SUPREME COURT OF INDIA

Harman Electronics (P) Ltd.

Vs.

National Panasonic India Ltd.

Crl.A.No. 2021 of 2008

(S.B. Sinha and Cyriac Joseph JJ)

12.12.2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Territorial jurisdiction of a court to try an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") is in question in this appeal.

The said question arose in the following circumstances.

Appellants and respondent entered into a business transaction. Appellant is a resident of Chandigarh. He carries on business in Chandigarh. The cheque in question admittedly was issued at

Chandigarh. Complainant also has a branch office at Chandigarh although his Head Office is said to be at Delhi. It is stated that the cheque was presented at Chandigarh. However, it is in dispute as to whether the said cheque was sent for collection to Delhi. The cheque was dishonoured also at Chandigarh. However, the complainant - respondent issued a notice upon the appellant asking him to pay the amount from New Delhi. Admittedly, the said notice was served upon the respondent at Chandigarh. On failure on the part of the appellant to pay the amount within a period of 15 days from the date of communication of the said letter, a complaint petition was filed at Delhi. In the complaint petition, it was stated:

"10. That the complainant presented aforesaid cheque for encashment through its banker Citi Bank NA. The Punjab & Sind Bank, the banker of the accused returned the said cheque unpaid with an endorsement "Payment stopped by drawer" vide their memo dated 30.12.2000. The aforesaid memo dated 30.12.2000 was received by the complainant on 3.1.2001.

11. Upon dishonour of the above mentioned cheque, the complainant sent notice dt. 11.1.2001 in terms of section 138 of Negotiable Instruments Act to the accused persons demanding payment of aforesaid cheque amount at Delhi. The accused persons were served with said notice by registered A/D.

12. By the said notice the accused persons were called upon to pay to the complainant the sum of Rs.5,00,000/- within 15 days of the receipt of said notice.

13. Despite the service of notice dt. 11.1.2001 the accused persons have failed and/or neglected to pay amount of aforesaid cheque within the stipulated period of 15 days after the service of the notice.

14. Accused persons clandestinely/deliberately and with malafide intention and by failing to make the payment of the said dishonoured cheque within the stipulated period have committed the offence under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881.

15. The complainant further submit that the complaint is being filed within 1 month from the date of expiring of the 15 days grace time given under the notice for payment of said amount.

16. This Hon'ble Court has jurisdiction to entertain the present complaint as complainant carries on its business at Delhi. The demand notice dt. 11.1.2001 was issued from Delhi and the amount of cheque was payable at Delhi and because accused failed to make the payment of amount of said

cheque within statutory period of 15 days from receipt of notice."

3. Cognizance of the offence was taken against the appellant by the learned judge.

Questioning the jurisdiction of the court of Additional Sessions Judge, New Delhi, an application was filed which was disposed of by the learned Additional Sessions Judge, New Delhi in terms of an order dated 3.2.2003 stating:

"2. The main grievance of the accused is that the accused persons, as well as the complainant are carrying their business at Chandigarh. The cheque in question was given by the accused to the complainant in Chandigarh, and it was present to their banker at Chandigarh. Only notice was given by the complainant to the accused persons, from Delhi. That the same was served on the accused admittedly, at Chandigarh and that both the parties are carrying out their business also at Chandigarh. Therefore, it is contended that it would amount to absurdity if the complaint of the complainant is entertained, in Delhi, in view of the case law reported in AIR 1999 Supreme Court 3782, K. Bhaskaran Vs. Sankaran Vaidyyan Balan and Another.

6. I have considered the arguments advanced at the bar, and I am of the considered opinion that this court has jurisdiction to entertain this complaint, as admittedly the notice was sent by the complainant to the accused persons from Delhi, and the complainant is having its registered office at Delhi, and that they are carrying out the business at Delhi. Admittedly, it is also evident from the record that accused allegedly failed to make the payment at Delhi, as the demand was made from Delhi and the payment was to be made to the complainant at Delhi."

4. By reason of the impugned judgment, Criminal Miscellaneous Petition filed by the appellant has been dismissed.

5. Mr. Ashok Grover, learned Senior Counsel appearing on behalf of the appellant would submit that as the entire cause of action arose within the jurisdiction of the courts at Chandigarh, the learned Additional Sessions Judge, New Delhi had no jurisdiction to take cognizance of the offence.

