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

Reserved on: 31.01.2024
Pronounced on: 22.04.2024

\+ **CRL.M.C. 6853/2022 & CRL.M.A. 26554/2022**

RIGHT CHOICE MARKETING SOLUTIONS JLT & ORS.
..... Petitioners

Through: Dr.Amit George, Mr.Nishe Rajen Shonker, Mr.Keerthipriyan. E, Mr.Alim Anvar, Mr.Arkaneil Bhaumik & Mr.Rayadurgam Bharat, Advs.

versus

STATE NCT OF DELHI & ANR. ..... Respondents

Through: Mr.Shoaib Haider, APP.
Mr.Gautam Dhamija, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') praying for quashing of the proceedings in the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') filed by respondent no.2 herein, being CC No. 1397/2018, titled ***Sachin Kumar Parolia v. Right Choice Marketing Solutions JLT & Ors.***.

Case of the Complainant:

2. The above complaint has been filed by the respondent no.2, impleading the petitioners herein as accused nos.1, 2, and 3 in the said complaint.

3. It is stated that petitioner no.1 is an entity with its office in the United Arab Emirates (UAE) and is the sales and marketing wing of Right Choice Builders Private Limited, a company incorporated under the Companies Act, 2013, which is arrayed as accused no.6 in the complaint. It is stated that the accused no. 6 has established various branches like Right Choice Properties, Right Choice Investment, etc. It is further contended that petitioner nos.2 and 3, along with others, who have been arrayed as accused nos. 4 and 5 in the complaint, are the common Directors of the Group, namely, Right Choice Group of Companies, and are responsible for the day-to-day affairs of petitioner no.1 and accused no.6.

4. It is further contended in the complaint that petitioner nos.2 and 3, along with accused nos.4 and 5, are the ones who approached different investors for their business and directly dealt with them regarding all transactions with the Right Choice Group of Companies and such investors. It is further alleged that petitioner nos.2 and 3, along with accused nos.4 and 5, approached respondent no.2 herein with various investment ideas and brochures mentioning the schemes and projects of petitioner no.1 and accused no.6 so as to lure respondent no.2/the complainant into investing in the Group.

5. It is further alleged that in 2014, petitioner no.2 herein, representing himself to be the Director of Right Choice Group of

Companies, personally approached respondent no.2 for investment in the aforesaid entities, assuring him of high rates of return on investments. It is stated that respondent no.2 succumbed to the repeated follow-ups of the accused, and believing their representation of assured quarterly returns, invested an amount of Emirati Dirham (AED) 600,000/- in favour of accused no.6 at its branch office in Dubai, that is, accused no.1/petitioner no.1 herein, by issuing multiple cheques in the month of August 2014. It is asserted that the said amount was invested by respondent no.2 only on instructions of petitioner nos.2 and 3, along with accused nos.4 and 5, who wanted the said money to be deposited in the name of petitioner no.1 stating that it is its branch office from where it would then be transferred to accused no.6, a company registered in India. The said amount was invested on the assurance of return at the rate of 26.5% per annum.

6. It is stated that petitioner nos.1 and 3, on express instructions from petitioner no.2, and accused nos.4 and 5, issued multiple post-dated cheques to respondent no.2 as monthly repayments, spreading across the entire year of 2015. The entire principal sum of AED 600,000/- was to become immediately payable by the accused after the expiry of period of one year.

7. It is stated that the accused thereafter requested respondent no.2 not to present the cheques and also failed to repay the principal sum upon the expiry of the one-year period. On an arbitrary basis, they paid an amount of AED 50,000/- in the form of two cheques of AED 25,000/- each, making an assurance that the rest would be paid soon.

8. It is asserted that in January 2016, when respondent no.2 called upon the accused at the head office at Pune, which is the registered address of accused no.6, the petitioner nos.1 and 3, on express instructions from petitioner no.2, and accused nos.4 and 5, issued ten fresh post-dated cheques towards the repayment of interest to respondent no.2. These were spread over the entire year of 2016 and were issued with an undertaking that they shall be honoured as and when presented.

