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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.61 of 2015

M.R.Palanisamy

...Petitioner

vs.

1.Spicex Chemicals Private Limited,
rep.by its Managing Director,
M.Ganapathy,
C-57, 58-Industrial Estate,
Yadavagiri,
Mysore-570 020.

2.M.Ganapathy.
Managing Director,
Spicex Chemicals Private Limited

3.G.Vijayalakshmi
W/O.Ganapathy,
Director,
Spicex Chemicals Private Limited

4.G.Mahadevan,
S/O.MGanapathy,
Director,
Spicex Chemicals Private Limited

...Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order datyed 10.12.2014 in STC.No.1576 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode and consequently, direct the learned Magistrate to restore the complaint in STC.No.1576 of 2014.



For Petitioner : Mr.Ayyappan

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JUDGMENT

Impugned order dated 10.12.2014, passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode, is as follows:

"The private complaint filed under Section 138 of NI Act. The learned counsel for the complainant presented this private complaint along with memo stating that the decision reported in Criminal Writ Petition No.2362 of 2014. The verdict of the Hon'ble High Court of Judicature at Bombay in Crl.W.P.No.2362 of 2014, which is not pending before the Hon'ble Apex Court to Special Leave on Appeal in (Crl)O(s).7251 of 2014.

Hence now, we followed the Hon'ble Apex Court verdict reported in "Dasarath Rupsingh Rathod v. State of Maharashtra and other. It held that if the territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which is the present content, is where the cheque is dishonoured by the Bank on which it is drawn" likewise in this present case, the accused Bank Dena Bank is situated within the jurisdiction at Mysore in Karnataka State, which is the local jurisdiction to try this private complaint. The disputed instrument hasp drawn on Dena Bank, Mysore, where the original jurisdiction falls to try this private complaint under Section 138 of NI Act.

So this Court is not having original jurisdiction. Hence, this private complaint is rejected with all documents presented along with complaint."

2.Material on record discloses that initially, a complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881, has been filed against M/s.Spicex Chemicals Private Limited and three others, on the file of the learned District Munsif -cum- Judicial Magistrate, Perundurai. Complaint has been taken on file in STC No.1576 of 2013. Having regard to the Judgment of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra and Another, reported in (2014) 3 SCC (Cri) 673 : (2014) 9 SCC 129,



the learned District Munsif -cum- Judicial Magistrate, Perundurai, has suo motu advanced the hearings of STC No.1576 of 2013 and on 17.11.2014, passed the following orders.

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"On perusal of the records, it is evident that the drawer bank is situate in Mysore, which is not under the territorial jurisdiction of this Court. As per our Apex Court direction in "Dashrath Rupsingh Rathod Vs. State of Maharashtra and Another", this Court has no jurisdiction to entertain this complaint. Hence, in the interest of justice, this complaint is returned and thereby the complainant is directed to represent the same with in a period of 30 days from today before proper Court, having jurisdiction to try the case."

3. Thereafter, taking return of the original complaint and documents, the complainant has presented the same in the Court of learned Judicial Magistrate, Fast Track Court No.I, Erode, on 10.12.2014. Having perused the complaint and the decision of the Hon'ble Supreme Court, vide order dated 10.12.2014, the learned Judicial Magistrate, Fast Track Court No.I, Erode, has rejected the complaint and the said order has been extracted in the forgoing paragraphs.

4. From the material on record, it could be deduced that the complaint, which has been returned on 17.11.2014, by the learned District Munsif -cum- Judicial Magistrate, Perundurai, has been represented in the Court of learned Judicial Magistrate, Fast Track Court No.1, Erode, within the period of 30 days from the date of letter.

5. Though, placing reliance on the decision of the High Court of Bombay, in Criminal Writ Petition No.2362 of 2014, dated 25.08.2014, Mr.Ayyappan, learned counsel for the petitioner submitted that the Court, at Erode, has jurisdiction to entertain the complaint, this Court, is not inclined to accept the said contentions, in the light of Para 20 of the Judgment of the Hon'ble Apex Court in Dashrath Rupsingh Rathod's Case, cited supra, wherein at para 20, the Hon'ble Supreme Court held as follows:

"20. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e.



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applicability to Complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it 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, will proceeding continue at that place. 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."

6. Though the learned Judicial Magistrate, Fast Track Court No.I, Erode, has observed that the Competent Court at Mysore in Karnataka State alone has the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act, 1881, instead of returning the complaint to the complainant", with a direction to present the complaint in the proper Court, having jurisdiction to try the case, the Court below has rejected the complaint.