6. Mr. Sakesh Kumar, learned counsel appearing on behalf of the respondent, on the other hand, would contend:

i. The cheque although was deposited at Chandigarh, the same having been sent by Citi Bank NA for collection at Delhi, the amount became payable at Delhi.

ii. Giving of a notice being a condition precedent for filing a complaint petition under Section 138 of the Negotiable Instruments Act, a notice having been issued from Delhi, the Delhi Court had the requisite jurisdiction, particularly when demand was made upon the appellant to pay the complainant at Delhi.

7. Section 138 of the Negotiable Instruments Act reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. - 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 and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) 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;

(b) 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 from the bank regarding the return of the cheque as unpaid; and

(c) 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.

Explanation.-- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

8. The proviso appended thereto imposes certain conditions before a complaint petition can be entertained.

9. Reliance has been placed by both the learned Additional Sessions Judge as also the High Court on a decision of this Court in K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr. [(1999) 7 SCC 510]. This Court opined that the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts, namely,

(1) Drawing of the cheque,

(2) Presentation of the cheque to the bank,

(3) Returning the cheque unpaid by the drawee bank,

(4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(5) Failure of the drawer to make payment within 15 days of the receipt of the notice. It was opined that if five different acts were done in five different localities, any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act and the complainant would be at liberty to file a complaint petition at any of those places. As regards the requirements of giving a notice as also receipt thereof by the accused, it was stated:

"18. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address. "

10. The court, however, refused to give a strict interpretation to the said provisions despite noticing Black's Law Dictionary in regard to the meaning of the terms `giving of notice' and `receiving of the notice' in the following terms:

"19. In Black's Law Dictionary, 'giving of notice' is distinguished from 'receiving of the notice.' (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A person 'receives' a notice when it is duly delivered to him or at the place of his business.

20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt in interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure."

11. For the said purpose, a presumption was drawn as regards refusal to accept a notice. We may, before proceeding to advert to the contentions raised by the parties hereto, refer to another decision of this Court in M/s Dalmia Cement (Bharat) Ltd. vs. M/s Galaxy Traders & Agencies Ltd. & ors. [AIR 2001 SC 676], wherein this Court categorically held:

"6. Section 27 of the General Clauses Act deals with the presumption of service of a letter sent by post. The dispatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But as the presumption is rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he in fact received the notice. It is open to the despatcher to adopt either of the options. If he opts the former, he can afford to take appropriate steps for the effective service of notice upon the addressee. Such a course appears to have been adopted by the appellant-company in this case and the complaint filed, admittedly, within limitation from the date of the notice of service conceded to have been served upon the respondents." (Underlying is mine)

It was furthermore held:

"The payee or holder of the cheque may, therefore, without taking peremptory action in exercise of

his right under clause (b) of Section 138 of the Act, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once a notice under clause (b) of Section 138 of the Act is 'received' by the drawer of the cheque, the payee or the holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account. This Court emphasised that `needless to say the period of one month from filing the complaint will be reckoned from the date immediately falling the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires'.

12. Indisputably, the parties had been carrying on business at Chandigarh. The Head Office of the complainant - respondent may be at Delhi but it has a branch office at Chandigarh. It is not in dispute that the transactions were carried on only from Chandigarh. It is furthermore not in dispute that the cheque was issued and presented at Chandigarh. The complaint petition is totally silent as to whether the said cheque was presented at Delhi. As indicated hereinbefore, the learned counsel appearing on behalf of the complainant - respondent contended that in fact the cheque was put in a drop box but as the payment was to be obtained from the Delhi Bank, it was sent to Delhi. In support of the said contention, a purported certificate issued by the Citi Bank NA has been enclosed with the counter affidavit, which reads as under:

"This is to confirm that M/s National Panasonic India Pvt. Ltd. (NPI) having registered office at AB- 11, Community Centre, Safdarjung Enclave, New Delhi - 110029 are maintaining a Current Account No. 2431009 with our Bank at Jeevan Bharti Building, 3, Parliament Street, New Delhi-110001 only and not at any other place in India including Chandigarh. Further confirmed that CITI bank has provided the facility for collection of Cheques/Demand Drafts from branches of NPI located at various places/cities in India. However, all amounts of cheques/Demand Drafts so collected on behalf of National Panasonic India Private Limited are forwarded and debited/credited to the aforesaid Current Account No. 2431009 with our Bank at Jeeval Bharti Building, 3, Parliament Street, New Delhi - 110001."

13. The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for collection of the cheque admittedly was available at Chandigrh and the said facility was availed of. The certificate dated 24.6.2003, which was not produced before the learned court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi Branch of the Citi Bank. We, therefore, have no other option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonour of the cheque also took place at Chandigarh. The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the Negotiable Instruments Act.

