

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.129 of 2015
and M.P.No.1 of 2015

K.Remil

.. Petitioner/Accused

Vs

T.P.Sasidharan

.. Respondent/Complainant

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code, to call for records in Crl.M.P.No.2230 of 2014 in S.T.C.No.669 of 2014, dated 05.11.2014, on the file of the Judicial Magistrate Court at Mahe.

For Petitioner : Mr.M.R.Radhakrishnan

O R D E R

Criminal Revision Case is directed against the order made in Crl.M.P.No.2230 of 2014 in S.T.C.No.669 of 2014, dated 05.11.2014, on the file of the Judicial Magistrate Court at Mahe, by which, the learned Judge has dismissed the petition filed, to return the complaint, filed under Sections 138 and 142 of the Negotiable Instruments Act, to the complainant, with a direction to file the same, before the proper Court.

2. Facts deduced from the petition in S.T.C.No.669 of 2014, are as follows:

On 10.03.2014, a complaint has been presented under Section 138 of the Negotiable Instruments Act, on the file of the Judicial Magistrate Court at Mahe. On 03.04.2014, sworn statement has been recorded and summons have been served on the accused. On 25.04.2014, the accused was absent and hence, aailable warrant has been issued. On 05.05.2014, the accused has surrendered and theailable warrant has been recalled. When the accused was examined for the offence, under Section 138 of the Negotiable Instruments Act, he has denied the charge and the case was posted for trial. On 04.07.2014, 18.07.2014 and 30.07.2014, the case had been adjourned.

3. On 07.08.2014, the complainant (PW.1), has examined himself in chief and marked Exs.P1 to P5. On the request of the accused, for cross-examination of the complainant (PW.1), the case has been

adjourned on three occasions, i.e., on 27.08.2014, 15.09.2014 and 08.10.2014 respectively. On 08.10.2014, the accused has filed CrI.M.P.No.2230 of 2014, for return of the complaint.

4. Before the Court below, the accused has raised two points, on the applicability of the decision made in Dashrath Rupsingh Rathod v. State of Maharashtra reported in 2014 (4) CTC 666, to the facts of the present case, as follows:

"(1) The stage of the case has not crossed Section 145 (2) of the Negotiable Instruments Act.

(2) The Chief Examination affidavit was filed and recorded only on 07.08.2014, which is subsequent to the decision of the Hon'ble Supreme Court, i.e., subsequent to 01.08.2014. The recording of the affidavit of the complainant is against the decision of the Hon'ble Supreme Court and not valid."

5. Objecting to the prayer for return of the complaint, a submission has been advanced by the complainant, that the stage of the case has crossed the stage under Section 145(2) of the Negotiable Instruments Act, 1881, and the decision of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod's case (cited supra), was not brought to the notice of the learned Magistrate on 07.08.2014, when the chief examination of the complainant was recorded and documents marked.

6. While advertng to the abovesaid points, the lower Court has considered a decision in Indian Bank Association v. Union of India reported in 2014 (5) SCC 590, wherein, the Apex Court has laid down the procedure to be followed by subordinate courts dealing with the cases under sections 138 of the Act. The said directions are contained in para 23 of the judgment which reads as under:-

"23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given: - 23.1. The Metropolitan Magistrate/ Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow up action be taken.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4 The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling witness for cross-examination.

23.5 The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses, instead of examining them in court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the court."

7. In the light of the decision made in Indian Bank Association's case (cited supra), the learned Judicial Magistrate Court at Mahe, has observed that on the first hearing of the case, on the appearance of the accused, the case moves to the stage of Section 145(2) of the Negotiable Instruments Act, if an affidavit has been properly filed, during the pre-summoning stage itself by the complainant. He has also observed that as per the old procedure, the case reaches the stage of Section 145(1) of the Negotiable Instruments Act, r/w. Section 254 Cr.P.C.

8. In Dashrath Rupsingh Rathod v. State of Maharashtra reported in 2014 (4) CTC 666, the Supreme Court, at Paragraph 20, held as follows:

"To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us, from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending."

9. After considering the decision made in Dashrath Rupsingh Rathod's case (cited supra), the Court below has arrived at a conclusion that the case on hand had reached the stage of Section 145 (2) of the NI Act. Reliance has also been made, to the decision of the Delhi High Court in United Teleservices Pvt. Ltd., v. Celestial Tech Vates Ltd., [CRL.M.C.No.4021of 2014, dated 11th September, 2014].

