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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 202 OF 2015**

Vasant T.Romani ... Applicant

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. J.S. Shukla for the applicant.

Mr.Dilip Bodake for respondent.

Mr. Ajay Patil, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : APRIL 30, 2015**

P.C.

Admit. Heard finally.

2. Heard learned counsel for the applicant, respondent and learned A.P.P. for the State.

3. The issue involved in the present case is as to whether the stage of Section 145(2) of the Negotiable Instrument Act (hereinafter referred as “the Act”) is reached before the trial court in the case under section 138 of the Act.

4. Admittedly affidavit of evidence of the complainant has been filed. Therefore, stage under section 145(1) is over. Section 145(2) of the Act reads as under :

“(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

4. It is thus clear that the witness whose affidavit of evidence has been tendered under section 145(1) of the Act can be summoned and can be examined by the court in the witness box, if the court thinks it fit. Sub section (2) further says that the court is under obligation to summon the witness and examine him, despite affidavit of evidence on record, if the application is made either by the prosecution or by the accused. As such stage of section 145(1) is over and the case has reached the stage of section 145(2) of the Act.

5. The applicant is the accused before the trial Magistrate. He had prayed for return of the complaint to the complainant in view of the judgment of Hon'ble Supreme court in the case of **Dashrath Rupsingh Rathod Vs. State of Maharashtra (2014) 9 SCC 129.** Since this court has taken a view

that stage of 145(2) has already reached, the complaint cannot be returned though the cheque has been dishonoured beyond the territorial jurisdiction of the court where the complaint is pending. The applicant's case will have to be tried and decided by the Court where it is pending. I do not find any substance in the application. Criminal Application stands dismissed.

(JUDGE)