

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. M.C. No.280/2010**

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Decided on: 1st February, 2010

Times Business Solution Limited Petitioner
Through: Mr. Sidharth Luthra, Sr. Adv.
with Mohd. Faras, Adv.

Versus

Debayan Bagchi Respondent
Through: Mr. M.P. Singh, Adv.

AND

CRL. M.C. NO. 281/2010

Times Business Solution Limited Petitioner
Through: Mr. Sidharth Luthra, Sr. Adv.
with Mohd. Faras, Adv.

Versus

S. Placement & Services Respondents
Through: Mr. M.P. Singh, Adv.

AND

CRL. M.C. NO. 282/2010

Times Business Solution Limited Petitioner
Through: Mr. Sidharth Luthra, Sr. Adv.
with Mohd. Faras, Adv.

Versus

Databyte Respondent

Through: Mr. M.P. Singh, Adv.

AND

CRL. M.C. NO. 292/2010

Times Business Solution Limited Petitioner
Through: Mr. Sidharth Luthra, Sr. Adv.
with Mohd. Faras, Adv.

Versus

Prodeb Solutions and Others Respondents
Through: Mr. M.P. Singh, Adv.

AND

CRL. M.C. NO. 295/2010

Times Business Solution Limited Petitioner
Through: Mr. Sidharth Luthra, Sr. Adv.
with Mohd. Faras, Adv.

Versus

HR Enterprises Solutions/ Hey Ram
Motors & Ors. Respondents
Through: Mr. M.P. Singh, Adv.

AND

CRL. M.C. NO. 296/2010

Times Business Solution Limited Petitioner
Through: Mr. Sidharth Luthra, Sr. Adv.
with Mohd. Faras, Adv.

Versus

Arabinda Bose Institute of Science,
Technology & Management & Another Respondents
Through: Mr. M.P. Singh, Adv.

**CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J. (ORAL)

1. All the above-mentioned petitions are disposed of together, by this order, as the same are in similar facts as also the question of law which needs to be answered, is same.
2. Petitioner filed complaints under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as the Act) against the respondents upon the return of cheque unpaid, on presentation. Learned Metropolitan Magistrate ordered for return of complaint of the petitioner, for its presentation to the court of competent territorial jurisdiction. As per the learned Metropolitan Magistrate, courts at Delhi had no jurisdiction to entertain and try the complaint, as no part of offence had been committed at Delhi.

3. Aggrieved by the orders passed by the learned Metropolitan Magistrate, petitioner has preferred above-mentioned petitions under Section 482 of Code of Criminal Procedure (Cr.P.C.).

4. Learned senior counsel has vehemently contended that since cheques in question were presented in Delhi for the purpose of encashment, therefore, one of the act forming component of the offence, took place in Delhi thereby attracting the jurisdiction of Delhi courts. As per the learned senior counsel, 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 complaints of the offence, took place: (i) drawing of the 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 the 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 the notice.

5. Reliance has been placed on **K.Bhaskaran vs.Sankaran Vaidhyan Balan & Another** reported in **(1999) 7 Supreme**

Court Cases 510. In nutshell it is contended that since the cheques in question were presented by the petitioner at Delhi for encashment, one of the components of the offence took place at Delhi, therefore, Delhi courts have jurisdiction to try the complaint.

6. At the first blush arguments may look impressive but the same needs to be rejected in view of the settled legal position in this regard. Respondents had issued the cheques in question from the account maintained by them with their respective Banks situated in different parts of the country. Drawer's bank was situated outside Delhi. Complainant presented cheques in question by depositing the same with its banker, who in turn presented the same to drawer's bank. At the most, banker of the petitioner can be termed as forwarding bank and/or collecting bank. However, to attract the criminal liability of the drawer of the cheque, the same has to be presented on the drawer's bank, on which the cheque is drawn.

7. Section 138 of the said Act reads as under:-

138. Dishonour of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for ["a term which may extend to two year"], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, ³["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within

fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability".

8. Bare perusal of 138 of the Act clearly shows that cheque has to be presented on the drawer's bank, where account is being maintained. It is only banker of the drawer which will be in a position to say that the cheque amount exceeds arrangement. Only drawer's bank can return the cheque unpaid for "insufficient funds in the account of drawer" or for any other reason. The payee of the cheque has no option but to present the cheque for encashment to the drawer's bank, on which the cheque had been drawn, either personally or through a bank. The payee of the cheque has the option to present the cheque in any bank but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque to drawer's bank on which the cheque is drawn that too within a period of six months. In my opinion, merely because the payee had deposited the cheque at Delhi would not mean that he had presented the cheque at Delhi.

9. In *Shroff publisher and Distributors Pvt. Ltd. Vs. Springer India Pvt. Ltd*, reported in 2008 Criminal Law Journal 1217, this court held that the payee has an 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 drawer's bank, on which cheque is drawn, within the period of six months from the date on which it is shown to have been issued.

10. In ***Ishar Alloy Steel Ltd. Vs. Jayaswals NECO Ltd.*** reported in **2001 criminal Law Journal 1250**, Supreme Court held as under:-

“Thus, ‘the bank’ referred to in Clause (a) to the proviso to Section 138 of the Act means the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee in whose favor the cheque is issued.”

11. In ***V.S.Thakur vs. State and Anr.*** reported in **Manu/DE/3317/2009** this court held as under:-

“The ratio of the above referred judgment of the Hon'ble Supreme Court is that a cheque

is deemed to have been presented to the banker of the drawer irrespective of the fact whether it is deposited by the payee in his own bank. The banker of the payee, after receiving the cheque from him, is required to present it to the banker of the drawer and therefore, if the cheque issued from a bank in Dehradun is deposited in Delhi, the bank in which it is deposited in Delhi, cannot be said that the cheque issued by the petitioner was presented in Delhi, despite the fact that the bank in which the respondent No.2 had an account was in Delhi, the cheque shall be deemed to have been presented only to the bank at Dehradun on which it was drawn. Therefore, deposit of cheque in Delhi would not confer jurisdiction of Delhi court to try this complaint."

(Emphasis supplied)

12. In **ICICI Bank Ltd. Vs. Subhash Chand Bansal & Ors.** reported in **160 (2009) Delhi Law Times 379** this court held that the court in whose territorial jurisdiction drawee bank is situated would have territorial jurisdiction to entertain the complaint in question.

13. K. Bhaskaran's case (supra) is of no help to the petitioner as in the said case the "place of presentation" of the cheque has not been defined. In the context of Section 138 of the Act, the place of presentation of cheque would be the place where bank of drawer is situated.

14. In view of the above, I do not find any material illegality, irregularity or impropriety in the impugned order.

15. Dismissed.

A.K. PATHAK, J

February 01, 2010

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