Before Ranjit Singh, J.

M/S CENTUM LEARNING LTD. AND OTHERS,—*Petitioners*

versus

GURPREET SINGH,—*Respondent*

Crl. M. No.M-35220 of 2011

22nd November, 2011

Negotiable Instruments Act, 1881 - S. 138/142 - Code of Criminal Procedure, 1973 - S.177 - Cheque dishonoured with the remarks "payment stopped by drawer" - Complaint filed and summoning order issued - Prayer is for quashing of complaint(s) and summoning order(s) on the ground of lack of jurisdiction - Held, plea of jurisdiction is a mixed question of law and fect - Complainant can choose any one of the courts having juridiction over any local and within the territorial limit where offence took place - Place where cheque presented cannot be ignored while determining territorial jurisdiction.

Held, That 'bank'' means the drawee bank and not the collecting bank as held in Sh Ishar Alloys Sales Ltd. v/s Jayaswals Neco Ltd. (2001) 3 SCC 609. However, the issue of jurisdiction was not in issue before the Hon'ble Supreme Court in that case and cannot help the case of the Petitioners. The issue of jurisdiction was dealt with in K Bhaskaran v/s Sankaran Vaidhya Balan; (1999) 7 SCC 510 and it was held that the Complainant can choose any one of the Courts having jurisdiction over any of the local areas within the territorial limits of which the components of the offence took place. Thus, the place where the cheque is presented cannot be all together ignored while determining the territorial jurisdiction of the trial court.

(Paras 9,11 & 14)

Also held, that question of jurisdiction of a court is always a mixed question of fact and law. The plea of jurisdiction has be first raised before the Trial Court for it to pass an appropriate order. The Petitioners have

already appeared and submitted to the jurisdiction of the Trial Court. They ought to have raised this plea before the Trial Court.

(Para 19)

Further held, that as per K Bhaskaran's case, the Trial Court will have to see if any of the five concatenations of the number of acts were complete to attract jurisdiction. One of the components is presentation of the cheque to the bank. Still if it is found that the Court at Ferozepur would have no jurisdiction to deal with the Complaint, the same can either be returned or liberty given to the Respondent to file the Complaint before the court of competent jurisdiction. This cannot lead to quashing of the complaint. The Petitioners may, if so advised, raise the plea of jurisdiction before the Trial Court and the Court would be at liberty to deal with the same and pass any appropriate order in accordance with law. Petitions dismissed.

(Paras 21 & 22)

Digvijay Rai, Advocate, *for the petitioners.*

RANJIT SINGH, J.

(1) M/s Centum Learning Ltd. and others seek quashing of the complaint pending before Judicial Magistrate Ist Class, Ferozepur; the summoning order dated 14.5.2011 and the proceedings arising therefrom on various grounds in Criminal Misc. M No.35220 of 2011 (***M/s Centum Learning Ltd., New Delhi and others Vs. Gurpreet Singh)***.

(2) Petitioner No.1-Company is engaged in management training and coaching of students to various Universities for different programmes. In order to open its educational centre at Mohali, the petitioners approached the respondent, who had a built up property measuring 21863 sq.feet comprising of basement, ground floor, first and second floor. The petitioners accordingly entered into a lease deed with Baldev Singh, who is a G.P.A holder of his son Gurpreet Singh and Smt.Kuljit Kaur on 29.3.2010. The respondent accepted the cheque of Rs.38,80,000/- at New Delhi towards the interest free security deposit. The petitioners also paid an amount of Rs.17,40,000/- as advance rent. The premises were accordingly handed over to the petitioner-company on 30.6.2010 on the basis of a registered lease deed.

(3) The petitioner-Company accordingly paid rent to the respondent for the period from July 2010 to September 2010 at the rate of Rs.8,70,000/- per month, as per the lease deed. Subsequently, some dispute arose between the parties and various telecommunication and e-mail communications followed. The petitioners claim to have handed over the possession of two floors premises to the respondent on 10.10.2010 as per mutual understanding. The process of exchanging e-mails again started for sorting out the differences between the parties. It is averred that the parties finally settled and the petitioners then issued a cheque @ Rs.5,50,000/- per month for the months of October, November and December. Some post dated cheques were statedly given for the period from January 2011 to September 2012 and the respondent encashed the cheques for the period from October 2010 to March 2011. As per the petitioners, they had conveyed that in case the revised agreement is terminated, then unused cheques shall be duly returned and in case these are not returned, then the petitionertenant would have the authority to stop the payment thereof.

