

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINALWRIT PETITION NO. 424 OF 2015

Vijaykumar shriram Zavar,
age 48 years, occ. Business,
r/o C/o M/s Pranav Trading Company,
Samarth Road Lines, Dharanikar Road,
Mondha, Tq. Parli V. Dist. Beed
At present Latur, Dist. Latur

... Petitioner

VERSUS

Bapurao Tukaram Nirade
age 45 years, occ. Agril.,
R/o Kacharwadi, Tq. Dharur,
District Beed

...Respondent

.....
Shri T.G.Gaikwad, advocate for petitioner
Shri Abhijit Choudhary, advocate for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 22nd July, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. Heard with the consent of the learned counsel for both the parties.

2] By the present petition, the petitioner is questioning the order passed by the learned Additional Chief Judicial Magistrate,

Majalgaon, dated 20.1.2015, below Exh.44 in S.C.C. No.405 of 2007, by which the learned Magistrate dismissed the application filed on behalf of the petitioner under Section 177 of the Code of Criminal Procedure in respect of the jurisdiction of the Magistrate to try the complaint.

3] Heard Shri T.G.Gaikwad, learned counsel for the petitioner and Shri Abhijit Choudhary for the respondent in extenso.

4] The petitioner is an accused in S.C.C. No. 405 of 2007. The complaint is filed against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate issued process against the petitioner. The said order was never challenged by the petitioner.

5] During the pendency of the complaint, the petitioner moved an application under Section 177 of the Code of Criminal Procedure. The said application is at Exh.44.

By moving the said application it was stated by the petitioner that the cheque in question is of Bank of Maharashtra, Parli Branch and said cheque issued by the petitioner in favour of the complainant/respondent was dishonoured at Parli. Therefore, the court at Majalgaon is not having territorial jurisdiction to try and decide the said case.

Before the learned trial court, reliance was placed on the reported judgment of the Apex Court in the case of **Dashrath Rupsingh Rathod vs State of Maharashtra [2014 (6) Mh.L.J.404]**.

With the help of said case, it was contended by the petitioner that the learned Additional Chief Judicial Magistrate has no territorial jurisdiction.

6] Undisputedly, in the case at hand, the respondent/complainant has already filed his affidavit in evidence. Not only that, the petitioner has cross-examined the present respondent/complainant. Thereafter, the statement of the petitioner under Section 313 of the Code of Criminal Procedure was also recorded. Thus, the application raising the plea of jurisdiction was raised after recording the statement of the petitioner under Section 313 of the Criminal Procedure Code.

7] In view of the fact that the trial was already commenced and the complainant was thoroughly cross-examined and even the statement of the petitioner was also recorded under Section 313 of the Code of Criminal Procedure, the learned Magistrate rightly found that the reliance placed by the petitioner on the judgment in the case of **Dashrath Rupsingh Rathod** (supra) is highly misplaced.

8] The impugned order suffers no infirmity. The order is perfectly legal, warranting no interference. Hence, the Criminal Writ Petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(V.M.DESHPANDE, J.)