

A VINAY KUMAR SHAILENDRA
V.
DELHI HIGH COURT LEGAL SERVICES COMMITTEE
AND ANR.
(Civil Appeal No. 8468 of 2014)

B SEPTEMBER 4, 2014

[T.S. THAKUR, V. GOPALA GOWDA AND
C. NAGAPPAN, JJ.]

C *Negotiable Instruments Act, 1881 – s. 138 – Complaint
under, for dishonour of cheque – Territorial jurisdiction upon
the courts to take cognizance – Held: Courts should take the
jurisdiction in cheque dishonour cases only if the drawee
bank who dishonoured the cheque is situated within the
D jurisdiction of the Court taking cognizance – On facts, issue
of a notice from Delhi or deposit of 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.*

E In these appeals, the direction issued by the High
Court to return all the complaints filed under Section 138
of the Negotiable Instrument Act, 1881 in which
Metropolitan Magistrates in Delhi have taken cognizance
only because the statutory notices in terms of proviso to
F Section 138 of the Act demanding payment against the
dishonoured cheque have been issued to the drawers of
the cheque from Delhi, have been challenged.

Dismissing the appeals, the Court

G HELD: The order passed by the High Court of Delhi
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

VINAY KUMAR SHAILENDRA v. DELHI HIGH COURT 511
LEGAL SER. COMMITTEE

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. 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 who dishonoured the cheque is situate within the jurisdiction of the Court taking cognizance. In that view, there is 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, keeping in view the decision of this Court in *Dashrath's* case. [Para 5, 6] [514-F-G; 517-A-D]

Harman Electronics Private Limited and Anr. v. National Panasonic India Private Limited 2008 (17) SCR 487:(2009) 1 SCC 720; *Dashrath Rupsingh Rathod v. State of Maharashtra and Anr.* (2014) 9 SCALE 97 - relied on.

K. Bhaskaran v. Sankaran Vaidhyan Balan 1999 (3) Suppl. SCR 271:(1999) 7 SCC 510; *Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur and Anr.* 1965 SCR 536 :AIR 1966 SC 81; *Air India Statutory Corporation and Ors. V. United Labour Union and Ors.* 1996 (9) Suppl. SCR 579 :(1997) 9 SCC 377; *Adalat Prasad Rooplal v. Jindal & Ors.* (2004) 7 SCC 338 – referred to.

Case Law Reference :

1999 (3) Suppl. SCR 271	Referred to	Para 2, 5
1965 SCR 536	Referred to	Para 3
1996 (9) Suppl. SCR 579	Referred to	Para 3
(2004) 7 SCC 338	Referred to	Para 3

VINAY KUMAR SHAILENDRA v. DELHI HIGH COURT 513
LEGAL SER. COMMITTEE [T.S. THAKUR, J.]

Legal Services Committee in public interest pointing out that a very large number of complaints under Section 138 of the Act were pending in Courts of Metropolitan Magistrates in Delhi in which cognizance had been taken although the Courts concerned had no territorial jurisdiction to do so. 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 Private Limited and Anr. v. National Panasonic India Private Limited* (2009) 1 SCC 720. The Committee's grievance was that notwithstanding a clear exposition of law on the subject by this Court in *Harman's* case (supra) 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* (1999) 7 SCC 510. It was in terms contended before the High Court that in the light of the pronouncement of this Court in *Harman's* case (supra) 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.

3. The contentions urged by the Committee found favour with the High Court who relying upon the decisions of this Court in *Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur and Anr.* (AIR 1966 SC 81) and *Air India Statutory Corporation and Ors. V. United Labour Union and Ors.* (1997) 9 SCC 377 held that the Constitution did not place any fetters on the extraordinary jurisdiction exercisable by the High Court

A 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
B unable to dismiss the complaints *suo moto* in the light of the decision of this Court in *Adalat Prasad Rooplal v. Jindal & Ors.* (2004) 7 SCC 338. The High Court accordingly allowed the writ petition with the following directions:

C *"Consequently, in exercise of power under Article 226 of the Constitution read with Section 482 of 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 NI*
D *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."*

4. The appellant who is a practicing Advocate of the High Court of Delhi has, with the permission of this Court, filed this
E appeal which was referred for hearing to a three-Judge Bench by an order dated 3rd November, 2009. That is precisely how the present appeal alongwith the connected appeal filed by Indiabulls Financial Services Ltd. against the very same order passed by the High Court have come up before us.

F 5. We have heard learned counsel for the parties at some length. The order 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
G 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's case* (supra). In *Dashrath Rupsingh Rathod v. State of Maharashtra and Anr.* (2014) 9 SCALE 97 we have
H had an occasion to consider whether the view expressed by

VINAY KUMAR SHAILENDRA v. DELHI HIGH COURT 515
LEGAL SER. COMMITTEE [T.S. THAKUR, J.]

this Court in *K. Bhaskaran's* case (supra) 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 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 found that the proviso to Section 138 does not constitute ingredients of the offence punishable under Section 138. The legal position on the subject was summed up in the following words:

"To sum up:

(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.

(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.

(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

A *drawee bank within a period of six months from the date of its issue.*

B *(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.

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

D *(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.*

E *(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.*

F *(vii) The general rule stipulated under Section 177 of Cr.P.C 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."*

H 6. In the light of the above pronouncement of this Court we

VINAY KUMAR SHAIENDRA v. DELHI HIGH COURT 517
LEGAL SER. COMMITTEE [T.S. THAKUR, J.]

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 who 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's* case (supra). 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's* case (supra).

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

Nidhi Jain.

Appeals dismissed.