Before Mehinder Singh Sullar, J.

M/S RATTAN INDUSTRIES LTD. & ANR.—*Petitioners*

versus

SHRUTI GUPTA—**Respondent**

CRM No. M-26943 of 2012

September 3, 2012

Negotiable Instrument Act, 1881 - S.138 - Jurisdiction - Cause of action - Petitioners-accused purchased hosiery items from complainant at Ludhiana on credit - Petitioner issued two cheques drawn on bank at New Delhi - Complainant presented cheques through its banker at Ludhiana - Dishonoured with remarks 'Funds insufficient' - Notice served from Ludhiana - Complainant filed complaint at Ludhiana u/s 138 Negotiable Instrument Act, 1881 and 420 Indian Penal Code, 1860 - Summoning order issued by court at Ludhiana u/s 138 of Negotiable Instrument Act, 1881 - Quashing petition filed by petitioners primarily on the ground that court at Ludhiana did not have territorial jurisdiction as cheques issued at Delhi and notice was received at Delhi - Dismissed - Held, Court at Ludhiana had jurisdiction - Goods were purchased at Ludhiana - Cheques issued by petitioner were presented at Ludhiana - Cheques were received back dishonoured at Ludhiana - Legal notice was issued from Ludhiana.

Held, that having regard to the legal provisions, material on record and the contention of learned senior counsel, to my mind, the answer must obviously be in the affirmative as the Court at Ludhiana has the territorial jurisdiction in this relevant connection.

(Para 11)

Further held, that as is evident from the record, that the complainant has specifically claimed in her complaint (Annexure P1) that the petitioners-accused purchased hosiery items against the credit from time to time from her company at Ludhiana. The indicated cheques issued by them (accused) were presented by the complainant for collection through her banker Punjab National Bank at Ludhiana. The cheques were received back dishonoured, vide memo dated 27.3.2012 containing remarks "Funds Insufficient". The complainant issued a registered notice dated 19.4.2012 from Ludhiana, through Avinash Chander Gupta and Gaurav Gupta, Advocates for payment of amount of the said dishonoured cheques within fifteen days. Still, the accused failed to make the payment despite acceptance of the statutory notice. In this manner, according to the complainant, they have committed the offence punishable u/s 138 of the NI Act in this respect.

(Para 12)

Further held, that needless to mention that the complaint, in such a situation, has naturally to be filed by the payee in the course of recovering the impugned amount of the cheque and not by the accused. Therefore, the cause of action has to be construed with a view point of the payee for the purpose of filing the complaint by him and not as per the wishes of the defaulter accused. Section 138 of NI Act is the speedy, beneficial provision to recover the impugned amount, to punish the defaulter and it cannot possibly be interpreted to create the hurdles to defeat the real cause of justice and public interest to enable the accused to defeat the rightful claim of the complainant. In that eventuality, the words "the issuance of cheque drawn by a person on an account maintained by him and returned by the bank unpaid", occurring in this section, pales into insignificance and cannot possibly be read in isolation. If the pointed contention of learned senior counsel for petitioners is accepted, then, there will be no end of anything and the very purpose of section 138 of NI Act would be frustrated, which is not legally permissible. Moreover, the matter of jurisdiction, in such a situation, is no more res integra and is now well settled.

(Para 18)

H.L. Tikka, Senior Advocate with Sumeet Goel, Advocate, *for the petitioners.*

MEHINDER SINGH SULLAR, J. (ORAL)

(1) The matrix of the facts & material, culminating in the commencement, relevant for disposal of the instant petition and emanating from the record, is that, petitioners-accused M/s Rattan Industries Ltd. through its Director Rakesh Bansal, had purchased hosiery items, from complainant-respondent Shruti Gupta wife of Rohit Gupta, sole proprietor of M/s Bharti Knits (for brevity "the complainant") at Ludhiana, during the financial year 2011-12 against the credit from time to time. The complainant-company is stated to have maintained regular account books during the course of its business, which are duly audited by the Chartered Accountant. The complainant repeatedly requested the petitioners to make payment in lieu of hosiery goods, but in vain. Ultimately, they issued two cheques, bearing Nos.122394 dated 29.12.2011 for an amount of Rs.12,40,000/- & 122396 dated 29.1.2012 for a sum of Rs. 12,31,250/-, drawn on ING Vysya Bank Ltd. East of Kailash Branch, New Delhi to the complainant at Ludhiana. The complainant presented the indicated cheques for collection through its banker Punjab National Bank, Ludhiana, but the same were received back dishonoured with the memo dated 27.3.2012, containing remarks "Funds Insufficient". Thereafter, the complainant served a registered notice dated 19.4.2012 upon the petitioners-accused from Ludhiana, through Avinash Chander Gupta and Gaurav Gupta, Advocates of Ludhiana for payment of the dishonoured cheques within fifteen days, but in vain.

