

SREE MAHESH STATIONARIES & ANR.

v.

INDIABULLS FINANCIAL SERVICES LTD.  
(Transfer Petition (CRL.) No.403 of 2013)

AUGUST 5, 2014

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

*Negotiable Instruments Act, 1881 - s.138 - Dishonour of cheque - Transfer of complaint - Petitioner borrowed loan from respondent-company - Cheque issued in partial repayment of the loan amount and drawn on Bank in Bangalore, when presented for encashment to Bank in Gurgaon was dishonoured - Complaint under s.138 of the 1881 Act - Magistrate at Gurgaon took cognizance and summoned the petitioners for appearance to face the trial - Transfer petition u/s.406 CrPC seeking transfer of the complaint from Gurgaon to the competent Court at Bangalore - Held: The only reason the complainant claimed jurisdiction for the Courts at Gurgaon was that the complainant-respondent had issued the statutory notices relating to dishonour of the cheque from Gurgaon - However, issue of statutory notice cannot by itself confer jurisdiction upon the Court to take cognizance of offence u/s. 138 of the 1881 Act - The complainant also tried to justify jurisdiction for the Court at Gurgaon on the ground that the cheque was presented for collection there, however, such plea not tenable -On either ground, the Courts in Gurgaon could not assume jurisdiction - Complaint in question accordingly transferred from the Court of Judicial Magistrate at Gurgaon, Haryana to the Court of competent jurisdiction of Chief Metropolitan Magistrate at Bangalore - Code of Criminal Procedure, 1973 - s.406 - Transfer Petition.*

**The petitioner borrowed loan of Rs.15,00,000/- (Rupees Fifteen Lakh) for business purposes from**

A respondent-company. A cheque allegedly issued in partial repayment of the loan amount and drawn on the Syndicate Bank, City Market Branch, Bangalore, when presented for encashment to ING Vysya Bank, Gurgaon was dishonoured resulting in the issue of statutory notices to the petitioners and eventual filing of a complaint before the Judicial Magistrate, First Class at Gurgaon under Section 138 of The Negotiable Instruments Act, 1881. The Magistrate took cognizance and summoned the petitioners for appearance to face the trial. Petitioners filed the present transfer petition under Section 406 CrPC seeking transfer of the complaint aforementioned from Gurgaon to the competent Court at Bangalore.

D Allowing the petition, the Court

HELD:1.1. The only reason the complainant claims jurisdiction for the Courts at Gurgaon is the fact that the complainant-respondent had issued the statutory notices relating to the dishonour of the cheque from Gurgaon. However, issue of a statutory notice cannot by itself confer jurisdiction upon the Court to take cognizance of an offence under Section 138 of the Negotiable Instruments Act. A unilateral act on the part of the complainant of issuing a notice from any part of the country would not vest the Court from within whose territorial limits the notice has been issued with the power to entertain a complaint. Presentation of the cheque at a place of the choice of the complainant or issue of a notice from any such place do not constitute ingredients of the offence under Section 138 and cannot, therefore, confer jurisdiction upon the Court from where such acts are performed. Although the complaint does not claim jurisdiction for the Court at Gurgaon on the ground that the cheque was presented for collection there yet in the Counter affidavit, the respondent has tried to justify the filing of the complaint on that ground.

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However, one cannot accept presentation of a cheque to be a valid presentation for purposes of limitation within the meaning of Section 138 unless the same is to the drawee bank. On either ground, therefore, the Courts in Gurgaon could not assume jurisdiction. [Paras 5] [379-C-H; 380-A-B]

1.2. Criminal Complaint No.14089 of 2009 titled Indiabulls Financial Services Ltd. v. Sree Mahesh Stationaries is transferred from the Court of Judicial Magistrate, First Class, Gurgaon, Haryana to the Court of competent jurisdiction of Chief Metropolitan Magistrate at Bangalore who shall try the case himself or transfer the same to any other Court competent to try the same. [Para 6] [380-C, D]

*Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.* [Criminal Appeal No.2287 of 2009 delivered on 1st August, 2014] and *Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* 2001 (2) SCR 36: (2001) 3 SCC 609 - followed.

*Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.* 2008 (17) SCR 487: (2009) 1 SCC 720 - relied on.

Case Law Reference:

2008 (17) SCR 487      relied on      Para 5

2001 (2) SCR 36      followed      Para 5

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Criminal) No. 403 of 2013

Petition U/S 406 of Criminal Procedure Code.

B. Vijay Kumar for the Petitioners.

Khaitan & Co. for the Respondent.