(4) The petitioners would contend that they had objected to the respondent from putting some new conditions against the understanding reached between them. The petitioners accordingly sent an addendum to the lease deed. While the petitioners were awaiting for signed addendum to be returned by the respondent, they received a e-mail taking a U turn to the effect that a sum of Rs.5,50,000/- per month was only a partial rent and the difference in rent was payable. The petitioners, on their part, wanted the respondent to send back the signed addendum and in the event of respondent failing to do so, the petitioners conveyed that the lease deed would stand terminated.

(5) On 2.6.2011, the respondent sought appointment of Arbitrator, to which the petitioners suggested the names of five retired Judges. No reply was received to the same. In the meantime, the respondent filed a complaint under Section 138/142 of the Negotiable Instruments Act (for short, "the Act") read with Section 420 IPC at Ferozepur. Judicial Magistrate, Ferozepur, after recording pre-summoning evidence, has issued summons to the accused on 14.5.2012. It is alleged that the petitioners have issued cheque No.013508 dated 10.4.2011 towards discharge of their existing liability and on presentation of the same at Ferozepur, the said cheque was dishonoured with endorsement 'payment stopped by drawer'. As per the allegation, the petitioners failed

to discharged the liability even after notice and hence, an offence under Section 138 of the Act. Petitioner Nos.2 and 3 appeared before the Court and have been granted bail. They, however, could not appear on 19.9.2011, which was the next date and were granted exemption. The case was then adjourned to 22.10.2011 and now the petitioners have filed the present petition for quashing of the complaint and the summoning order.

(6) On the basis of similar facts, concerning the same dispute and transaction, the respondent has filed a complaint, when a cheque bearing No.013527 dated 10.4.2011 for a sum of Rs.2,72,993/- was returned with the similar remarks, when presented by him to his bankers at Ferozepur. The petitioners, thus, stand summoned in the second complaint as well, which is under challenge in Criminal Misc. M No.35221 of 2011 (***M/s Centum Learning Ltd., New Delhi and others Vs. Smt.Kuljit Kaur)***. Both these petitions are, thus, being disposed of together by this common order.

(7) The learned counsel for the petitioners has mainly challenged the complaint and the summoning order on the ground that the Courts at the Ferozepur have no jurisdiction in this case. It is alleged that the agreement was entered into at Delhi. The cheque was issued at Delhi; the property is situated at Mohali and it is accordingly urged that no cause of action has arisen at Ferozepur, where the complaint has been filed. In support, heavy reliance is placed by the petitioners on a decision of Delhi High Court rendered in Criminal Revision No.313 of 2011 (***M/s Grandlay Electrical India, New Delhi Vs. M/s Ess Ess Enterprises, Ludhiana and others)***. While deciding this Criminal Revision, High Court of Delhi has referred to and relied upon various judgments of the Hon'ble Supreme Court in the case of **Harman Electronics (P) Ltd. and Anr. *versus* M/s National Panasonic India Ltd. (1), Sh. Ishar Alloy Sales Ltd. *versus* Jayaswals Neco Ltd. (2).** Reference is also made to **K. Bhaskaran *versus* Sankaran Vaidhyan Balan (3).**

(8) In ***Sh.Ishar Alloy Sales Ltd.'s case*** (supra), the Hon'ble Supreme Court has determined the meaning of that the expression "the

(1) 2009 (1) SCC 720
(2) 2001 (3) SCC 609
(3) 1999 (7) SCC 510

bank" as mentioned in clause (a) of proviso to Section 138 of the Act. The Court posed this question at the outset of the judgment and then has answered the same. The question as posed is as follows:-

> "Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the payee of the cheque?"