(2) Leveling a variety of allegations and narrating the sequence of events in detail in the complaint, in all, the complainant claimed that since the pointed cheques issued by the petitioners-accused were dishonoured and even they did not make the payment, despite issuance of notice, so, they have committed the offences punishable under section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the NI Act") and Section 420 IPC. In the background of these allegations, the complainant filed the criminal complaint (Annexure P1) against the petitioners-accused for the commission of the indicated offences.

(3) Taking cognizance of the matter and after considering the preliminary evidence, while dismissing the complaint against the other accused, the trial Court summoned the present petitioners-accused, to face the trial

for the commission of offence punishable under section 138 of the NI Act, vide impugned summoning order dated 13.7.2012 (Annexure P2), which, in substance, is as under :-

> *"Complaint put up today. It be registered. Affidavit of CW-1 along with documents Ex.C1 to Ex.C13 and he closed the preliminary evidence vide separate statement.*
>
> *Heard on the point of summoning. Attorney for the Complainant has stepped into witness box as CW1 and narrated the whole sequence of events in minute details through affidavit, as got detailed by him in the written complaint. He has placed on record all relevant documents including the disputed cheque memo, legal notice, postal receipts etc.*
>
> *After perusing the statement of complainant and conducting a document based enquiry, there is prima facie sufficient material to issue process against accused no.2 (being director of accused no.1) who as per the documents placed on file, is the drawer/signatory of the cheque in question u/s 138 of Negotiable Instruments Act. It is further pertinent to add here that although the accused is/are residing beyond the local jurisdiction of this Court nevertheless in view of the law laid down in Apex Health Care Private Limited and others Vs. M/s Alchemist Hospitals Limited (Crl.Misc. No.14352 of 2009, Date of Decision : August 18, 2010) the provision of Section 202 Cr.P.C. directing a Magistrate to hold an enquiry and postpone the issuance of process is not applicable to the proceedings under Section 138 of the Act. Accordingly, accused no.1 and 2 are ordered to be summoned to face trial for above said offence on filing of PF of Rs.50/-, RC, list of witnesses and copy of complaint for 04.09.2012. Dasti summons be issued if requested.*

(4) Strange enough, instead of submitting to the jurisdiction of the trial Court, the petitioners-accused straightway jumped to file the present petition to quash the impugned complaint (Annexure P1) and summoning order (Annexure P2), invoking the provisions of Section 482 Cr.PC.

(5) Having heard the learned senior counsel for the petitioners, having gone through the record & legal provisions with his valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant petition in this context.

(6) Ex facie, the argument of learned counsel that as the cheques in question were issued at Delhi and the petitioners-accused received the notice at Delhi, therefore, the Courts at Ludhiana did not have the territorial jurisdiction to entertain the impugned complaint and to pass the summoning order, is neither tenable nor the observations of Hon'ble Apex Court in case ***Harman Electronics (P) Ltd. and Anr.*** *versus* ***National Panasonic India Ltd. (1),*** would advance the cause of the petitioners in any manner in this regard, wherein, the complainant also has a branch office at Chandigarh although his Head Office is said to be at Delhi. The appellant (therein) carries on business in Chandigarh. The cheque in question was issued, presented and dishonoured at Chandigarh. However, the complainant issued the statutory notice upon the appellant asking him to pay the amount from New Delhi. Notice was served upon the appellant at Chandigarh.

(7) Sequelly, in criminal revision petition, bearing No.313 & Crl. MA No.7998 of 2011 titled as ***"M/s Grandlay Electricals (India)*** *versus* ***M/s Ess Ess Enterprises & Ors."*** decided by the Delhi High Court, by way of judgment dated 18.7.2011 relied upon by the petitioners-accused, the respondent-firm (therein) issued cheque drawn on State Bank of Patiala, Ludhiana against the payment of goods supplied. The cheque was returned unpaid by the drawee bank on the ground of "Insufficient Fund". The petitioner was informed about the dishonour of the cheque by its banker, vide memo dated 19.11.2010 at Ludhiana. He thus issued a demand notice under section 138 of the NI Act to the respondent firm, which was sent through registered AD post on the correct address of the respondent-accused. The registered AD notice was received back undelivered with the remark "unclaimed" on 3rd December, 2010. Since the respondent/accused failed to pay the demanded amount of cheque within the requisite period of 15 days of the said notice, the petitioner filed the complaint under Section 138, N.I. Act against the respondents No.1 & 2 at Delhi. Consequently, the complaint was returned to be filed before the court of competent territorial jurisdiction at Ludhiana.

