

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Crl.Rev.Pet.No. 653 of 2015

AGAINST THE ORDER IN CMP 404/2015 of ADDITIONAL CHIEF
JUDICIAL MAGISTRATE'S COURT (E&O), ERNAKULAM DATED
27-02-2015.

REVISION PETITIONER(S)/COMPLAINANT:

RADHA N.MENON, ANURADHA,
R. MADHAVAN NAIR ROAD,
COCHIN-682 016.

BY ADVS.SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.NELSON JOSEPH
SRI.M.D.JOSEPH

RESPONDENT(S)/ACCUSED:

1. M/S.NEESA LEISURE LIMITED,
CAMBAY SQUARE, PLOT NO.X-22-24,
GIDC ELECTRONIC ESTATE SECTOR-25,
OPP. HILL WOOD SCHOOL,
GANDHI NAGAR-382 044, GUJARAT.
2. MANOJ SINGAL, MANAGING DIRECTOR,
M/S.NEESA LEISURE LIMITED,
CAMBAY SQUARE, PLOT NO.X-22-24,
GIDC ELECTRONIC ESTATE SECTOR-25,
OPP. HILL WOOD SCHOOL,
GANDHI NAGAR-382 044, GUJARAT.
3. KAMALENDRA JOSHI, VICE PRESIDENT -
FINANCE & ACCOUNTS AND COMPLIANCE OFFICER,
M/S.NEESA LEISURE LIMITED,
CAMBAY SQUARE, PLOT NO.X-22-24,
GIDC ELECTRONIC ESTATE SECTOR-25,
OPP. HILL WOOD SCHOOL,
GANDHI NAGAR-382 044, GUJARAT.
4. PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R4 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 05-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

“C.R.”

K. HARILAL, J.

Crl.R.P. No.653 of 2015

Dated this the 5th day of June, 2015

ORDER

The question that arises for consideration in this Criminal Revision Petition is, whether the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') alleging dishonour of a multi-city cheque drawn on the account maintained by the accused/drawer in a particular branch; but payable at par at all branches, is maintainable in the court within whose jurisdiction the branch, in which the cheque was presented and got dishonoured, is situated.

2. The revision petitioner is the complainant in C.M.P.No.404 of 2015 on the files of the Additional

Chief Judicial Magistrate's Court (Economic Offences), Ernakulam. The above C.M.P. was filed against the respondents 1 to 3 herein, alleging the offence punishable under Sec.138 of the N.I. Act. It is the case of the revision petitioner that the respondents owed an amount of ₹1,00,000/- to him and in discharge of the said debt, the accused/1st respondent issued a multi-city cheque drawn on the Axis Bank, Gandhi Nagar Branch, Gujarat, payable at par at all branches of the said Bank. So, he presented the said cheque for encashment before the Ravipuram Branch at Ernakulam, of the Axis Bank where it got dishonoured and returned for want of sufficient funds. Thus, the dishonour of the cheque was occurred at Axis Bank, Ravipuram Branch at Ernakulam and the said branch is situated within the jurisdiction of the court which passed the impugned order. Therefore, the court before which the complainant filed the complaint has jurisdiction to entertain and try the

complaint. But the court below, without considering the decision laid down by the Apex Court in Dashrath Rupsingh Rathod v. State of Maharashtra [2014 (3) KLT 605 (SC)], in its correct perspective, returned the complaint on an erroneous finding that in the light of the decision in Dashrath Rupsingh Rathod's case, the court below has no territorial jurisdiction to entertain and try the complaint and the court within whose jurisdiction the branch on which the cheque has been drawn, has the jurisdiction to entertain and try the complaint. The illegality of the aforesaid finding whereby the trial court returned the complaint is challenged in this revision petition.

3. The learned counsel for the revision petitioner advanced arguments assailing the finding, whereby the court below returned the complaint on a finding of the lack of jurisdiction. The learned counsel for the petitioner drew my attention to the decision laid down by the Apex Court in Dashrath Rupsingh Rathod v.

State of Maharashtra [2014 (3) KLT 605 (SC)] and canvassed the point that the court within whose jurisdiction the dishonour of the cheque occurred has the jurisdiction to entertain and try the complaint. Therefore, the court which passed the impugned order has the jurisdiction to entertain and try the complaint as the dishonour occurred at the Branch which is situated within the jurisdiction of that court. In support of the said contention, the learned counsel for the revision petitioner has produced the dishonoured memo issued by the Axis Bank, Ravipuram Branch, Ernakulam, where the cheque was dishonoured.

4. Going by the complaint and the impugned order under challenge, it is seen that the facts narrated in the complaint are not disputed or doubted. So, the question raised above can be answered in view of the decision laid down by the Apex Court in Dashrath Rupsingh Rathod v. State of Maharashtra [2014 (3) KLT 605].

5. On an analysis of the above judgment, it could be seen that, the three Judge Bench of the Apex Court had reconsidered the territorial jurisdiction of the proceedings on a complaint under Section 138 of the NI Act, in view of all the earlier judgments with respect to the territorial jurisdiction and partly overruled the decision of the Apex Court in Bhaskaran v. Balan [1999 (3) KLT 440 (SC)] which held that since an offence under Sec.138 of the N.I. Act can be completed only with the concatenation of five acts that constituted the components of the offence, any court within whose jurisdiction any one of those acts was committed would have the jurisdiction to try the offence.

6. The territorial jurisdiction of a multi-city cheque payable at par at all branches is not specifically decided in the decision in Dashrath Rupsingh Rathod v. State of Maharashtra [2014 (3) KLT 605]. But the Apex court has made a reference

by stating that it is always open to the creditor to insist the cheque in question be made payable at the place of the creditors convenience.

7. In Dashrath Rupsingh Rathod's case the above decision, the Apex Court held that an offence contemplated under Sec.138 of the N.I. Act stands committed on the dishonour of the cheque and accordingly, the Judicial First Class Magistrate, at the place where dishonour occurs is ordinarily the court where the complaint must be filed, entertained and tried. The offence in Sec.138 of the N.I. Act is the dishonour of the cheque alone. There is no provision in the N.I. Act, which would justify a departure from the stipulation that the place where the offence is committed is the place where the prosecution has to be conducted.

8. In the light of the principle which is culled out from the above decision, I hold that where a cheque is drawn on the account maintained in a particular

branch of a bank, but payable at par at all branches of that bank, the prosecution under Sec.138 of the N.I. Act, alleging dishonour of that cheque, is maintainable, in the court, within whose jurisdiction the branch at which the cheque was presented for encashment by the payee himself or by the payee's bank and got dishonoured, is situated. Put it differently, the court within whose jurisdiction the cheque has been dishonoured has jurisdiction to entertain and try the case, as the cause of action arises at the place where the dishonour occurs.

9. In the instant case, indisputably the dishonour of the cheque occurred at Ravipuram Branch, Ernakulam, the place within the jurisdiction of the court which returned the complaint by the impugned order. Needless to say, the court which returned the complaint has territorial jurisdiction to entertain and try the complaint. Consequently, the impugned order is set aside and the trial court is directed to restore

the complaint on the files and proceed in accordance with law. If the complaint has been taken back, the petitioner is allowed to refile the same.

This revision petition is allowed accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge