

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.160 of 2015

M.F.Garments,
Manju Complex,
PP Road,
Perumbavoor,
represented by General Manger,
T.T.Joy,
Thom bra House,
Pulluvazhy Post,
Perumbavoor. Petitioner/ Complainant

vs.

1.Sun Trading
rep.by Mr.D.Selvakumar

2.D.Selvakumar,
Managing Partner

3.S.Hemalatha ... Respondents/ Accused

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order directing payment of additional Court fee made on 29.01.2015 in STC No.84 of 2014 on the file of the learned Judge, Fast Track Court (Magistrate Level), Ambattur.

For Petitioner : Mr.B.R.Shankaralingam

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JUDGMENT

Being aggrieved by the direction, dated 29.01.2015, of the learned Judge, Fast Track Court (Magistrate Level), Ambattur, issued to the petitioner to pay required Court fee, as per Schedule II Article 20 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, complainant has filed the present revision case.

2. Impugned order, dated 29.01.2015 of the learned Judge, Fast Track Court (Magistrate Level), Ambattur, is reproduced hereunder:

"Learned counsel for complainant present, records perused. The petitioner is M/s.M.F.Garments, rep. by its General Manager, T.T.Joy. The accused is M/s.Sun Trading and 2 others. The cheque bearing No.300386 was issued by the accused which according to the petitioner/complainant was returned on 01.09.2012 by South Indian Bank as insufficient funds. Later notice was issued on behalf of the complainant seeking payment of money as per 138 NI Act, on failure on the part of the accused to repay the said amount the present complaint was filed before the learned 1st Class Magistrate, Perumbavoor, Kerala.

In compliance with the order passed by Hon'ble Supreme Court in Crl.Appeal No.2287 of 2009 in Dasarath Rupsingh Rathod v. State of Maharashtra and another, the present case in C.C.No.69/13 transferred to this Court. The Complainant has represented the complaint before this Court and same was numbered as STC.No.84 of 2014.

This Court in compliant with the order passed by the Hon'ble Apex Court in 2014 (4) CTC 666, in Dasarath Rupsingh Rathod v. State of Maharashtra, having taken up the case on file now upon scrutiny of the same finds that the Additional Court Fee to be paid for filing the complaint before the Magistrate Court in Tamilnadu as stipulated Schedule II Article 20 of Tamil Nadu Court Fee and Suits Valuation Act, 1955. It is found, that there is shortage of Court fees to be paid by complainant with for the purpose of taking up the complaint on file and conducting trial of the case.

Hence in the above situation the complainant is directed to pay the required Court fee and comply with the same."

3. Material on record discloses that earlier, the petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, on the file of the learned Judicial First Class Magistrate, Perumbavoor, Kerala, and it has been taken on file in CC.No.69 of 2013.

4. In terms of the Judgment of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod v. State of Maharashtra and another, reported in CDJ 2014 SC 647 = 2014 (9) SCC 129, wherein it has been held that the complaint under Section 138 of the Negotiable Instruments Act, 1881, shall be dealt with only by the jurisdictional Magistrate, where the Drawer's Bank is situated, the learned Judicial First Class Magistrate, Perumbavoor, Kerala, has returned the complaint to the petitioner to be presented before the jurisdictional Court.

Accordingly, the complaint has been presented on 06.11.2014, in the Fast Track Court (Magistrate Level), Ambattur, and taken on file in STC No.84 of 2014.

5. When the matter stood thus, having regard to the requirement of payment of Court fee, for entertaining a complaint under Section 138 of the Negotiable Instruments Act, 1881, as provided for, under Schedule II Article 20 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, the learned Magistrate, Ambattur, vide order dated 29.01.2015, has directed the complainant to pay the required Court fee. At this juncture, the provision relating to payment of Court fee, for entertaining of a complaint of the said Act, is extracted hereunder:

Article	Particulars	Proper Fee
20.	For any complaint under Section 138 of the Negotiable Instruments Act, 1881.	Twenty-five rupees for every rupees fifty thousand subject to a maximum of one thousand rupees.

6. Direction issued to the petitioner to pay Court fee, as per Schedule II Article 20 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, is assailed on the grounds that the complaint under the Negotiable Instruments Act, 1881, has already been entertained by the learned Judicial First Class Magistrate, Perumbavoor, Kerala, and taken on file in CC.No.69 of 2013 and therefore, the petitioner is not required to pay any Court fee under the Tamil Nadu Court-fees and Suits Valuation Act, 1955. It is also submitted that when the Hon'ble Supreme Court in Dasarath Rupsingh's case has directed transfer of cases to the jurisdictional Court, the question of paying additional Court fee is not required. In the above reported Judgment, the Hon'ble Supreme Court has held that,

"It is expedient to direct that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, would continue at that place and to clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the complaint will be maintainable only at the place where the cheque stands dishonoured. 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. All other complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred.'