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(1) (2009) 1 SCC 720 : AIR 2009 SC 1168

(8) On the peculiar facts & in the special circumstances of the indicated cases, the Hon'ble Supreme Court and Delhi High Court after considering the judgment of Hon'ble Apex Court in cases ***Harman Electronics (P) Ltd.(supra), Shri Ishar Alloy Steels Ltd.*** *versus* ***Jayaswals NECO Ltd. (2)*** and ***K.Bhaskaran*** *versus* ***Sankaran Vaidhyan Balan and another (3),*** ruled that issuance of statutory notice would not by itself give rise to a cause of action and a court derives jurisdiction only when the cause of action arises within its jurisdiction. The same cannot be conferred by any act of omission and commission on the part of the accused. The jurisdiction of a court to try a criminal case is governed by the provisions of Cr.PC. Merely issuing the statutory notice and submitting the cheque for collection cannot confer jurisdiction on that Court.

(9) Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the petitioners-accused in the instant controversy. At the very outset, it would be beneficial to note that Hon'ble Supreme Court in case ***Goa Plast (P) Ltd.*** *versus* ***Chico Ursula D'Souza (4)*** culled out the object behind the enactment of the NI Act and held as under :-

> *"The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as*

(2) (2001) 3 SCC 609
(3) (1999) 7 SCC 510
(4) (2004) 2 SCC 235

a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

(10) Such thus being the legal position & material on record of the present case, now the short & significant question, though very important, that arises for determination in this petition is, as to whether the Court at Ludhiana has the territorial jurisdiction to entertain the impugned complaint (Annexure P1) or not ?

(11) Having regard to the legal provisions, material on record and the contention of learned senior counsel, to my mind, the answer must obviously be in the affirmative as the Court at Ludhiana has the territorial jurisdiction in this relevant connection.

(12) As is evident from the record, that the complainant has specifically claimed in her complaint (Annexure P1) that the petitionersaccused purchased hosiery items against the credit from time to time from her company at Ludhiana. The indicated cheques issued by them (accused) were presented by the complainant for collection through her banker Punjab National Bank at Ludhiana. The cheques were received back dishonoured, vide memo dated 27.3.2012 containing remarks "Funds Insufficient". The complainant issued a registered notice dated 19.4.2012 from Ludhiana, through Avinash Chander Gupta and Gaurav Gupta, Advocates for payment of amount of the said dishonoured cheques within fifteen days. Still, the accused failed to make the payment despite acceptance of the statutory notice. In this manner, according to the complainant, they have committed the offence punishable u/s 138 of the NI Act in this respect.

(13) As is amply clear that Section 138 of the NI Act postulates that 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 under this Section.

(14) Not only that, the proviso to this section posits that nothing contained in this section shall apply unless 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; 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 form the bank regarding the return of the cheque as unpaid and 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.

(15) Sequelly, Section 142 of the NI Act envisages that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, shall take cognizance of any offence punishable under section 138 **except upon a complaint, in writing, made by the payee** or, as the case may be, the holder in due course of the cheque and such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. However, the power has also been conferred to the trial Court to take cognizance after the prescribed period as well, if the complainant satisfies it that he had sufficient cause for not making a complaint within such period.

(16) A conjoint and meaningful reading of these provisions would reveal that such complaint can only be filed if the impugned cheque was presented to the banker within a period of six months from the date, on which, it was drawn or within a period of its validity and it was dishonoured by the bank. Not only that, the payee or the holder in due course of the cheque has to give a statutory notice, in writing, to the drawer of the cheque within the prescribed period of thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and the drawer of such cheque fails to make the payment within a period of fifteen days from the receipt of such notice.

(17) Meaning thereby, the presentation, dishonour of the cheque & non-payment of amount despite receipt of notice within a statutory period etc. are the conditions precedent for institution of a criminal complaint in

writing by the payee. In other words, unless all the indicated conditions are fulfilled, only then the complaint could be filed by the payee and not otherwise. The indicated incidents, essential ingredients and the words "except upon a complaint, in writing, made by the payee" occurring in section 142 of NI Act, are the most important, having significant meaning to adjudicate the cause of action for the purpose of filing the complaint by the payee.

