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Good Luck Traders Vs. M/S. Brahmaputra Tmt Bars Pvt. Ltd. and Ors.

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Court : Delhi

Decided On : Dec-16-2014

Judge : V.P.Vaish

Appellant : Good Luck Traders

Respondent : M/S. Brahmaputra Tmt Bars Pvt. Ltd. and Ors.

Advocate for Pet/Ap. : Mr. Ashish Pratap Singh, Mr. Gagan Deep Singh, Mr. P. K. Saxena, Mr. Chinmoy Pradip Sharma, Mr. Arunabh Chowdhury, Mr. G. Panmei

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

13. h November, 2014 Date of Decision:

16. h December, 2014 % + CRL. M.C. 4589/2014 GOOD LUCK TRADERS Through: ..... Petitioner Mr. Ashish Pratap Singh, Advocate. versus M/S. YASH ASSOCIATES & ORS. .....Respondents Through: Mr. Gagan Deep Singh, Advocate for R-1 & R-2. Mr. P. K. Saxena, APP for the State. + CRL. M.C. 4597/2014 GOOD LUCK TRADERS Through: ..... Petitioner Mr. Ashish Pratap Singh, Advocate. versus SHREE SHIV SAI STEEL INDUSTRIES LTD. .....Respondent Through: Mr. Chinmoy Pradip Sharma, Advocate for R-1 to R-4. Mr. P. K. Saxena, APP for the State. + CRL. M.C. 4598/2014 GOOD LUCK TRADERS Through: ..... Petitioner Mr. Ashish Pratap Singh, Advocate. versus M/S. YASH ASSOCIATES & ORS. .....Respondents Through: Mr. Gagan Deep

Singh, Advocate for R-1 & R-2. Mr. P. K. Saxena, APP for the State. + CRL. M.C. 4599/2014 GOOD LUCK TRADERS Through: ..... Petitioner Mr. Ashish Pratap Singh, Advocate. versus M/S. BRAHMAPUTRA TMT BARS PVT. LTD. & ORS. ..Respondents Through: Mr. Arunabh Chowdhury & Mr. G. Panmei, Advocates for R-1 to R-3. Mr. P. K. Saxena, APP for the State. + CRL. M.C. 4600/2014 GOOD LUCK TRADERS Through: ..... Petitioner Mr. Ashish Pratap Singh, Advocate. versus SHREE SHIV SAI STEEL INDUSTRIES LTD. & ORS...Respondents Through: Mr. Chinmoy Pradip Sharma, Advocate for R-1 to R-4. Mr. P. K. Saxena, APP for the State. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1 By these petitions filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), the petitioner has assailed orders dated 12.09.2014 and 18.09.2014 passed by learned ACMM, Karkardooma Courts, Delhi whereby the complaint(s) have been returned to the petitioner/ complainant for filing the same in the Court(s) having territorial jurisdiction .

2. Since all the petitions involve an identical question of law, therefore, all the petitions are being disposed of by this common order.

3. The factual matrix of the case is that the petitioner/ complainant filed complaint(s) under Section 138 of Negotiable Instruments Act, 1881 (NI Act, for short) against respondents for the offence under Section 138 of NI Act. Crl. M.C. No.4589/2014 pertains to cheque Nos.487120, 487121 & 487122 all dated 01.01.2014, for Rs.2,00,00,000/- (Rupees Two crores) each, drawn on Indian Bank Guwahati; Crl. M.C. No.4597/2014 relates to cheque Nos. 712046, 712048 & 712049, all dated 26/11/2013, for Rs. 50,00,000/- (Rupees Fifty lacs), Rs. 59,95,000/-(Rupees Fifty nine lacs ninety five thousand), Rs. 30,00,000/- (Rupees Thirty lacs) respectively drawn on Indian Bank, Beltola, Kamrup, Assam; Crl. M.C. No.4598/2014 pertains to cheque Nos. 336135, 336134 & 336131 dated 07.02.2014, 03.02.2014 & 31.01.2014 respectively for Rs.7,31,296/- (Rupees Seven lacs thirty one thousand two hundred and ninety six), 8,67,846/(Rupees Eight lacs sixty seven thousand eight hundred and forty six) & Rs.8,52,546/- (Rupees Eight lacs fifty two thousand five hundred and forty six) respectively all

drawn on Punjab National Bank, Fancy Bazar, Guwahati, Assam; Crl.M.C. 4599/2014 pertains to cheque Nos. 202769, 202770 & 202771 all dated 26.11.2013, for Rs. 2,00,00,000/(Rupees Two crores) each drawn on State Bank of India, Commercial Branch, Guwahati, Assam and Crl.M.C. 4600/2014 pertains to cheque Nos. 712045 & 712047 both dated 26.11.2013, for Rs. 50,00,000/- (Rupees Fifty lacs) each drawn on Indian Bank, Beltola, Kamrup, Assam all cheques being payable at par at all branches.