9. It is stated that respondent no.2 presented the said cheques before the bankers, that is, National Bank of Abu Dhabi, and HSBC Bank, Middle East, and to the shock of respondent no.2, the said cheques were returned dishonoured with the remarks '*insufficient funds*'. Upon repeated follow-ups, the petitioner nos.1 and 3 again paid an arbitrary and *ad hoc* amount of AED 42,500/- in bits and pieces against the cheques that had been returned dishonoured.

10. The respondent no.2 asserts that being aggrieved of the aforesaid conduct, respondent no.2 initiated criminal complaints against the accused with the Abu Dhabi Police for the dishonour of the ten cheques. The Abu Dhabi Courts of First Instance, vide its order dated 26.12.2016 passed in Case No. 13267/2016, convicted petitioner no.3 and sentenced him with imprisonment of two years for the first set of five cheques totalling AED 295,089/-. The said Court, vide its order dated 27.03.2017 passed in Case No. 1918/2017, convicted petitioner no.3 and awarded a sentence of imprisonment of three years for the second set of five cheques totalling AED 685,625/-.

11. It is stated that the accused are not travelling to Dubai out of fear of being arrested.

12. It is stated that respondent no.2 thereafter issued a legal notice dated 15.03.2017, through his counsel in Abu Dhabi. The said notice was addressed to the accused at its Dubai office as also the India office and was duly served on the India office on 25.03.2017. An e-mail dated 19.04.2017 was also addressed to all the Directors. It is stated that in response to the above notices, petitioner no.3 contacted the counsel of respondent no.2 and assured of repayment. Terms of settlement were shared by the counsel for respondent no.2 vide e-mail dated 09.05.2017, however, the accused never responded to the same.

13. It is stated that respondent no.2 then proceeded to present the cheque of the principal amount of AED 600,000/- drawn on the bank, namely, Emirates NBD Bank Gold Branch, which again was returned dishonoured with the remark '*insufficient fund*' vide returning memo dated 07.12.2017 to the bank of respondent no.2, namely, ICICI Bank, Branch, Greater Kailash-I, New Delhi.

14. It is stated that respondent no.2 thereafter issued Legal Demand Notice dated 30.12.2017 under Section 138 of the NI Act. The said notice was duly delivered at the office of the accused.

15. On the issue of cause of action and the jurisdiction, respondent no.2 asserted in the complaint as under:

> *"21. That the cause of action for filing the present complaint squarely arose on 07.12.2017 when the aforesaid cheque bearing No. 000526 issued by Accused no.3 on behalf of Accused No.1 on express instructions of Accused No.2, 4, and 5 was dishonored vide*

> *Returning Memo dated 07.12.2017. The cause of action further arose on 30.12.2017 when the Complainant herein through its counsel issued a statutory legal demand notice dated 30.12.2017 to the accused persons herein. Cause of action further arose on 16.01.2018 when even after the stipulated period of 15 days, the accused persons failed to pay the legitimate dues of the Complainant.*
>
> *22. That the legal notice of demand was sent to the Accused persons within the stipulated period of limitations and thereafter this present complaint is also being filed within the period of limitation.*
>
> *23. That the cheque in question was presented by the complainant with its banker at Greater Kailash, Delhi, where the complainant has been maintaining his bank account and the same has been returned unpaid by the banker of the complainant at Delhi. The aforesaid branch of the Complainant's bank comes under the territorial jurisdiction of this Hon'ble Court and hence this Complaint."*

16. I must herein note that by an order dated 27.08.2018 passed by the learned Additional Sessions Judge-04 and Special Judge (NDPS) South East, Saket Courts, New Delhi, the order dated 23.02.2018 passed by the learned Trial Court in the above complaint issuing summons to the accused nos. 4 and 6 in the said complaint, has been set aside. The said order is under challenge by respondent no.2 in CRL.MC. 3828/2019, titled ***Sachin Kumar Parolia v. Rahul Rajan & Ors.*** and is being disposed of by a separate judgment passed today.