14. It is one thing to say that sending of a notice is one of the ingredients for maintaining the

complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

15. It is in the aforementioned situation, the distinction noticed by the Bench in M/s Dalmia Cement (Bharat) Ltd. (supra) and the meaning of `giving of notice' and `receiving of notice' as contained in Black's Law Dictionary assumes significant.

16. What is meant by `communication' albeit in different context, has been considered by a Constitution Bench of this Court in State of Punjab vs. Amar Singh Harika [AIR 1966 SC 1313] stating:

"It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned."

17. The distinction between passing of an order which is final and a communication thereof is not necessary has been noticed by this Court subsequently in State of Punjab vs. Khemi Ram [(1969) 3 SCC 28] stating:

"In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in The State of Punjab

v. Amar Singh (AIR 1966 SC 1313) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

For constitution of an offence under Section 138 of the Act, the notice must be received by the accused. It may be deemed to have been received in certain situations. The word `communicate' inter alia means `to make known, inform, convey, etc.'

18. This Court in Sultan Sadik vs. Sanjay Raj Subba and Ors [(2004) 2 SCC 377], held:

"33. The decision of this Court in Khemi Ram [(1969) 3 SCC 28] relied upon by Mr. Bachawat is not apposite as therein an order of suspension was in question. This Court in the said decision itself referred to its decision in State of Punjab v. Amar Singh Harika [AIR 1966 SC 1313], which stated that communication of an order dismissing an employee from service is imperative. If communication of an order for terminating the jural relationship is imperative, a fortiori it would also be imperative at the threshold."

19. Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. The court ordinarily will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local.

20. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary.

21. In Mosaraf Hossain Khan vs. Bhagheeratha Engg. Ltd. [(2006) 3 SCC 658], this court held:

"30. In terms of Section 177 of the Code of Criminal Procedure every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. 178 provides for place of inquiry or trial in the following terms: `178.

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) Where an offence is committed partly in one local area and partly in another, or

(c) Where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) Where it consists of several acts done in different local areas.

31. A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the district courts of Birbhum and in that view of the matter it is that court which will have jurisdiction to take congnizance of the offence. In fact the jurisdiction of the court of CJM, Suri, Birbhum is not in question. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 of the Code of Criminal Procedure is attracted, the court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter.

32. Sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of 'cause of action' for which the complaint petition was filed by the appellant and cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri."

22. In Y.A. Ajit. v. Sofana Ajit [AIR 2007 SC 3151), this Court held:

"The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is therefore not a stranger to criminal cases."

23. Presumption raised in support of service of notice would depend upon the facts and circumstances of each case. Its application is on the question of law or the fact obtaining. Presumption has to be raised not on the hypothesis or surmises but if the foundational facts are laid

down therefor. Only because presumption of service of notice is possible to be raised at the trial, the same by itself may not be a ground to hold that the distinction between giving of notice and service of notice ceases to exist.

24. Indisputably all statutes deserve their strict application, but while doing so the cardinal principles therefor cannot be lost sight of. A Court derives a jurisdiction only when the cause of action arose within his jurisdiction. The same cannot be conferred by any act of omission or commission on the part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, commission of an completes. Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter in Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd., [(2001) 6 SCC 463] emphasis has been laid on service of notice.

25. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower cannot only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-`-vis the provisions of the Code of Criminal Procedure.

26. Learned counsel for the respondent contends that the principle that the debtor must seek the creditor should be applied in a case of this nature.

27. We regret that such a principle cannot be applied in a criminal case. Jurisdiction of the Court to try a criminal case is governed by the provisions of the Criminal Procedure Code and not on common law principle.

28. For the views we have taken it must be held that Delhi High Court has no jurisdiction to try the case. We, however, while exercising our jurisdiction under Article 142 of the Constitution of India direct that Complaint Case No.1549 pending in the Court of Shri N.K. Kaushik, Additional Sessions Judge, New Delhi, be transferred to the Court of the District and Sessions Judge, Chandigarh who shall assign the same to a court of competent jurisdiction. The transferee court shall fix a specific date of hearing and shall not grant any adjournment on the date on which the complainant and its witnesses are present. The transferee court is furthermore directed to dispose of the matter within a period of six months from the date of receipt of the records of the case on assignment by the learned District and Sessions Judge, Chandigarh.

29. The appeal is allowed with the aforementioned observations and directions. There shall, however, be no order as to costs.