377 : 1997 SCC (L&S) 1344

6 (2004) 7 SCC 338 : 2004 SCC (Cri) 1927

1 *Delhi High Court Legal Service Committee v. Govt. (NCT of Delhi)*, (2009) 83 AIC 820 (Del)

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LEGAL SERVICES COMMITTEE (*Thakur, J.*)

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a 5. The appellant who is a practising Advocate of the High Court of Delhi has, with the permission of this Court, filed this appeal which was referred for hearing to a three-Judge Bench by an order dated 3-11-2009⁷. That is precisely how the present appeal along with the connected appeal filed by Indiabulls Financial Services Ltd. against the very same order passed by the High Court have come up before us.

b 6. We have heard the learned counsel for the parties at some length. The order¹ passed by the High Court simply directs return of complaints in cases where the same have been filed only because the statutory notices have been issued from Delhi. The direction proceeds on the basis that issue of statutory notices from Delhi by itself is not sufficient to confer jurisdiction on the Delhi courts to entertain the complaints. Reliance has been placed for that proposition upon the decision of this Court in *Harman case*².

c 7. In *Dashrath Rupsingh Rathod v. State of Maharashtra*⁸ we have had an occasion to consider whether the view expressed by this Court in *K. Bhaskaran case*³ was sound and whether complaints under Section 138 could be maintained at a place other than the place where the drawee bank is situate. Answering the question in the negative this Court held that an offence under Section 138 is committed no sooner the cheque issued on an account maintained by the drawer with a bank and representing discharge of a debt or d a liability in full or part is dishonoured on the ground of insufficiency of funds or on the ground that the same exceeds the arrangements made with the banker. Prosecution of the offender and cognizance of the commission of the offence is, however, deferred by the proviso to Section 138 till such time the complainant has the cause of action to institute such proceedings. This Court e found that the proviso to Section 138 does not constitute ingredients of the offence punishable under Section 138.

8. The legal position on the subject was summed up in the following words: (*Dashrath Rupsingh Rathod case*⁸, SCC pp. 173-74, para 58)

“58. To sum up:

f 58.1. (i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

g 58.2. (ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

7 *Vinay Kumar Shailendra v. Delhi High Court Legal Service Committee*, (2014) 9 SCC 129 (F1)

1 *Delhi High Court Legal Service Committee v. Govt. (NCT of Delhi)*, (2009) 83 AIC 820 (Del)

h 2 *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*, (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610

8 (2014) 9 SCC 129 : (2014) 3 SCC (Cri) 673 : (2014) 4 SCC (Civ) 676 : (2014) 9 Scale 97

3 *K. Bhaskaran v. Sankaran Vaidhyan Balan*, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284

58.3. (iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue. a

(b) if the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque, and

(c) if the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice. b

58.4. (iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

58.5. (v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the court till such time cause of action in terms of clause (c) of proviso accrues to the complainant. c

58.6. (vi) Once the cause of action accrues to the complainant, the jurisdiction of the court to try the case will be determined by reference to the place where the cheque is dishonoured.

58.7. (vii) The general rule stipulated under Section 177 CrPC applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof." d e

9. In the light of the above pronouncement of this Court in *Dashrath case*⁸ we have no hesitation in holding that the issue of a notice from Delhi or deposit of the cheque in a Delhi bank by the payee or receipt of the notice by the accused demanding payment in Delhi would not confer jurisdiction upon the courts in Delhi. What is important is whether the drawee bank which dishonoured the cheque is situate within the jurisdiction of the court taking cognizance. In that view, we see no reason to interfere with the order passed by the High Court which simply requires the Magistrate to examine and return the complaints if they do not have the jurisdiction to entertain the same in the light of the legal position as stated in *Harman case*². All that we need to add is that while examining the question of jurisdiction the Metropolitan Magistrates concerned to whom the High Court has issued directions shall also keep in view the decision of this Court in *Dashrath case*⁸. f g

8 *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 12 h

2 *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*, (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610

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10. With the above observations these appeals fail and are hereby dismissed but in the circumstances without any orders as to costs.

a

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(BEFORE R.M. LODHA, C.J. AND KURIAN JOSEPH
AND ROHINTON FALI NARIMAN, JJ.)

b YOGENDRA PRATAP SINGH . . . Appellant;
Versus
SAVITRI PANDEY AND ANOTHER . . . Respondents.

Criminal Appeals No. 605 of 2012[†] with Nos. 1924-25 of 2014,
decided on September 19, 2014

c **A. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 proviso (c) and S. 142(b) — Dishonour of cheque — Complaint in respect of — Maintainability of — Offence under S. 138 — When complete — No complaint can be maintained against drawer of the cheque before the expiry of 15 days from date of receipt of notice under S. 138 proviso (c) because the drawer/accused cannot be said to have committed any offence until then nor is there any accrual of cause of action**
d **for filing of complaint under S. 138 of the NI Act until then — Any complaint filed before expiry of the said 15 days is non est — Hence, no cognizance of an offence can be taken on basis of such non est complaint — Thus, if a complaint has been filed before the expiry of the said 15 days, it being no complaint at all in the eye of the law, it is not open to the court to take cognizance of such a non est complaint merely because on the date of**
e **consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed — The only remedy for the complainant is to file a fresh complaint which satisfies all the five essential features of S. 138 of the NI Act — Complainant is not permitted to present the very same said non est complaint at any later stage — In all pending cases where the complaint cannot proceed further in**
f **terms of the present judgment, payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to S. 142 clause (b) of the NI Act**

g **B. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 proviso (c) and 142 — Dishonour of cheque — Complaint being non est (see Shortnote A) having been filed before expiry of 15 day period prescribed in S. 138 proviso (c) — Re-presentation/Re-filing of complaint — Held, complainant is not permitted to present the very same said non est complaint at any later stage — Only remedy is to file a fresh complaint and if it could not be filed within the time prescribed under**

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[†] From the Judgment and Order dated 21-5-2010 of the High Court of Allahabad in Crl. Miscellaneous Application No. 773 of 2009