

A M/S APEX DISTRIBUTORS & ANR.  
v.  
M/S TIMEX GROUP INDIA LTD.  
(Transfer Petition (CRL.) No. 197 of 2012)

B AUGUST 5, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

C *Code of Criminal Procedure, 1973: s.406 - Transfer of criminal complaint - Dishonour of cheque issued on Vellore bank - Complaint u/s.138 NI Act filed in Delhi - Transfer Petition seeking transfer from Delhi Court to Vellore Court - Held: The cheque was dishonoured at Vellore where the bank on which it was drawn was located - No reason why the complaint filed by the respondents should not be transferred to Vellore for further proceedings - The fact that petitioner No.2 was suffering from several medical problems also relevant for deciding the transfer of the proceedings from Delhi to Vellore - The complaint directed to be transferred from Courts in Delhi to the Magistrate at Vellore who shall try the case himself or transfer the same to any other Court competent to try the same - Issue of statutory notice demanding payment of cheque amount in Delhi would not vest Delhi Court with jurisdiction to entertain complaint and try the case - Negotiable Instruments Act, 1881 - s.138 -*  
D  
E  
F *Notice.*

G **The petitioners issued a cheque on Vyasa Bank, Vellore, Tamilnadu in favour of respondent which got dishonoured. The respondent issued a notice on the petitioners in Delhi for making payment of cheque amount. As the petitioners did not make the payment, the respondent filed a complaint under section 138 of the Negotiable Instruments Act, 1881. The complainant justified the institution of the case in Delhi on the ground**

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that the statutory notices demanding payment of the cheque amount were issued to the petitioners from Delhi. The Magistrate issued summons to the petitioners.

The petitioners filed the instant Transfer Petition under 406, Cr.P.C. for seeking transfer of complaint filed under section 138 of the Negotiable Instruments Act, 1881 pending before Delhi Court to the court competent to try same at Pondicherry.

The question which arose for consideration was whether the court in Delhi had the jurisdiction to entertain the complaint in the facts and circumstances of the case especially when issue of statutory notices was the only reason urged by the respondent-complainant for filing a complaint in Delhi.

Allowing the Transfer Petition, the Court

HELD: 1. Issue of a statutory notice demanding payment of the cheque amount is not sufficient to vest the Delhi Courts with the jurisdiction to entertain the complaint and try the case. [Para 3] [1144-H]

2. The cheque in question was dishonoured at Vellore where the bank on which it was drawn is located. There is no reason why the complaint filed by the respondents should not be transferred to Vellore for further proceedings. The fact that petitioner No.2 is suffering from several medical problems is also relevant for deciding the transfer of the proceedings from Delhi to Vellore. The complaint is directed to be transferred from Courts in New Delhi to the Chief Judicial Magistrate at Vellore who shall try the case himself or transfer the same to any other Court competent to try the same. [Paras 4 & 5] [1142-E-G]

*Harman Electronics (P) Ltd. v. National Panasonic*

A *India (P) Ltd. (2009) 1 SCC 720: 2008 (17) SCR 487 - relied on.*

B *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr. Criminal Appeal No.2287 of 2009; K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr. (1999) 7 SCC 510: 1999 (3) Suppl. SCR 271 - referred to.*

**Case Law Reference:**

2008(17)SCR 487 Relied on Para 3

C 1999(3)Suppl.SCR271 Referred to Para 3

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Criminal)No.197 of 2012.

D Petition U/S 406 of Criminal Procedure Code.

D.K. Thakur, Devendra Jha, Sushila Kumar, Debasis Misra, for the Petitioners.

Vikram Dhokalia (for Dua Associates) for the Respondent.

E The Judgment of the Court was delivered by

F **T.S. THAKUR, J.** 1. In this petition under Section 406 of the Cr.P.C., the petitioners seek transfer of Criminal Complaint No.3960 of 2008 under Section 138 of the Negotiable Instruments Act, 1881 pending before the Metropolitan Magistrate, Patiala House Court at New Delhi to the Court competent to try the same at Pondicherry. The cheque in question appears to have been issued on Vyasya Bank Ltd., Vellore, Tamil Nadu. When presented for encashment the same was dishonoured, whereupon, the respondent got notices issued to the petitioners asking them to pay the cheque amount within the statutory period of fifteen days from the date of the receipt of the said notices. Failure of the petitioners to make the payment led to the filing of criminal complaint No.3960 of

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APEX DISTRIBUTORS & ANR. v. TIMEX GROUP 1141  
INDIA LTD. [T.S. THAKUR, J.]

2008 before the Metropolitan Magistrate at Patiala House, New Delhi in which the Court took cognizance and issued summons to the petitioners. The complaint, it is noteworthy, justified the institution of the case in Delhi on the solitary ground that the statutory notices demanding payment of the cheque amount had been issued to the petitioners from Delhi. In para 13 of the complaint, the complainant said:

*"That the cause of action has arisen within the jurisdiction of this Hon'ble Court in as much as the notice of demand for the Cheque amount was issued to all the Accused from Delhi. Therefore, this Hon'ble Court has the jurisdiction to entertain, try and decide the present complaint."*

2. The petitioners' case, in the present transfer petition, is that the cheque in question was not in discharge of any debt or liability but had been given to the respondent-company by way of security. Dishonour of any such cheque was not, according to the petitioners, an offence punishable under Section 138 of the Act aforementioned. That apart, the petitioners claim that the Courts in Delhi have no jurisdiction to entertain the complaint. Simply because the statutory notices were issued to the petitioners from Delhi did not clothe the Courts in Delhi to take cognizance of the offence assuming that the same had been committed. Multiple ailments of Petitioner No.2 are also urged as a ground for transfer of the proceedings from Delhi to Pondicherry.

3. The only question that primarily arises for our consideration is whether the Courts in Delhi had the jurisdiction to entertain the complaint in the facts and circumstances of the case especially when issue of statutory notices was the only reason urged by the respondent-complainant for filing a complaint in Delhi. Issue of a statutory notice demanding payment of the cheque amount is, in our opinion, not sufficient to vest the Delhi Courts with the jurisdiction to entertain the complaint and try the case. We say so on the authority of the

- A decision of this Court in *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.* (2009) 1 SCC 720 where this aspect was examined at length. This Court ruled that issue of a statutory notice cannot constitute a valid ground for conferring jurisdiction upon the Court concerned to take cognizance of an offence under Section 138. That position has been reiterated in a recent decision delivered on 1st August, 2014 by this Court in *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr. Criminal Appeal No.2287 of 2009*. In *Dashrath Rupsingh's case* (supra) this Court has overruled the earlier decision delivered by a two-Judge Bench of this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr.* (1999) 7 SCC 510 upon which the respondent sought to place reliance in support of their contention that Delhi Court could exercise jurisdiction based on the fact that notice of demand of the cheque amount was issued from Delhi.

4. In the circumstances and keeping in view the admitted factual position that the cheque in question was dishonoured at Vellore where the bank on which it was drawn is located, we see no reason why the complaint filed by the respondents should not be transferred to Vellore for further proceedings. The fact that petitioner No.2 is suffering from several medical problems will also, in our opinion, be taken care by the transfer of the proceedings from Delhi to Vellore.

5. We accordingly allow this petition and direct transfer Criminal Complaint No.3960 of 2008 titled *M/s Timex Group India Ltd. v. M/s Apex Distributers & Anr.* from Metropolitan Magistrate at Patiala House Courts in New Delhi to the Chief Judicial Magistrate at Vellore who shall try the case himself or transfer the same to any other Court competent to try the same. No costs.