(18) Needless to mention that the complaint, in such a situation, has naturally to be filed by the payee in the course of recovering the impugned amount of the cheque and not by the accused. Therefore, the cause of action has to be construed **with a view point of the payee for the purpose of filing the complaint by him** and not as per the wishes of the defaulter accused. Section 138 of NI Act is the speedy, beneficial provision to recover the impugned amount, to punish the defaulter and it cannot possibly be interpreted to create the hurdles to defeat the real cause of justice and public interest to enable the accused to defeat the rightful claim of the complainant. In that eventuality, the words "the issuance of cheque drawn by a person on an account maintained by him and returned by the bank unpaid", occurring in this section, pales into insignificance and cannot possibly be read in isolation. If the pointed contention of learned senior counsel for petitioners is accepted, then, there will be no end of anything and the very purpose of section 138 of NI Act would be frustrated, which is not legally permissible. Moreover, the matter of jurisdiction, in such a situation, is no more res integra and is now well settled.

(19) An identical question came to be decided by the Hon'ble Apex Court in ***K. Bhaskaran's case (supra),*** wherein having interpreted the provisions of section 138 of NI Act, sections 178(3), 177 and 179 Cr.PC, it was ruled that "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 the following five acts, the components of the offence, took place: (1) drawing of the cheque; (ii) presentation of the cheque to the bank; (iii) returning of the cheque unpaid by the drawee bank; (iv) giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount; (v) failure of the drawer to make payment within 15 days of the receipt of the notice. It may, therefore, be an idle exercise to question jurisdiction relating to this offence. High Court in appeal rightly set aside

the finding of the trial court that it had no territorial jurisdiction because the cheque had been dishonoured in a different district, outside its jurisdiction. Further on facts, High Court rightly held that trial court had jurisdiction as the cheque had been issued at a shop within its jurisdiction."

(20) As indicated here-in-above, the petitioners-accused have purchased the hosiery items from the complainant at Ludhiana. The impugned cheques were presented by the complainant at Ludhiana. She received the information of dishonour of cheques at Ludhiana. She issued statutory legal notice to the petitioners-accused for making the payment from Ludhiana. In that eventuality, it cannot possibly be saith that the Court at Ludhiana did not have the territorial jurisdiction to entertain the impugned complaint, as urged on behalf of petitioners-accused. Therefore, the contrary arguments of their learned senior counsel "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances, as the law laid down in ***K.Bhaskaran's case (supra)*** "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand.

(21) Faced with the grave situation and taking the benefit of his ability, the next celebrated submission of learned senior counsel that since the impugned summoning order is non-speaking order and is the result of non-application of mind, so, the same deserves to be set aside, lacks merit as well.

(22) Now it is well settled legal proposition that at the time of summoning, the Magistrate, prima facie, has to form an opinion that there is sufficient ground for proceeding against (not the evidence to convict the accused), as contemplated u/s 204 Cr.PC. The Magistrate at this stage is not legally required to pass a detailed judgment in this regard.

(23) A similar point was considered by the Hon'ble Supreme Court in case ***U.P. Pollution Control Board*** *versus* ***M/s Mohan Meakins Ltd. and others (5),*** wherein, it was observed as under (para 6):-

> *"6. In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a magistrate for passing detailed*

(5) (2000) 3 SCC 745

order while issuing summons vide ***Kanti Bhadra Shah v. State of West Bengal, 2000(1) RCR(Crl.) 407 : 2000(1) SCC 722****. The following passage will be apposite in this context:*

> *"If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work ? The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all (sic) causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snailpaced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages of the trial." (Emphasis supplied)*

(24) As reproduced here-in-above, the trial Court has duly considered the preliminary, oral as well as documentary evidence in the right perspective, correctly summoned the petitioners-accused and no interference is warranted in the impugned summoning order, as urged on their behalf.

(25) No other legal point, worth consideration, has either been urged or pressed by the learned senior counsel for the petitionersaccused.

(26) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main complaint case, as there is no merit, therefore, the present petition is hereby dismissed in the obtaining circumstances of the case.

(27) Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the complaint (Annexure P1), as the same has been so recorded for a limited purpose of deciding the instant petition for its quashment in this relevant direction.

J.S. Mehndiratta