

Criminal RevisionPresent: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 03.03.2010

C.R.R. No. 4577 of 2009**Prem Sankar Roy @ Prem Shankar Roy****versus****Tripurari Singh & Anr.****Point:**

JURISDICTION: Communication of the demand notice at Howrah-Whether Courts at Howrah will have jurisdiction to try case under S.138 of N.I.Act - Negotiable Instruments Act, 1881 S. 138.

Fact: The petitioner who has been facing prosecution under Section 138 of the Negotiable Instruments Act before the Learned Judicial Magistrate, 1st Court, Howrah has filed the instant application for quashing of the said case on the ground of lack of territorial jurisdiction of the Court concerned since not a single event had been taken place giving rise to the cause of action empowering the Court concerned to take cognizance of the offence and hold the trial.

Held:

The cheque in question was drawn on a bank situated at R.N. Mukherjee Road, Kolkata and the cheque was dishonoured by the said bank. The demand notice was admittedly served upon the complainant at his address at Kolkata. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Harman Electronics Private Limited & Anr. Vs. National Panasonic India (P) Ltd. (supra), the Court at Howrah has no territorial jurisdiction to hold the trial in respect of the alleged offence. It is the communication of the demand notice and consequent refusal to make payment would give rise to the cause of action and not the sending of notice.

(Paragraph – 4)

Cases Cited:1. Harman Electronics Private Limited & Anr. Vs. National Panasonic India (P) Ltd., reported in (2009) 2 C Cr LR (SC) 686.

2. K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr., reported in 1999 SCC (Cri) 1284.

For Petitioner : Mr. Sobhendu Sekhar Roy

For O.P. No. 1 : Mr. Mahendra Prosad Gupta
Mr. Debojyoti Deb

The Court: The petitioner who has been facing his prosecution under Section 138 of the Negotiable Instruments Act before the Learned Judicial Magistrate, 1st Court, Howrah has come up before this Court for quashing of the said case on the ground that the Court concerned is lacking of the territorial jurisdiction.

2. It has been vehemently contended before this Court that from the face of the allegations made in the complaint, it is absolutely clear that not a single event has been taken place giving rise to the cause of action empowering the Court concerned to take cognizance of the offence and hold the trial. In this connection reliance has been placed on the decision of Harman Electronics Private Limited & Anr. Vs. National Panasonic India (P) Ltd., reported in (2009) 2 C Cr LR (SC) 686.

3. On the other hand, the learned advocate appearing on behalf of the opposite party opposed the prayer for quashing and relied on the decision of the Hon'ble Supreme Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr., reported in 1999 SCC (Cri) 1284.

4. Now, having gone through the complaint in question, I find the cheque in question was drawn on a bank situated at R.N. Mukherjee Road, Kolkata and the cheque was dishonoured by the said bank. The demand notice was admittedly served upon the complainant at his address at

Kolkata. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Harman Electronics Private Limited & Anr. Vs. National Panasonic India (P) Ltd. (supra), the Court at Howrah has no territorial jurisdiction to hold the trial in respect of the alleged offence. It is the communication of the demand notice and consequent refusal to make payment would give rise to the cause of action and not the sending of notice.

5. This application thus stands allowed.

6. It is directed the records relating to the case be transferred to the Court of the Learned Chief Metropolitan Magistrate, Calcutta. The Learned Chief Metropolitan Magistrate, Calcutta shall have the liberty to either hold the trial by himself or to transfer the case to any other competent Court. It may be that earlier this Hon'ble High Court by an order passed in connection with C.R.R. No. 3153 of 2000 rejected the petitioner's prayer for quashing and came to a definite finding that a prima facie case for trial has been made out. This case relates to an offence punishable under Section 138 of the Negotiable Instruments Act was commenced sometime in the month of September, 2008, but till date trial has not yet been concluded which is contrary to the mandate of Section 143 of the Negotiable Instruments Act. It is therefore directed that the case records be transferred to the Court of the Learned Chief Metropolitan Magistrate, Calcutta within three days from the communication of this order and the Learned Chief Metropolitan Magistrate, Calcutta must take its decision at once whether the trial be held by him or by any other Magistrate. The transferee Court immediately upon receipt of the records fix the date for recording of evidence not beyond the period of one week and shall make all endeavours to conclude the trial within two months from the date of commencement of recording of evidence. The Learned Court below is directed to proceed strictly in terms of Section 143 of the Negotiable Instruments Act.

7. The Office is directed to communicate this order to the Court where the case is now pending as well as to the Court of the Learned Chief Metropolitan Magistrate, Calcutta positively by tomorrow.

8. This application thus stands disposed of.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)