7. In Dashrath Rupsingh Rathod's case, three stages have been considered. Apparently, the case of the petitioner falls in the third category of cases. Therefore, though the complaint has been taken on file in CC.No.69 of 2013, vide order dated 07.10.2014, the learned Judicial First Class Magistrate, Perumbavoor, Kerala, has returned the complaint to the petitioner, with liberty to prefer the complaint before the concerned jurisdictional Court. The learned Judge, Fast Track Court (Magistrate Level), Ambattur, is the jurisdictional Court and therefore, when the complaint was presented on 06.11.2014, within 30 days from the date of order passed by the learned Judicial First Class Magistrate, Perumbavoor, Kerala, it has been taken on file in STC No.84 of 2014 by the learned Magistrate at Ambattur.

8. From the Judgment of the Apex Court, the order of return of complaint to the petitioner, it is manifestly clear that the Court at Perambavoor, State of Kerala, had no territorial jurisdiction to entertain the complaint. That is why, in terms of the Judgment of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod's case, it has been returned to the petitioner, with liberty to file the same, before the Court of Competent territorial jurisdiction. Merely because, the learned Judicial First Class Magistrate, Perumbavoor, Kerala, had already entertained the complaint, and also taken the same on file in CC.No.69 of 2013, it cannot be contended that the petitioner is not required to pay any Court fee, as per Schedule II Article 20 of the Tamil Nadu Court-Fees and suits Valuation Act, 1955.

9. The Tamil Nadu Court-Fees and suits Valuation Act, 14/55, is extended to whole of the State of Tamilnadu. As per Section 3 of the Act, "Court" means any Civil, revenue, or Criminal Court; and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of the

parties. In Rangammal V. Selvi reported in 2002 LW Pg. 101 = 2001 (3) MLJ 315, this Court held that the appellate Court can lawfully consider the correction of the Court fee either on its own or on the application of any party, if an order has been passed by the Lower Court affecting the fee payable. Court cannot ignore even one word in the Section to give different meaning as to what was intended.

10. When the appellate Court can consider the correctness of fee payable, on its own, it is inherent that the Court, in which the proceedings are instituted, can also verify, on its own, as to whether proper Court fee is paid or not, with reference to the nature of proceedings instituted. As per Section 17 of the Act, the provisions of Sections 10 to 14 shall apply mutatis mutandis to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on the plaints in the suits.

11. As per Section 21 of the Act, the fee payable under the Tamil Nadu Court-Fees and suits Valuation Act, 1955, shall be determined or computed in accordance with the provisions of Chapter IV, VI, VIII and Schedules I and II. When Tamil Nadu Act prescribes a schedule of payment of Court Fee, the same is required to be paid. Directions issued by the learned Judge, Fast Track Court (Magistrate Level), Ambattur, dated 29.01.2015, to the petitioner to pay the required Court fee, cannot be said to be manifestly illegal, warranting any interference.

12. During the course of hearing, learned counsel for the petitioner posed a question as to whether, the petitioner should be mulcted with a liability to pay Court fee twice, for the same cause. Answer to the question would be that for maintaining a petition under Section 138 of the Negotiable Instruments Act, 1881, within the State of Tamilnadu, as per the Tamil Nadu Court-Fees and suits Valuation Act, 1955, the complainant has to pay proper Court fee. If due to advertance, he has filed a complaint in any other State having no territorial jurisdiction for entertaining a complaint on the account of the law of the land, declaring territorial jurisdiction and where the complaint under Negotiable Instruments Act, 1881, has to be preferred, the complainant is always at liberty to seek for refund of court fee already paid, subject to the law prevailing on that aspect in the State, where the complaint was filed. While initially issuing directions for proceeding with a complaint, the Apex Court has considered three different stages, for retention in the same Court, (2) to transfer the complaint and (3) to return the complaint to the complainant, to be represented within 30 days from the date of order, passed by the Court, to the proper Court having territorial jurisdiction.

13.For the reasons stated supra, this Criminal Revision Petition is dismissed. Consequently, the petitioner, has to pay appropriate Court fee, as per the Tamil Nadu Court-Fees and suits Valuation Act, 1955. Complaint has been presented on 06.11.2014, within the time, as per the directions of the Hon'ble Supreme Court. Original complaint filed along with other papers in the present Criminal Revision, are directed to be returned to the learned counsel for the petitioner, after obtaining an attested copy of the same from the learned counsel for the petitioner, so as to enable the complainant to proceed further.

With the above directions, this Criminal Revision Case is dismissed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mps

To

The Judge,
Fast Track Court, Magistrate Level,
Ambattur.

CRL.R.C.No.160 of 2015

SCD (CO)
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