4. In order to have better understanding of facts of the cases, it would be appropriate to refer to facts of one case. The facts are being extracted from Crl. M.C. No.4589/2014. The complainant is a private Ltd. company incorporated under the Indian Companies Act, 1956. The respondent No.1 herein (accused No.1 in the original complaint) through respondent No.2 approached the petitioner for supply of steel scraps and sponge iron in north-east region of India and assured repayment of the amount and good profit. The petitioner company transferred an amount of Rs. 3.5 crores through RTGS in the account of the accused. The petitioner company supplied goods to various companies as per instructions of respondents and in discharge of their liability, respondents issued cheque numbers 487120, 487121 & 487122 all dated 01.01.2014 for Rs. 2,00,000/- (Rupees Two crore) each drawn on Indian Bank, Guwahati - 781028. On presentation, the said cheques were dishonoured with the remarks payment stopped by drawer. Despite statutory notice dated 22.01.2014, the respondents failed to make the payment of the said cheques.

5. Vide impugned orders, learned trial court returned the complaint(s) to the petitioner/ complainant for filing before the same the Court of competent court having territorial jurisdiction, in view of the judgment in Dashrath Rupsingh Rathod vs. State of Maharashtra & Anr. (Criminal Appeal No.2287 of 2009 decided on 01.08.2014).

6. Feeling aggrieved by the said orders, the petitioner has filed the present petitions.

7. Learned counsel for the petitioner contended that now a days, almost all the branches of the bank are covered under Core Banking Solutions (CBS) and in

terms of guidelines issued by Reserve Bank of India vide circular No.RBI/2012-13/163 DPSS.CO.CHD. No.271/03.01.02/2012-13 dated 10.08.2012, all CBS enabled banks have been asked to issue only payable at par/ multi-city CTS2010standard cheques to all eligible customers. It has been argued on behalf of the petitioner that one of the essential features of multi-city/ cheques payable at par is that the holder of cheque can present the same at any CBS enabled branch of the drawee bank in order to encash the said cheque. That being so, the complainant is well within its right to initiate prosecution for the offence under Section 138 of the NI Act at the place where the branch in which the cheque in question was presented for its encashment irrespective of the fact that such branch was not the home branch of the drawee bank where the accused was having the bank account in the said bank. In other words, the main thrust of argument raised on behalf of the petitioner/ complainant is that the complaint under Section 138 of NI Act can be instituted even at that branch of a bank wherein the cheques in question were deposited and got dishonoured, in addition to the home branch of the drawee bank wherein the accused has bank account. When the accused issued such a cheque payable at par there was an express authority to the complainant under the aforesaid condition to present the cheque in any branch of the concerned Bank.

8. Per contra, learned counsel for respondents/ accused urged that territorial jurisdiction to entertain and try cases filed under Section 138 of NI Act, would lie with Courts within whose jurisdiction the home branch of the drawee bank in which the accused has a bank account from which cheques in question have been issued, is situated and at no other place. In support of their submission, they have placed heavy reliance upon the judgment of Dashrath Rupsingh Rathod vs. State of Maharashtra and Another, 2014 (9) Supreme Court Cases 129.

9. I have bestowed my thoughtful consideration to the submissions made by learned counsel for both the parties and also have perused the material on record.

10. As is evident from the above discussion, the moot question involved in all these petitions is as to whether Delhi Courts would have territorial jurisdiction to try the cases instituted under Section 138 of NI Act merely because the cheques in

question are payable at par at all branches of drawee bank being multi-city cheques and one of the branches of drawee bank is situated at Delhi.

11. In order to appreciate the rival submissions made on behalf of both the parties, it would be appropriate to refer to the relevant provisions contained in NI Act. The relevant provisions read as under:

6. "Cheque".-. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. Explanation I. - For the purposes of this section, the expressions - (a) a cheque in the electronic form means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system; (b) a truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing. Explanation II. - For the purpose of this section, the expression clearing house means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.

