

FIL Industries Limited

v.

Imtiyaz Ahmed Bhat

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE
JAGDISH SINGH KHEHAR

Criminal Appeal No. 1168 Of 2013 [Arising Out Of Slp(Crl) No. 8096 Of
2012] | 12-08-2013

1. We have heard learned counsel for the parties.

2. Leave granted.

3. The facts very briefly are that the respondent delivered a cheque dated 23rd December, 2010 for an amount of `29,69,746/-(Rupees Twenty Nine lakhs sixty nine thousand seven hundred forty six only) on Jammu and Kashmir Bank Limited, Branch Imam Saheb, Shopian, to the appellant towards some business dealings and the appellant deposited the same in UCO Bank, Sopore. When the cheque amount was not encashed and collected in the account of the appellant in UCO Bank Sopore, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Chief Judicial Magistrate, Sopore. The respondent sought dismissal of the complaint on the ground that the Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint. By order dated 29th November, 2011, the learned Chief Judicial Magistrate, Sopore, however, held that he had the jurisdiction to entertain the complaint. Aggrieved, the appellant filed Criminal Miscellaneous Petition No. 431 of 2011 under Section 561A of the Jammu and Kashmir Criminal Procedure Code and by the impugned order dated 2nd June, 2012, the High Court quashed the complaint saying that the Court at Sopore had no jurisdiction to receive and entertain the complaint.

4. We have heard learned counsel for the parties and we find that in *K.Bhaskaran v. Sankaran Vidyabalan and Another* [(1999) 7 SCC 510], this Court had the occasion to consider as to which Court would have the

jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and in paras 14, 15 and 16 of the judgment in the aforesaid case held as under:-

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence : (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.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

16. Thus it is clear, if the 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. In other words, 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 those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.

5. It will be clear from the aforesaid paragraphs of the judgment in K. Bhaskaran's case (Supra) that five different acts compose the offence under Section 138 of the Negotiable Instruments Act and if any one of these five different acts was done in a particular locality the Court having territorial

jurisdiction on that locality can become the place of trial for the offence under Section 138 of the Negotiable Instruments Act and, therefore, the complainant can choose any one of those courts having jurisdiction over any one of the local area within the territorial limits of which any one of the five acts was done. In the facts of the present case, it is not disputed that the cheque was presented to the UCO Bank at Sopore in which the appellant had an account and, therefore the Court at Sopore had territorial jurisdiction to entertain and try the complaint.

6. Learned counsel for the respondent, however, relied on the decision of this Court in *Harman Electronics Private Limited and Another v. National Panasonic India Private Limited* [(2009) 1 SCC 720] to submit that the Court at Shopian would have the territorial jurisdiction. We have perused the aforesaid decision of this Court in *Harman Electronics Private Limited* (Supra) and we find on a reading of paragraphs 11 and 12 of the judgment in the aforesaid case that in that case the issue was as to whether sending of a notice from Delhi itself would give rise to a cause of action for taking cognizance of a case under Section 138 of the Negotiable Instruments Act when the parties had been carrying on business at Chandigarh, the Head Office of the respondent-complainant was at Delhi but it had a branch at Chandigarh and all the transactions were carried out only from Chandigarh. On these facts, this Court held that Delhi from where the notice under Section 138 of the Negotiable Instruments Act was issued by the respondent would not have had jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act. This question does not arise in the facts of the present case.

7. For the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the High Court and remand the matter to the Chief Judicial Magistrate, Sopore for decision in accordance with law.