7. Material on record discloses that the present revision case has been filed on 22.01.2015, which is beyond 30 days time, as provided for by the Hon'ble Supreme Court to present the complaint in the proper Court, having territorial jurisdiction. Contention of Mr. Ayyappan, learned counsel for the petitioner is that had the learned Judicial Magistrate, Fast Track Court No.I, Erode, has simply returned the complaint to be presented before the Court at Mysore, State of Karnataka, the petitioner would not have been constrained to challenge the order of rejection. According to the learned counsel for the petitioner, when the complaint is rejected, by a Court, then the right of the petitioner, to pursue his remedy in the Court of competent jurisdiction would be affected. It is also his submission that an order of rejection, of the complaint, can be challenged only by way of revision, under Sections 397 read with 401 of the Code of Criminal Procedure, and thus, the petitioner was constrained to file the present revision case on 22.01.2015, within the period provided for filing revision.

8. As per the decision of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod's case, a complaint should have been represented within 30 days from the date of return. In the case on hand, when the petitioner presented the complaint once again, in the Fast Track Court No.I, Erode, it has been rejected. Therefore, bonafides of the complainant in preferring a revision case, before this Court, cannot be doubted. Though the petitioner has also placed reliance on the decision of the High Court of Bombay, in Mr. Ramanbhai Mathurbhai Patel vs. State of Maharashtra and another, in Criminal Writ Petition No.2362 of 2014, dated 25.08.2014, in support of his contentions, regarding territorial jurisdiction, the said plea is rejected.

9. Considering the time spent in litigating the present revision case, certainly the petitioner would be confronted with a delay in representing the complaint in the competent jurisdictional Court, at Mysore. Reading of Section 142 dealing with cognizance of offences, makes it clear that the complaint should be made within one month of the date on which, cause of action has arisen under Clause (c) of Proviso to Section 138 of the Negotiable Instruments Act, 1881. Clause (c) to Section 138 of the Act, states about the drawer of the cheque failing to make the payment of the said amount of money to the payee, or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

10. Inasmuch as the complainant had a cause of action for maintaining a complaint, STC.No.1576 of 2014 has been taken on file by the learned District Munsif -cum- Judicial Magistrate, Perundurai



but, as per the Judgment of the Hon'ble Supreme Court, it lacked territorial jurisdiction. That is why in Dashrath Rupsingh Rathod's case, possibly, keeping in mind the period prescribed, i.e., 30 days, as provided for under Section 142 of the Act, for preferring a complaint under the Negotiable Instruments Act, 1881, the Apex Court has directed to return all the complaints to the complainants, with a direction to present it, within 30 days from the date of return, to the Court having proper jurisdiction.

11. In the case on hand, instead of presenting the complaint to the Court at Mysore, State of Karnataka, bonafidely believing that the learned Judicial Magistrate, Fast Track Court No.I, Erode, had jurisdiction, the complaint seemed to have been mistakenly presented by the Revision petitioner, in the said Court. Representation is within 30 days, of the complaint in Erode, as ordered by the Hon'ble Supreme Court, but, no sooner it was rejected on 10.12.2014, the petitioner, instead of presenting the complaint to the Competent Court at Mysore, within the State of Karnataka, has filed this revision case and in that process, there is a delay. The contention of the learned counsel for the petitioner that the prescribed period under the Code of Criminal Procedure, to challenge an order of rejection is 90 days and thus, the petitioner bonafidely challenged the order of rejection, by way of revision, cannot be rejected.

12. Proviso to Section 142 of the Negotiable Instruments Act, 1881, states that cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies that he has sufficient cause for not preferring the complaint in time. Though as per the Judgment in Dashrath Rupsingh Rathod's case complaint ought to have been re-presented within 30 days from the date of return, statute enables the Court of competent jurisdiction, to take cognizance of the complaint, even after the prescribed period, if sufficient cause is shown.

13. On the facts and circumstances of this case, this Court is of the view that Section 14 of the Limitation Act, 1963, can also be pressed into service, for the reasons that the petitioner has bonafidely attempted to seek a remedy, by way of revision, before this Court. Therefore, while setting aside the impugned order of rejection, liberty is given to the petitioner, to represent the complaint to a competent Court at Mysore, as expeditiously as possible, and if any application is filed under Section 142 of the Negotiable Instruments Act, 1881, the Court of competent jurisdiction shall consider the bonafides of the petitioner on the aspect of



condoning the delay.

Accordingly, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

mps

To

The Judicial Magistrate,
Fast Track Court No.I, Erode.

1 CC to Mr.Ayyappan, Advocate SR.No. 12663

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KGK (CO)
PSI (21.03.2015)