(9) As held by the Hon'ble Supreme Court 'the Bank' means the drawee bank and not the collecting bank. Hence, in order to attract the criminal liability under Section 138 of the Act, the cheque must be presented to the drawee bank within the statutory period of six months either personally or through a collecting bank. The issue of jurisdiction to file complaint was not in issue before the Hon'ble Supreme Court and this is so very clear from Para 10 of the judgment, which is as follows:-

> "It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on

> which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee."

(10) This judgment, thus, may not help the cause of petitioners with any certainly.

(11) The issue of territorial jurisdiction of the courts relating to offence under Section 138 of the Act has been dealt with in ***K.Bhaskaran's case*** (supra). The Court has clearly held that complainant can choose any one of those Courts having jurisdiction over any of the local areas within the territorial limits of which any one of the following five acts, the components of the offence, took place: (i) drawing of cheque (ii) presentation of the cheque to the bank; (iii) returning of the cheque unpaid by the drawee bank; (iv) giving of notice in writing to drawer of the cheque, demanding payment of the cheque amount; and (v) failure of the drawer to make payment within 15 days of the receipt of notice. Hon'ble Supreme Court in this case accordingly upheld the order passed by the High Court, setting-aside the finding of the trial Court that it had no territorial jurisdiction because the cheque had been dishonoured in different district, outside its jurisdiction. The question of jurisdiction is considered by the Hon'ble Supreme Court in the light of Section 177 of Cr.P.C. Relevant observations of the Hon'ble Court are as under:-

> "We fail to comprehend as to how the Trial Court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be inquired into and tried in a court within whose jurisdiction it was committed." The locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criteria to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as

the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act."

(12) It is further observed that the rule that every offence shall be tried by the Court within whose jurisdiction it was committed is not an unexceptional or unrecognized principle. It is observed as under:-

"Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word 'ordinarily' to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a Court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the Court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. It reads thus :

"179. Offence triable where act is done or consequence ensues. -When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

(13) It is in the above context, the Court held that offence under Section 138 of the Act can be completed only with the concatenation of number of acts and then has listed the five acts already noticed above. The Court has then observed:-

"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 :

178. (a)-(c) xx xx xx xx

(d) 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.

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."

(14) Thus, the place where the cheque is presented can not be all together ignored while determining the territorial jurisdiction of the Trial Court.

(15) In ***Harman Electronics (P) Ltd.'s case*** (supra), the Court was dealing with relevance of place from where notice is sent and received for determining territorial jurisdiction of the Court trying the offence. Appellant in this case was carrying on business in Chandigarh, cheque was issued and dishonoured at Chandigarh. Notice, however, was sent by the complainant from Delhi and the complaint was filed at Delhi. It is held that Court derives a jurisdiction only when cause of action arises within its jurisdiction. As is observed, distinction has to be borne in mind between the ingredients of

an offence and commission of a part of the offence. It is, thus, observed that while issuance of a notice by the holder of a negotiable instrument is necessary, the service thereof is imperative. It is only on a service of such notice and failure on the part of the accused to pay the demanded amount within 15 days thereafter the commission of an offence is completed. Accordingly, it is observed that giving of notice, therefore, can not have any precedent over the service. It was, thus, held that Delhi High Court had no jurisdiction and the case was transferred to Chandigarh.

(16) Incidentally, there was dispute as to whether the said cheque was sent for collection to Delhi (emphasis supplied). This perhaps was the reason with the Court in ***Harman Electronics (P) Ltd.'s case*** (supra) to somehow distinguish the ratio of law laid down in ***K.Bhaskaran's case*** (supra). This is apparent from the following observations made by the Court in the case of ***Harman Electronics (P) Ltd.*** (supra):-

> "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 Chandigarh 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 Citibank. 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."

(17) ***Harman Electronics (P) Ltd.'s case*** (supra), thus, was decided in the background of factual position noticed above. Ratio of law in ***K.Bhaskaran's case*** (supra), thus, can not be ignored.