<u>Submissions of the learned counsel for the Petitioners:</u>

17. The learned counsel for the petitioners submits that the petitioner no.1 is a Company registered and operating in the UAE. The

petitioner nos.2 and 3 are Indian citizens and are Directors of the petitioner no.1/Company, but were residing in the UAE at the time when the transaction in question took place. The respondent no.2/the Complainant was also a resident of UAE when the transaction took place. He further submits that the cheque in question is drawn on the Emirates NBD Bank, Gold Branch, Dubai and the amount payable thereunder is also in AED. He submits that qua the other cheques that were issued by the petitioner no.1 to the respondent no.2, the respondent no.2 had approached a UAE Court, that is, the Abu Dhabi Court of First Instance. Even a legal notice dated 30.12.2017 was issued by the legal counsel of the respondent no.2 from Dubai, duly acknowledging therein that the entire transaction had taken place at Dubai and also making a demand of 600,000 AED, which is the subject matter of the cheque in question. He submits that it is only with a *mala fide* intent that the respondent no.2 presented the cheque in question through the Indian Bank, that is, ICICI Bank, Greater Kailash, New Delhi Branch, to somehow invoke the provisions of the NI Act and the jurisdiction of the Courts at Delhi.

18. Placing reliance on the judgment of the Supreme Court in ***Abu Salem Abdul Kayyum Ansari v. The State of Maharashtra,*** 2022 SCC OnLine SC 852, he submits that the NI Act does not have any extraterritorial application.

19. Relying upon Section 134 of the NI Act, he submits that the liability of the maker of the cheque, that is, the petitioner no.1, is regulated by the laws of Dubai. He submits that though, in terms of Section 137 of the NI Act, there is a presumption that law of any

foreign country regarding the cheque is the same as that of India, in the present case, such presumption has been rebutted by the petitioners by placing on record translated copies of the relevant provisions from the law applicable at Dubai as also a legal opinion obtained, which show that in Dubai return of a cheque due to insufficiency of fund is no longer a criminal offence.

20. Placing reliance on Section 135 of the NI Act, he submits that it is only where the cheque is specifically "*made payable*" at a different place from where it was made, that the law applicable to the place where such cheque is made payable, shall become applicable. He submits that Section 135 of the NI Act, therefore, excludes the application of Section 70 of the NI Act, on which the learned counsel for the respondent no.2 has placed reliance on, inasmuch as the said provision is based on a presumption which gets excluded because of Section 135 of the NI Act which is applicable to a foreign cheque.

21. He submits that, in the present case, the transaction in question admittedly took place in UAE; the cheque was drawn on Dubai based branch of a UAE Bank; there is no endorsement on the cheque that it is payable in India; the cheque is payable in the currency of UAE, that is, Emirati Dirham (AED); the respondent no.2 was a resident of UAE at the time when the transaction had taken place; the petitioner no.1 on whose behalf the cheque was issued is a company incorporated in UAE; and the petitioner nos.2 and 3 were also at UAE at the time of the issuance of the cheque. He submits that, therefore, the courts in India would have no jurisdiction and the provision of Section 138 of the NI Act would not be applicable in the facts of the present case. In

support, he places reliance on the judgment of the High Court of Madras in ***Pale Horse Designs v. Natarajan Rathnam***, 2010 SCC OnLine Madras 5377; and of the High Court of Andhra Pradesh in ***Vinjanamapati Anantaramaiah v. M. Venkata Subba Rao,*** (1968) SCC OnLine AP 34.

<u>Submissions of the learned counsel for the Respondent no.2</u>

22. On the other hand, the learned counsel for the respondent no.2/the Complainant submits that the present petition is liable to be dismissed on the ground of delay and laches alone. He submits that the present petition has been filed with a delay of more than 5 years and at a stage when the defence evidence is being recorded. He submits that there is no explanation given by the petitioners for the delay in filing of the present petition.

23. He submits that, even otherwise, in terms of Section 70 of the NI Act, the respondent no.2 was within his rights to present the cheque with the bank where he maintains his account in India. In case of a dishonour of the cheque in terms of Section 138 read with Section 142 (2) of the NI Act, the complaint was rightly filed in the Court of appropriate jurisdiction.

24. He further submits that Section 134 of the NI Act is confined to a civil liability and does not extend to a criminal liability which is created under Section 138 of the NI Act.

25. He submits that unlike the cheque that was payable only at USA in the case of ***Pale Horse Designs*** (Supra), in the present case, there was no specific mention of the cheque being payable only at Dubai.

He submits that, therefore, on a conjoint reading of Sections 68, 69 and 70 of the NI Act, the respondent no.2 was within his rights to present the cheque for payment at his bank account at Delhi.