10. On the aspect of the recording the chief examination of the complainant on 07.08.2014, after the decision of the Supreme Court in

Dashrath Rupsingh Rathod's case, dated 01.08.2014, the Court below has observed that neither the complainant nor the accused were aware of the said decision, on the date of recording the chief examination on 07.08.2014 and only at a later point of time, it was brought to the notice of the Court and that no sooner the decision was brought to the notice, the Court is bound to take note of the same. Thus, by observing that there was no illegality in recording the chief examination on 07.08.2014, when the attention of the lower Court, was invited to the decision, cited above, the Court below has rejected both the grounds, raised for returning the complaint to the complainant with a direction to file the same before the proper Court.

11. Though Mr.R.Radhakrishnan, learned counsel for the petitioner assailed the order of the trial Court, on the very same grounds, this Court is not inclined to accept the same. Attention of the Court below, has been invited to the decision of the Apex Court, only after the complainant was examined in chief, and thus, the stage has crossed Section 145(1) of the Negotiable Instruments Act, 1881. The decision rendered in Dashrath Rupsingh Rathod's case, cannot be retrospectively applied to a case, where evidence has already been reelected. The learned Magistrate has not committed any irregularity. Though he further contended that the learned Judicial Magistrate, Mahe, has committed an act of contempt, such a contention deserves to be rejected, in limini. No Court would deliberately and intentionally disobey the directions of the Apex Court. To raise an allegation of contempt, first of all, a person should have the knowledge of an order. Thereafter, such person should have acted with a wilful and deliberate intention to flout the order. To attribute contumacious conduct on the part of the Judicial Officer, is regrettable.

12. There is no merit in this Criminal Revision Case and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/- सतयमेव जयते
Assistant Registrar

True Copy

Sub Assistant Registrar

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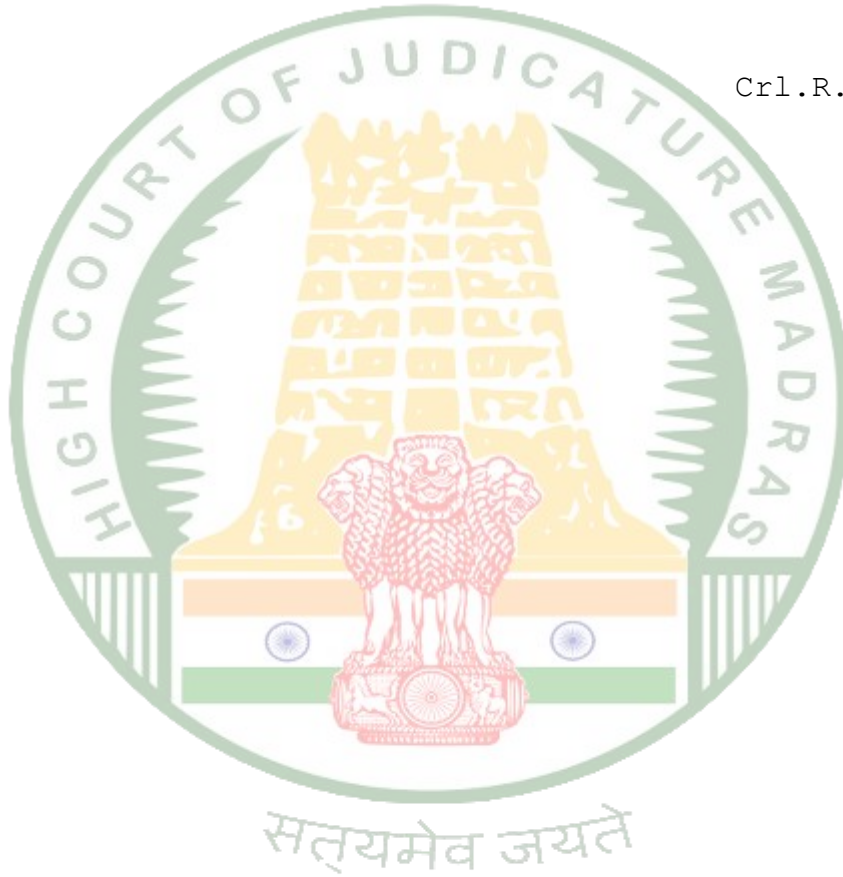
1.The Judicial Magistrate Court,
Mahe.

2.do thro' The Chief Judicial Magistrate,
Puducherry.

+1 cc to Mr.M.Radhakrishnan, Advocate,SR.8579.

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krd 6/4

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