(18) In ***M/s Grandlay Electrical India's case*** (supra), Delhi High Court has relied upon ***Harman Electronics (P) Ltd.*** (supra) and

in ***Sh.Ishar Alloy Sales Ltd.'s case*** (supra). It is noticed that respondents in this case are resident of and are located at Ludhiana. The cheque which is the subject matter of the complaint under Section 138 of the Act is also drawn at State Bank of Patiala, Ludhiana where respondent No.1 is maintaining its bank account. The cheque in question, though it was deposited for collection by the petitioner with his banker Punjab and Sind Bank, Jangpura Extension, New Delhi, was sent for collection to the drawee bank at Ludhiana where it was allegedly dishonoured. Even the notice of demand under Section 138 of the Act was served on the respondents at Ludhiana. Thus, in view of the law laid down by the Supreme Court in the case of ***M/s Harman Electronics (P) Ltd.*** (supra) and ***Shri Ishar Alloy Sales Ltd.*** (supra), the entire cause of action for filing the complaint under Section 138 of the Act has arisen at Ludhiana. Accordingly, the Courts at Delhi were held to be having no jurisdiction to entertain the complaint and the revision petition was accordingly allowed and the action of the Magistrate in returning the complaint to be filed in the Court of competent jurisdiction was upheld by the Delhi High Court. Against this order, a Special Leave Petition No.8396 of 2011 was filed before the Hon'ble Supreme Court and the same was dismissed on 18.11.2011. Copy of this order has also been placed before the Court. It is accordingly urged that the Court at Ferozepur would not have any jurisdiction to entertain the complaint and accordingly the complaint and the summoning order be quashed under Section 482 Cr.P.C.

(19) The question of jurisdiction of a Court is always a mixed question of fact and law. Whether the Court at Ferozepur will have jurisdiction to entertain this complaint or not, will first have to be raised before that Court itself. In the present case, the prayer is made for quashing the complaint. This prayer is substantially different from the position before the High Court of Delhi. The High Court of Delhi was exercising the revisional jurisdiction against the order passed by the Magistrate in returning the complaint for want of jurisdiction. This order was upheld, against which the S.L.P. has also been dismissed. Obviously, the plea of jurisdiction was raised before the Trial Court and accordingly the complaint was returned to the petitioners therein to be presented before the Court of competent

jurisdiction. Obviously, such a plea of jurisdiction was raised before the trial Court and that is how the matter had reached the High Court of Delhi and then before the Hon'ble Supreme Court. It was not a case where the complaint or the summoning order was quashed by the High Court while exercising inherent jurisdiction.

(20) The petitioners have to first raise this plea before the Trial Court, for it to pass an appropriate order. The petitioners have already appeared before the Trial Court and have submitted themselves to the jurisdiction of the Court. They ought to have raised this plea before the Trial Court for it to decide. It will not be a case where inherent jurisdiction is to be exercised on the basis of averments made in the petition. This plea has to be raised before the Trial Court, which would be well competent to deal with the same and pass an appropriate order in accordance with law.

(21) The issue does not appear to be as simple as is being made out by the counsel. In this case, the cheque was presented at Ferozepur. This fact is not in any serious dispute unlike in the case of ***M/s Harman Electronics (P) Ltd.*** (supra). As per ***K.Bhaskaran's case*** (supra), the Trial Court will have to see if any of the five concatenation of the number of acts were complete to attract the jurisdiction of the Court at Ferozepur. One of the component is presentation of the cheque to the bank, which in this case was at Ferozepur. Still, if it is found that the Court at Ferozepur would have no jurisdiction to deal with the complaint, the same can either be returned or liberty given to the respondent to file the complaint before the Court of competent jurisdiction. This can not lead to quashing of the complaint as such. Certainly no case for quashing the complaint and the summoning order, thus, would be made out. I am, therefore, not inclined to invoke the inherent jurisdiction of this Court to quash the complaint and the summoning order. The petitioners may, if so advised, raise the plea of jurisdiction before the Trial Court and the Court would be at liberty to deal with the same and pass any appropriate order in accordance with law.

(22) Both the petitions are, therefore, dismissed.

M. Jain