26. He submits that, even otherwise, the judgment of ***Pale Horse Designs*** (Supra) would no longer be a good law in view of the subsequent amendments to the NI Act legislatively overruling the judgment of the Supreme Court in ***Dashrath Rupsingh Rathod v. State of Maharashtra,*** (2014) 9 SCC 129.

27. He submits that the present petition raises disputed question of facts, and this Court should, therefore, refuse to exercise its jurisdiction under Section 482 of the Cr.P.C.. In support, he places reliance on the judgment of Supreme Court in ***HMT Watches Ltd. v. M.A. Abida & Anr.,*** (2015) 11 SCC 776.

Analysis and Findings

28. I have considered the submissions made by the learned counsels for the parties.

29. From the complaint itself, it becomes evident that the respondent no.2 had invested in the accused no.1, that is, the petitioner no.1 herein, a company registered and situated at Dubai, by issuing multiple cheques that were payable in Dubai, which were in foreign currency that is, AED. In return, the cheques which were issued by the petitioner no.1 were drawn on National Bank of Abu Dhabi and in the foreign currency-AED. On return of some of the cheques as unpaid, the respondent no.2 had earlier filed the proceedings before the Abu

Dhabi Courts of First Instance and orders were also passed in favour of the respondent no.2.

30. It is only on the non-compliance/non implementation of the said orders, that the respondent no.2 thereafter presented the subject cheque to his bank at ICICI Bank, Greater Kailash-I, New Delhi, which was expectantly also returned unpaid with the remark '*insufficient funds*'.

31. The issue that arises before this Court is whether the presentation of the subject cheque at the Branch in Greater Kailash-I, New Delhi will be sufficient to invoke the provisions of Section 138 of the NI Act and make the complaint filed by the respondent no.2 as maintainable.

32. To answer the above issue, some of the provisions of the NI Act need to be noticed.

33. Section 11 of the NI Act defines an '*inland instrument*', as under: -

> "***11. Inland instrument.***—*A promissory note, bill of exchange or cheque drawn or made in India, and made payable in, or drawn upon any person resident, in India shall be deemed to be an inland instrument."*

34. In the present case, the cheque in question is not made in India; it was not made payable in India; and, was not drawn on a bank in India. It is, therefore, not an '*inland instrument*'.

35. Section 12 of the NI Act defines the term '*foreign instrument*', as under: -

> ***"12. Foreign instrument.***—*any such instrument not so drawn, made or made*

> *payable shall be deemed to be a foreign instrument."*

36. In the present case, the cheque in question is therefore, a '*foreign instrument*'.

37. Chapter XVI of the NI Act contains the provisions applicable to International Law dealing with '*foreign instrument*'. Section 134 to Section 137 of the NI Act, falling in Chapter XVI thereof, are reproduced hereinunder: -

> *"**134. Law governing liability of maker, acceptor or indorser of foreign instrument.—** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.*
>
> ***135. Law of place of payment governs dishonour.—** Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.*
>
> ***136. Instrument made, etc., out of India, but in accordance with the law of India.—** If a negotiable instrument is made, drawn, accepted or indorsed outside India, but in accordance with the law of India, the circumstances that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon within India.*

> ***137. Presumption as to foreign law.***— *The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of India, unless and until the contrary is proved."*

38. Section 134 of the NI Act states that in the absence of a contract to the contrary, a liability of the maker or drawer of a foreign cheque is regulated in all essential matters by the law of the place where the instrument was made. In ***Pale Horse Designs*** (supra), the High Court of Madras has observed that the term 'liability' mentioned in Section 134 of the NI Act means only the civil liability. Therefore, unless there is a contract to the contrary shown, in case of a foreign cheque, as is in the present case, the civil liability of the drawer, that is, the petitioner no.1, is governed by the law of place where the cheque was drawn, that is, Dubai. Reliance in this regard is also placed on the judgment of the Andhra Pradesh High Court in ***Vinjanamapati Anantaramaiah***, (Supra).

39. Section 135 of the NI Act states that where a cheque is made payable in a place different from that in which it is made or indorsed, the law of the place where it is made payable, determines what constitutes dishonour and what notice of dishonour is sufficient.