68. Presentment for payment of instrument payable at specified place and not elsewhere. - A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

69. Instrument payable at specified place. - A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

70. Presentment where no exclusive place specified. - A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence,

of the maker, drawee or acceptor thereof, as the case may be.

12. The issue of territorial jurisdiction of Court to try the offence under Section 138 of NI Act has been set at rest by the decision of three Judges Bench of the Honble Supreme Court of India in the celebrated case Dashrath Rupsingh Rathod (supra) wherein the Apex Court observed as under:

21. The interpretation of Section 138 of the NI Act which commends itself to us is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly JMFC at the place where this occurs is ordinarily where the complaint must be filed, entertained and tried. The cognizance of the crime by JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the complaints even though noncompliance therewith will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall decide by this judgment. We clarify that the complainant is statutorily bound to comply with Section 177, etc. of Cr PC and therefore the place or situs where the Section 138 complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. (emphasis supplied) 22. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence i.e. applicability to complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged respondent-accused who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a court devoid of jurisdiction, this

recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the presummoning stage, either by affidavit or by oral statement, the complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is presently pending. All other complaints (obviously including those where the respondent-accused has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred.

(emphasis supplied) 13. While agreeing with the view taken by Honble Mr. Justice Vikramjit Sen, it has been further held by Honble Mr. Justice T.S. Thakur in the aforesaid judgment as under:

58. To sum up:

58. 1. 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. 58.2. 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. 58.3. 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 drawee bank within a period of six months from the date of its issue, (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. 58.4. The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act. 58.5. 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 the proviso accrues to the complainant. 58.6. 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. 58.7. The general rule stipulated under Section 177 Cr PC 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.

59. Before parting with this aspect of the matter, we need to remind ourselves that an avalanche of cases involving dishonour of cheques has come upon the Magistracy of this country. The number of such cases as of October 2008 were estimated to be more than 38 lakhs by the Law Commission of India in its 213th Report. The result is that cases involving dishonour of cheque are in all major cities choking the criminal justice system at the Magistrate's level. Courts in the four metropolitan cities and other commercially important centres are particularly burdened as the filing of such cases is in very large numbers. More than five lakh such cases were pending in criminal courts in Delhi alone as of 1-6-2008. The position is no different in other cities where large number of complaints are filed under Section 138 not necessarily because the offence is committed in such cities but because multinational and other companies and commercial entities and agencies choose these places for filing the complaints for no better reason than

the fact that notices demanding payment of cheque amounts were issued from such cities or the cheques were deposited for collection in their banks in those cities. Reliance is often placed on Bhaskaran case [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC510:

1999. SCC (Cri) 1284]. to justify institution of such cases far away from where the transaction forming basis of the dishonoured cheque had taken place. It is not uncommon to find complaints filed in different jurisdiction for cheques dishonoured in the same transaction and at the same place. This procedure is more often than not intended to use such oppressive litigation to achieve the collateral purpose of extracting money from the accused by denying him a fair opportunity to contest the claim by dragging him to a distant place. Bhaskaran case [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC510:

1999. SCC (Cri) 1284]. could never have intended to give to the complainant/payee of the cheque such an advantage. Even so, experience has shown that the view taken in Bhaskaran case [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC510:

1999. SCC (Cri) 1284]. permitting prosecution at any one of the five different places indicated therein has failed not only to meet the approval of other Benches dealing with the question but also resulted in hardship, harassment and inconvenience to the accused persons. While anyone issuing a cheque is and ought to be made responsible if the same is dishonoured despite compliance with the provisions stipulated in the proviso, the court ought to avoid an interpretation that can be used as an instrument of oppression by one of the parties. The unilateral acts of a complainant in presenting a cheque at a place of his choice or issuing a notice for payment of the dishonoured amount cannot in our view arm the complainant with the power to choose the place of trial. Suffice it to say, that not only on the principles of interpretation of statutes but also the potential mischief which an erroneous interpretation can cause in terms of injustice and harassment to the accused the view taken in Bhaskaran case [K. Bhaskaran v.Sankaran Vaidhyan Balan, (1999) 7 SCC510:

1999. SCC (Cri) 1284]. needs to be revisited as we have done in foregoing paragraphs.

14. On bare reading of provisions contained in Section 138 read with Section 142 of NI Act and the view taken by the Apex Court in Dashrath Rupsingh Rathod (supra), there is no scope of confusion that complaint under Section 138 of NI Act will be maintainable only at the place where the cheque stands dishonoured. In other words, the prosecution for the offence under Section 138 of NI Act would only lie at the place where the drawee bank is situated.

