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**Jagan Vs. State and anr**

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**SooperKanoon Citation** : sooperkanoon.com/1027035

**Court** : Delhi

**Decided On :** Sep-09-2013

**Judge** : J.R. Midha

**Appellant** : Jagan

**Respondent** : State and anr

**Judgement** :

$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 4114/2011 & Crl. MA 19168/2011 Date of Decision :

9. h September, 2013 % JAGAN Through ..... Petitioner Mr. S.N. Gupta, Adv. versus STATE & ANR Through ..... Respondents Mr. Neeraj Kr. Singh, APP. Mr. Piyush Sharma, Adv. for respondent no.2. CORAM:HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT
(ORAL) 1. The petitioner is challenging the territorial jurisdiction of the learned Metropolitan Magistrate to entertain and try the complaint under Section 138 of the Negotiable Instruments Act on the ground that the deposit of cheque by respondent no.2 in its Bank at Delhi would not confer jurisdiction on the learned Metropolitan Magistrate.

2. The law with respect to the territorial jurisdiction of the Court under Section 138 of the Negotiable Instruments Act has been set at rest by the Supreme Court in

Nishant Aggarwal v. Kailash Kumar Sharma, 2013 (7) SCALE 75 in which the Supreme Court, after considering Shri Ishar Alloy Steels Ltd. (supra) and Harman Electronics Private Limited (supra), held that the Court where the cheque is deposited for collection, has jurisdiction to try the accused under Section 138 of Negotiable Instruments Act in terms of the principles laid down in K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510.The Supreme Court held that the issue of territorial jurisdiction of the Courts did not even arise for consideration in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. (2001) 3 SCC 609.and therefore it does not affect the ratio in K. Bhaskaran (supra). The Supreme Court further observed that in Harman Electronics Private Limited v. National Panasonic India Private Limited, (2009) 1 SCC 720.the Court held that a notice of dishonor under Section 138 of Negotiable Instruments Act alone would not confer the jurisdiction to try the accused at the place of issuance of the notice. However, the Supreme Court did not deviate from the other principles laid down in K. Bhaskaran (supra). In Nishant Aggarwal (supra), the Supreme Court re-affirmed the jurisdiction of the Court where the cheque is presented for collection in terms of K. Bhaskaran(supra). The relevant portion of the said judgment is reproduced hereunder:

2. The question which has to be decided in this appeal is whether the Court, where a cheque is deposited for collection, would have territorial jurisdiction to try the accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short "the N.I. Act") or would it be only the Court exercising territorial jurisdiction over the drawee bank or the bank on which the cheque is drawn? xxx xxx xxx 10. Mr. Ahmadi, learned senior counsel for the Appellant in support of his claim that the Court at Bhiwani has no jurisdiction heavily relied on the decision of this Court in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. (2001) 3 SCC 609.We were taken through the entire judgment. Though the case is also related to N.I. Act, the issue of territorial jurisdiction was not the subject-matter thereof. In Ishar Alloy Steels (supra), a three-Judge Bench of this Court defined the term "the bank" appearing in c lause (a) of Section 138 of the N.I. Act as the drawer's bank. It was defined in the context of the statutory period of six months as mentioned in clause (a), hence, this Court held that the date of presentation of the cheque for calculating the

statutory time period of six months will be the date of presentation of the cheque to the drawer's bank i.e. Payee bank and not the drawee's bank i.e. Collecting bank. This Court has correctly applied the principle of strict interpretation appreciating that Section 138 of the N.I. Act creates an offence as the drawer of the cheque cannot be expected or saddled with the liability to hold the cheque amount in his account beyond six months. The reading of the entire decision in Isher Alloy Steel (supra) shows that jurisdiction of the Court to take cognizance arises only where cheque is presented to the bank of drawer either by drawee's bank or the drawee/payee personally within six months. In other words, the analysis of the said decision, the ratio of Isher Alloy Steel (supra) deals with such a situation where the cheque has been presented within six months to the drawer's bank by the payee in any manner. Inasmuch as the interpretation relates to filing of complaint within the statutory time period of six months, we are of the view that the reliance on the law laid down in Isher Alloy Steel (supra) has no relevance as far as the present case is concerned. In fact, that is the reason that in Isher Alloy Steel (supra), the judgment in K. Bhaskaran (supra) was not discussed since territorial jurisdiction was not the issue in that case. In view of the same, the definition of the term "the bank" envisaged in Isher Alloy Steel (supra) cannot be employed to decide the jurisdictional aspect and dilute the ratio of the judgment in K. Bhaskaran (supra). Hence, we are of the view that on the strength of the judgment in Isher Alloy Steel (supra) defining the term "the bank", it cannot be said that jurisdiction to file a complaint under Section 138 of the N.I. Act does not lie at the place of drawee's bank. To put it clearly, the judgment in Isher Alloy Steel (supra) does not affect the ratio of the judgment in K. Bhaskaran (supra) which provides for jurisdiction at the place of residence of the payer and the payee. In such circumstances, we are of the view that the judgment in Isher Alloy Steel (supra) as well as judgments of various High Courts relied on by the Appellant cannot be read against the Respondent to hold that the Magistrate at Bhiwani does not have the jurisdiction to try the complaint. xxx xxx xxx 12. Mr. Ahmadi, learned senior counsel for the Appellant has also relied on a decision of this Court in Harman Electronics Private Limited and Anr. v. National Panasonic India Private Limited : (2009) 1 SCC 720.In Harman Electronics (supra), the complainant and the accused entered into a business transaction. The accused was a resident of