40. The learned counsel for the respondent no.2 has submitted that as the cheque in question does not specifically state the place where it is payable, in terms of Section 70 of the NI Act, the cheque can be presented for payment at the place of business or the usual residence of the drawee that is, the respondent no.2, and in the present case, at Delhi. He submits that in terms of Section 135 of the NI Act, the law

as prevalent in India shall therefore, determine what constitutes dishonour and what notice of dishonour is sufficient.

41. The above submission cannot be accepted.

42. While it is true that in the absence of stipulation that the cheque can only be presented for payment at Dubai, the cheque could be deposited by the respondent no.2 at its bank in India as far as Section 135 of the NI Act, it requires the cheque to be specifically made payable at a place different from where it was made or indorsed. In my opinion, therefore, merely because there is no prohibition on the cheque being presented for payment at a place different from where it is made or indorsed, Section 135 of the NI Act cannot be attracted.

43. Even otherwise, Section 70 of the NI Act has no application to a cheque. Section 70 of the NI Act deals with a promissory note or a bill of exchange, and it provides that where the same is not made payable at a specified place, it 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. On the other hand, Section 72 of the NI Act deals with a cheque, and provides that subject to the provisions of Section 84 of the NI Act, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer. Therefore, as far as a cheque is concerned, unless specifically made payable at some other place, it must be presented at the bank upon which it is drawn, that is, where the bank of the drawer is situated. This would also have the effect on

the place where the offence under Section 138 of the NI Act is said to have been committed, as shall be discussed herein below.

44. Section 137 of the NI Act prescribes a presumption that the law of any foreign country regarding the cheque shall be presumed to be the same as that of India, unless and until, the contrary is proved. Though, the learned counsel for the petitioners has sought to contend that the dishonour of cheque is no longer visited with a criminal liability in UAE, this would be a question of fact and a matter to be decided on evidence and cannot be a ground to quash the complaint at this stage.

45. This now brings me to Section 138 of the NI Act, which reads as under: -

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account***—*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 provision of this Act, be punished with imprisonment for a term which may be extended to two years, 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 in due 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, within thirty days of the receipt of information by him from the bank regarding the return of the cheque 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 purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

46. The conditions for invoking the above provision are:-

(a) the presentation of the cheque for payment to the bank on which it is drawn, within a period of six months from the date it was drawn or its validity, whichever is earlier;

(b) the bank returning the cheque 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;

(c) the payee or the holder in due course of the cheque issues a demand notice demanding the amount of the cheque from the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and,

(d) the drawer of the cheque fails to pay the said amount within 15 days of the receipt of such notice.

47. In ***Dashrath Rupsingh Rathod*** (Supra), the Supreme Court has held that a reading of Section 138 of the NI Act in conjunction with Section 177 of the Cr.P.C. leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed. It held that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located. It held that the complainant is statutorily bound to comply with Section 177, etc., of the Cr.P.C. 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 is where the cheque is dishonoured by the bank on which it is drawn. The Supreme Court summed up its conclusions 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 CrPC 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."*

48. However, the Legislature then amended the NI Act by way of the Negotiable Instruments (Amendment) Act, 2015, *inter alia* amending Section 142 of the NI Act, to read as under: -

> *"**142. Cognizance of offences.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
>
> *(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;*
>
> *(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:*
>
> *Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;*
>
> *(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.*
>
> *(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—*
>
> > *(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or*
> >
> > *(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.*
> >
> > *Explanation.—For the purposes of*
>
> *clause (a), where a cheque is delivered for*

> *collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."*

49. In view of the above amendment, and more specifically in terms of Section 142(2) of the NI Act, the offence under Section 138 of the NI Act is now to be inquired into and tried only by a court within whose local jurisdiction, if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated. The Explanation to Sub-Section (2) to Section 142 further reiterates that for the purposes of clause (a) to Sub-Section (2) to Section 142, where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

50. The effect of the above provision, therefore, is that the offence under Section 138 of the NI Act is deemed to have been committed at a place where a cheque is delivered for collection at the branch of the bank of the payee or holder in due course, and the offence shall be inquired into and tried only by a court within whose local jurisdiction, if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated.

51. In the present case, the cheque was presented for payment by the respondent at Delhi. There is no prohibition of the cheque being

deposited by the respondent no.2 for collection in Delhi. Therefore, in terms of Section 142(2) of the NI Act, the Court at Delhi shall have jurisdiction to inquire into and try the offence under Section 138 of the NI Act.