15. No doubt, a cheque which is made payable at par/ multi-city cheque can be presented at any of the branches of bank, which has been nominated as CBS branch of the drawee bank in terms of the recent guidelines issued by Reserve Bank of India vide circular dated 10.08.2012. However, it is to be noticed that the said guidelines had been issued by Reserve Bank of India with altogether different object. The said object is to facilitate speedy encashment of amount against cheques more particularly in cases of out stationed cheques. It is a matter of common knowledge that in the past, there used to be considerable delay in collection of out-stationed cheques which led to number of complaints from customers and members of public at large. The average time consumed in the out-stationed cheque used to be somewhere between seven days to one month. In order to improve the service with regard to collection of out-stationed cheques, facility of cheques which are payable at par/ multi-city cheques was introduced in the banking system. In order to regulate the same, Reserve Bank of India also issued policy which is known as Policy on Multi-city/payable at par CTS2010 Standard Cheques. A perusal of the said policy would reveal that certain limit has been prescribed on payment of multi-city cheques at non-home branches as mentioned therein.

16. According to the said policy, if the cheque account of multi-city cheque to be presented at non-home branch in case of saving bank account, is more than Rs.10,00,000/- (Rupees Ten lakhs) then same would not be accepted by non-home branch of the drawee bank and thus, it has to be presented at the home branch of the drawee bank for its encashment. Same is the position with regard to

other types of bank accounts like current account, cash credits, etc.

17. It is relevant to mention here that some of the cheques are payable at CBS Branches. The word CBS implies Core Banking Solutions. As per guidelines No.DPSS CO No.644/03.01.02/2007-08 dated 31.10.2007 issued by the Reserve Bank of India a branch designated as a CBS Branch should be equipped with the facility of issuing cheques that are Payable at Par or are Multi-City Cheques. Such a service should be made available to all eligible and requesting customers. Therefore, it implies that CBS Branches are equipped with issuing Payable at Par & Multi-City Cheques to all its customers.

18. There is another reason due to which the contention raised on behalf of petitioner/ complainant cannot be sustained. The cheque amount is supposed to be paid from the account of accused/ respondents maintained at home branch of drawee bank. It is merely as a result of computerization of all the branches of bank, facility has been provided for encashment of cheques payable at par at any branch irrespective of the fact that account holder was not having bank account in the branch where the cheque is presented. Merely because the cheque has been presented at non-home of drawee bank, it does not in any manner, become the drawee bank for the obvious reason that before encashing the cheque payable at par, the non-home branch is still required to verify from home branch of the drawee branch as to whether or not there was any impediment in encashment of the cheque drawn at home branch. Even otherwise, in the event of encashment, the amount of cheque would be required to be debited in the account of the accused maintained at home branch as the amount was only payable by the home branch of drawee bank. Therefore, the presentation of cheque at non-home branch of drawee bank being the cheque which is payable at par/ multi-city cheque, will not change the character of drawee bank and would not confer territorial jurisdiction on Delhi Courts.

19. The sequitur of the above discussion is that Delhi Courts have no territorial jurisdiction to entertain and try the complaint(s) which are subject matter of the present petition. Accordingly, all the petitions are hereby dismissed and the impugned orders dated 12.09.2014 and 18.09.2014 passed by the learned trial

court are maintained.

20. The complaint(s) and original documents be returned to the petitioner/complainant for filing the same in appropriate Court(s) having territorial jurisdiction to entertain and try the same within a period of 30 days.

21. A copy of this order be sent to the trial court for information and necessary compliance. Crl. M.A. No.15666/2014 in Crl. M.C. 4589/2014 Crl. M.A. No.15680/2014 in Crl. M.C. 4597/2014 Crl. M.A. No.15683/2014 in Crl. M.C. 4598/2014 Crl. M.A. No.15685/2014 in Crl. M.C. 4599/2014 Crl. M.A. No.15687/2014 in Crl. M.C. 4600/2014 The above applications are dismissed as infructuous. (VED PRAKASH VAISH) JUDGE DECEMBER16h, 2014 hs

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