The Judgment of the Court was delivered by

A **T.S. THAKUR, J. :** 1. In this petition under Section 406 of the Cr.P.C., the petitioners seek transfer of Criminal Complaint No.14089 of 2009 from the Court of Judicial Magistrate, First Class, Gurgaon, Haryana to the Court of competent jurisdiction at Bangalore.

B 2. The petitioner appears to have borrowed a loan of Rs.15,00,000/- (Rupees Fifteen Lakh) for business purposes from the respondent-company. A cheque allegedly issued in partial repayment of the-loan amount and drawn on the Syndicate Bank, City Market Branch, Bangalore, when presented for encashment to ING Vysya Bank, Gurgaon appears to have been dishonoured resulting in the issue of statutory notices to the petitioners and eventual filing of a complaint before the Judicial Magistrate, First Class at Gurgaon under Section 138 of The Negotiable Instruments Act, 1881. The Magistrate has taken cognizance and summoned the petitioners for appearance to face the trial. Petitioners have, in that backdrop, filed the present transfer petition seeking transfer of the complaint afore-mentioned from Gurgaon to the competent Court at Bangalore.

E 3. Petitioners' case, as is evident from the averments made in the transfer petition, is that the Courts at Gurgaon have no jurisdiction to entertain the complaint specially when the cheque in question was issued and dishonoured at Bangalore and the offence, if any, was committed only at Bangalore. Issue of statutory notices to the petitioners from Gurgaon also does not confer jurisdiction upon the Courts concerned or justify continuance of the proceedings at Gurgaon.

G 4. Having heard learned counsel for the parties, we are inclined to allow this petition. We say so because in para 7 of the complaint filed by the respondent-complainant the reason for filing the complaint at Gurgaon has been set out, thus:

H "That the cause of action for filing the present complaint arose when the aforesaid cheque was issued to the

complainant company when the intimation regarding dishonour of the said cheque was received when the aforesaid legal notice under Section 138 of the N.I. Act was sent to the accused and on the failure of the accused to make payment despite being served with the said notice within the stipulated period of 15 days. The cause of action is still subsisting and continuing. This Hon'ble Court has jurisdiction to take cognizance of the offence as the cause of action arose within the jurisdiction of this Hon'ble Court. The complaint is within the period of limitation as per law."

5. It is evident from the above that the only reason the complainant claims jurisdiction for the Courts at Gurgaon is the fact that the complainant-respondent had issued the statutory notices relating to the dishonour of the cheque from Gurgaon. We do not think that issue of a statutory notice can by itself confer jurisdiction upon the Court to take cognizance of an offence under Section 138 of The Negotiable Instruments Act. We say so because in *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.* (2009) 1 SCC 720 this Court examined a similar question and clearly ruled that a unilateral act on the part of the complainant of issuing a notice from any part of the country would not vest the Court from within whose territorial limits the notice has been issued with the power to entertain a complaint. That judgment has been affirmed by a three-judge bench of this Court in *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.* Criminal Appeal No.2287 of 2009 delivered on 1st August, 2014. This Court has in that case held that presentation of the cheque at a place of the choice of the complainant or issue of a notice from any such place do not constitute ingredients of the offence under Section 138 and cannot, therefore, confer jurisdiction upon the Court from where such acts are performed. Although the complaint does not claim jurisdiction for the Court at Gurgaon on the ground that the cheque was presented for collection there yet in the Counter affidavit, the respondent has tried to justify the filing of the complaint on that ground. *Dashrath Rupsingh's case (supra)*,

- A however, does not, as mentioned above, accept presentation of a cheque to be a valid presentation for purposes of limitation within the meaning of Section 138 unless the same is to the drawee bank. That is the view taken even in *Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* (2001) 3 SCC 609. On either
- B ground, therefore, the Courts in Gurgaon could not assume jurisdiction. Following the decisions in *Dashrath Rupsingh's and Ishar Alloy Steels* cases (*supra*), we have no hesitation in allowing the petition and directing transfer of the complaint to the competent Court to entertain the same.
- C 6. We accordingly allow this petition and transfer Criminal Complaint No.14089 of 2009 titled *Indiabulls Financial Services Ltd. v. Sree Mahesh Stationaries* from the Court of Judicial Magistrate, First Class, Gurgaon, Haryana to the Court of competent jurisdiction of Chief Metropolitan Magistrate at
- D Bangalore who shall try the case himself or transfer the same to any other Court competent to try the same. No costs.

Bibhuti Bhushan Bose

Petition allowed.