52. In ***Pale Horse Designs*** (supra), following the judgments of the Supreme Court in ***Shri Ishar Alloys Steel Ltd. v. Jayaswals Neco Ltd.***, 2001 (3) SCC 609, and in ***M/s Harman Electronics (P) Ltd. & Anr. v. M/s National Panasonic India Pvt. Ltd.,*** AIR 2009 SC 1168, wherein it had been held that only the court where the bank of the drawer is situated, shall have jurisdiction, a learned Single Judge of the High Court of Madras, observed as under:

> *"**23**. Chapter XVI of the Negotiable Instruments Act, 1881 deals with i) the law governing the liability of maker, acceptor or indorser of foreign instrument, ii) law applicable in case of dishonour of negotiable instruments when it is made payable in a different place from that in which it is made or endorsed, iii) law applicable to negotiable instruments which are made in accordance with law of India even though made out of India and iv) presumption as to the foreign law in this regard. There are four sections in Chapter XVI.*
>
> ***24**. Section 134 is to the effect that the liability of the maker or drawer of a foreign negotiable instrument, in the absence of a contract to the contrary, shall be regulated in all essential matters by the law of place where the instrument was made. In respect of such instruments, the liabilities of acceptor or indorser alone shall be governed by the law of the place where the instrument is made payable. ..... From Section 134 it is quite clear that the liability of a foreign negotiable instrument shall be governed by law of the*

place where the instrument was made in all essential matters. In this case, it is not in dispute that the cheques were drawn in Massachusetts, United States of America. Therefore, in all essential matters the law in the United States of America shall be attracted towards any action against the drawer. <u>It is again reiterated that the said section deals with the question of civil liability and not criminal liability</u>.

***25**. Similarly, Section 135 is to the effect that law of the place where the cheque is made payable determines what constitutes dishonour and what notice of dishonour is sufficient in case of a negotiable instrument made payable at a different place from the place wherein it is made or indorsed. The said section also will not render any help to the respondent because the place wherein the cheques concerned in these petitions are payable is only at Massachusetts, United States of America. This is made clear by the judgment of the Apex court in in Shri Ishar Alloy Steels Ltd vs. Jayaswals Neco Limited reported in (2001) 3 SCC 609. In the case on hand, all the cheques were drawn on Danvers Savings Bank at Massachusetts, United States of America. Hence it is payable at Massachusetts, United States of America. <u>Here again it is pointed out that the section deals with the civil liability and not the criminal liability.</u> The notice of dishonour referred to in Section 155 of the Negotiable Instruments Act, 1881 is nothing but a notice of dishonour contemplated under Chapter VIII, especially Section 92. The same has nothing to do with the notice contemplated under Section 138 of the Negotiable Instruments Act, 1881.*

***26.** Section 136 gives extra territorial applicability of Indian Law regarding negotiable instruments to instruments made outside India if it is made in accordance with the law of India. Section 136 is to the effect that if a negotiable instrument is made, drawn, accepted or indorsed outside India, but in*

accordance with law of India, then the circumstance that any agreement evidenced by such instrument shall not be valid according to the law of the country wherein it was entered into will not invalidate any subsequent acceptance or endorsement made thereon within India. It must be seen that the subsequent acceptance and endorsement made within India alone are not invalidated because of the law of the other country in which it was entered into, even though the agreement evidenced by the instrument made in the foreign country shall be invalidated in accordance with the law of the said country.

***27**. Section 137 of the Negotiable Instruments Act, 1881 simply says that the law of any foreign country regarding negotiable instruments shall be presumed to be the same as that of India unless and until the contrary is proved. Only relying on the said provision and misinterpreting the same as a referee to law relating to criminal liability found in the next chapter also, it was held by the learned single judge of this court in the said case that the instrument made in Singapore was valid in accordance with Indian law. <u>Here again this court wants to remind that Section 137 also deals with the presumption of law of foreign country regulating civil rights and liabilities in respect of negotiable instruments.</u> When an Act is not generally recognised by the international community, by a general convention, treaty or a universal declaration to be an offence, no presumption can be made that, simply because such an act made is punishable as an offence under the law of India, the same shall have also been made punishable under the law of any foreign country. It must be kept in mind that though the liability is civil in nature, by a special provision under Section 138 of the Negotiable Instruments Act, 1881, the dishonour of a cheque when the cheque amount is not paid within a specified time after the receipt of statutory notice of demand, it is made an*

offence. The section has been placed in Chapter XVII of Negotiable Instruments Act, 1881. Therefore, the presumption enshrined in Section 137 i.e. found in Chapter XVI regarding the position of foreign law shall not be extended to the penal provision found in Section 138 of the Negotiable Instruments Act, 1881.