Chandigarh. He carried on the business in Chandigarh and issued a cheque in question at Chandigarh. The complainant had a Branch Office at Chandigarh although his Head Office was at Delhi. He presented the cheque given by the accused at Chandigarh. The cheque was dishonoured at Chandigarh. The complainant issued a notice upon the accused asking him to pay the amount from New Delhi. The said notice was served on the accused at Chandigarh. On failure on the part of the accused to pay the amount within 15 days from the date of the communication of the said letter, the complainant filed a complaint at Delhi. In the complaint, it was stated that the Delhi Court has jurisdiction to try the case because the complainant was carrying on business at Delhi, the demand notice was issued from Delhi, the amount of cheque was payable at Delhi and the accused failed to make the payment of the said cheque within the statutory period of 15 days from the date of receipt of notice. It is further seen that the cognizance of the offence was taken by the learned Magistrate at Delhi. The accused questioned the jurisdiction of the Magistrate at Delhi before the Addl. Sessions Judge, New Delhi. The Sessions Judge held that the Magistrate at Delhi had jurisdiction to entertain the complaint as, admittedly, the notice was sent by the complainant to the accused from Delhi and the complainant was having its Registered Office at Delhi and was carrying on business at Delhi. The learned Judge has also observed that the accused failed to make payment at Delhi as the demand was made from Delhi and the payment was to be made to the complainant at Delhi. The Delhi High Court dismissed the petition filed by the accused. Thereafter, the accused approached this Court. This Court considered Section 138 of the N.I. Act and also referred to K. Bhaskaran's case (supra) and quoted the five components of offence under Section 138 which have been noted in paragraph supra. This Court reiterated that the five different acts which are the components of offence under Section 138 of the N.I. Act 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 N.I. Act and the complainant would be at liberty to file a complaint at any of those places. Ultimately, this Court held that the Chandigarh Court had jurisdiction to entertain the complaint because the parties were carrying on business at Chandigarh, Branch Office of the complainant was also in Chandigarh, the transactions were

carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. This Court pointed out that the complaint did not show that the cheque was presented at Delhi, because it was absolutely silent in that regard and, therefore, there was no option but to presume that the cheque was presented at Chandigarh. It is not in dispute that the dishonour of the cheque also took place at Chandigarh and, therefore, the only question which arose before this Court for consideration was whether the sending of notice from Delhi itself would give rise to a cause of action in taking cognizance under the N.I. Act. In such circumstances, we are of the view that Harman Electronics (supra) is only an authority on the question where a court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction and it does not deviate from the other principles laid down in K. Bhaskaran (supra). This Court has accepted that the place where the cheque was presented and dishonoured has jurisdiction to try the complaint. In this way, this Court concluded that issuance of notice would not by itself give rise to a cause of action but communication of the notice would. In other words, the court clarified only on the service in such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days, thereafter, the commission of an offence completes. We are of the view that this Court in Harman Electronics (supra) affirmed what it had said in K. Bhaskaran (supra) that court within whose jurisdiction the cheque is presented and in whose jurisdiction there is failure to make payment within 15 days of the receipt of notice can have jurisdiction to try the offence under Section 138 of the N.I. Act. It is also relevant to point out that while holding that the Chandigarh Court has jurisdiction, this Court in Harman Electronics (supra) observed that in the case before it, the complaint was silent as to whether the said cheque was presented at Delhi. In the case on hand, it is categorically stated that the cheque was presented at Bhiwani whereas in Harman Electronics (supra) the dishonour had taken place at Chandigarh and this fact was taken into account while holding that Chandigarh court has jurisdiction. In the complaint in question, it is specifically stated that the dishonour took place at Bhiwani. We are also satisfied that nothing said in Harman Electronics (supra) had adverse impact on the complainant's case in the present case.

13. As observed earlier, we must note that in K. Bhaskaran (supra), this Court has held that Section 178 of the Code has widened the scope of jurisdiction of a

criminal court and Section 179 of the Code has stretched it to still a wider horizon. Further, for the sake of repetition, we reiterate that the judgment in Ishar Alloy (supra) does not affect the ratio in K. Bhaskaran (supra) which provides jurisdiction at the place of residence of the payer and the payee. We are satisfied that in the facts and circumstances and even on merits, the High Court rightly refused to exercise its extraordinary jurisdiction under Section 482 of the Code and dismissed the petition filed by the Appellantaccused.

14. In the light of the above discussion, we hold that the ratio laid down in K. Bhaskaran (supra) squarely applies to the case on hand. The said principle was correctly applied by the learned Sessions Judge as well as the High Court. Consequently, the appeal fails and the same is dismissed. In view of the dismissal of the appeal, the interim order granted by this Court on 09.12.2011 shall stand vacated. (Emphasis supplied) 3. This case is squarely covered by Nishant Aggarwal (supra) as the cheque in question was deposited by the respondent no.2 in their account with Standard Chartered Bank, CMS, New Delhi and, therefore, the learned Metropolitan Magistrate has clear jurisdiction to entertain and try the complaint under Section 138 of the Negotiable Instruments Act.

4. There is no merit in this petition which is hereby dismissed.

5. Pending application stands disposed of. J.R. MIDHA, J SEPTEMBER 09 2013 dk

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