xxxxx

***31.** A combined reading of Sections 1, 11, 12 and 134 to 137 of the Negotiable Instruments Act, 1881, will make it clear that a cheque made/drawn in a foreign country on a drawee bank functioning in the foreign country and made payable therein shall be a foreign instrument and the law of the country wherein the cheque was drawn or made payable shall be the law governing the rights and liabilities of the parties and the dishonour of the cheque. As such the payee cannot select a country and present it through a bank therein for collection to confer jurisdiction on a court functioning therein. If the payee is given such a right to proceed criminally against the drawer by selecting the jurisdiction, the same will encourage forum shopping making the payees to go to a country wherein the dishonour of the cheque is made a criminal offence and wherein the law is more favourable to the payee enabling him to collect the amount covered by the cheque by way of fine or compensation by resorting to criminal prosecution. A person who is not a citizen of India for an act committed in a foreign country wherein it is not a punishable offence, cannot be prosecuted in India. In this case, none of the petitioners is a citizen of India. The acts constituting the offence, namely issuance of the cheque, the dishonour of the cheque, the failure to make payment of the cheque after receipt of the statutory notice were all committed by them not in India, but in USA. Therefore, they cannot be prosecuted in India for the said act as an offence punishable under Section 138 of the Negotiable Instruments Act,*

> *1881. This court comes to the conclusion that the learned IX Metropolitan Magistrate, Saidapet does not have the jurisdiction to entertain the complaint since the offence was not committed within the jurisdiction of the said Metropolitan Magistrate."*
>
> *(Emphasis supplied)*

53. From the above, it is apparent that in ***Pale Horse Designs*** (supra), the learned Single Judge of the High Court of Madras, while emphasising that Section 134 and Section 137 of the NI Act deal with the civil liability, also held that where the entire transaction, that is issuance of the cheque, the dishonour of the cheque, the failure to make payment of the cheque after receipt of the statutory notice, were all committed not in India, but in USA, the drawer of the cheque cannot be prosecuted in India for an offence under Section 138 of the NI Act.

54. In the present case, due to the amendment in Section 142 of the NI Act, now the dishonour of the cheque, due to its presentation for payment at the bank of the respondent no.2 at Delhi, is deemed to have taken place at Delhi. Though, Section 134 of the NI Act states that in absence of a contract to the contrary, the liability of the drawer of a foreign cheque is regulated in all essential matters by the law of the place where he made the cheque, there is nothing in the said provision which would exclude the application of Section 138 of the NI Act read with Section 142 of the NI Act. Merely because the payee or holder in due course of a foreign cheque chooses to present the cheque in India out of *malafide,* the application of the provision of

Section 138 of the NI Act and the jurisdiction of the court where such cheque is deposited for payment, cannot be ousted.

55. It is also to be kept in mind that Section 138 of the NI Act was inserted with the purpose of regulating financial promises in growing business, trade, commerce, and industrial activities of the country, and the strict liability to promote greater vigilance in financial matters. The object was to enhance the acceptability of cheques in the settlement of liabilities and there can be no difference in this regard between an Indian cheque or a foreign cheque. Ultimately the cheque has to bind the drawer to fulfil its obligation, as the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. Therefore, equity also does not rest with the accused in the present case. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding the interest of creditors. Reference in this regard can be made to the judgments of the Supreme Court in ***Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.***, (2008) 2 SCC 305; ***Meters and Instruments (P) Ltd. & Anr. v. Kanchan Mehta***, (2018) 1 SCC 560; ***P. Mohanraj & Ors. v. Shah Bros. Ispat (P) Ltd.***, (2021) 6 SCC 258.

56. Apart from the above, it is the case of the Complainant/respondent no. 2 that the petitioner nos. 2 and 3 escaped from the jurisdiction of the Courts at Dubai and have come to India. It does not, therefore, lie in the mouth of the petitioner nos. 2 and 3 to contend that the presentation of the cheque in India by the respondent

no. 2 for encashment, was *malafide.* The petitioner nos.2 and 3 are also citizens of India, presently residing in India.

57. Section 4 of the Cr.P.C. also provides that all offences under laws other than the Indian Penal Code, shall be investigated, inquired into, tried, and otherwise dealt with in accordance to the provisions of the Cr.P.C., but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Therefore, offence under Section 138 of the NI Act is to be tried in accordance with the provisions of the Cr.P.C., subject to the provisions of the NI Act itself, including Section 142 of the NI Act. Section 4 of the Cr.P.C. is reproduced hereinunder:

> *"**4. Trial of offences under the Indian Penal Code and other laws.**—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences."*

58. The Supreme Court in the judgment of ***P. Mohanraj*** (Supra) has held that the proceedings for an offence under Section 138 of the NI Act are almost in the nature of a civil wrong which has been given criminal overtones. It can be said to be a '*civil sheep*' in a '*criminal wolf's clothing*', as it is the interest of the complainant/victim that is sought to be protected, the larger interest of the State being subsumed

in the complainant/victim alone moving a court in cheque bouncing cases. It was further observed that it is in actuality a hybrid provision to enforce payment of a bounced cheque. It is because of such a nature of the offence under Section 138 of the NI Act, that the Legislature in its wisdom has used the term '*cause of action*' in Section 142 of the NI Act. While interpreting Section 142 of the NI Act, the Supreme Court held as under:

> *"**49.** A cursory reading of Section 142 will again make it clear that the procedure under the CrPC has been departed from. First and foremost, no court is to take cognizance of an offence punishable under Section 138 except on a complaint made in writing by the payee or the holder in due course of the cheque — the victim. Further, the language of Section 142(1)(b) would again show the hybrid nature of these provisions inasmuch as a complaint must be made within one month of the date on which the "cause of action" under clause (c) of the proviso to Section 138 arises. The expression "cause of action" is a foreigner to criminal jurisprudence, and would apply only in civil cases to recover money. Chapter XIII CrPC, consisting of Sections 177 to 189, is a chapter dealing with the jurisdiction of the criminal courts in inquiries and trials. When the jurisdiction of a criminal court is spoken of by these sections, the expression "cause of action" is conspicuous by its absence."*

59. Reference in this regard can also be made to the judgments of the Supreme Court in ***Bridgestone India (P) Ltd. v. Inderpal Singh*** (2016) 2 SCC 75 and ***Yogesh Upadhyay & Anr. v. Atlanta Limited*** 2023 SCC OnLine SC 170.

60. Therefore, reading Section 4 of the Cr.P.C. with Section 142 (2) of the NI Act, it must be held that the Courts in India (Delhi) where the cheque has been deposited for encashment, shall have the jurisdiction to adjudicate on the complaint for an offence under Section 138 of the NI Act, even though it is a foreign cheque.

61. It is also to be noted that the subject complaint has been pending adjudication since the year 2018. Some of the accused filed a Revision Petition before the learned District Judge, challenging the orders passed by the learned Trial Court summoning them as an accused in the said complaint, which came to be allowed by the learned ASJ vide an order dated 27.08.2018. The respondent no.2 has challenged the said order by way of a petition under Section 482 of the Cr.P.C., being CRL.M.C. no.3828/2019. It is only on or around 09.12.2022, that the petitioners chose to file the present petition. It has been contended by the learned counsel for the respondent no.2 that in the meantime, the trial has reached the stage of defence evidence. There is absolutely no reason supplied by the petitioners in the petition for the delay in approaching this Court.

62. In my view, therefore, the unexplained delay itself is sufficient ground for this Court to refuse to exercise its inherent jurisdiction under Section 482 of the Cr.P.C. to quash the complaint at this belated stage. However, I have considered the submissions made by the learned counsel for the petitioners on merit as well, as the petition has been pending adjudication for a long period.

63. In view of the above, I find no merit in the present petition, the same is dismissed. The pending application also stands disposed of.

64. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 22, 2024/*rv/ns/RP/*AS