

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL.R.C. No. 750 of 2015

and

M.P.No.1 of 2015

K.R.Kandasamy ...Petitioner/Petitioner/Accused

Versus

V.P.Balasubramaniam ...Respondent/Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the order dated 23.06.2015 passed in C.M.P.No.2299 of 2015 in S.T.C.No.2613 of 2013 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran

ORDER

The petitioner is the sole accused in S.T.C.No.2613 of 2013 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam, Erode District. The respondent is the complainant. The respondent had filed the said case alleging that the petitioner had committed offence punishable under Section 138 of the Negotiable Instruments Act.

2. On service of summons, the petitioner appeared before the Trial Court. The petitioner filed Crl.O.P.No.2588 of 2015 seeking to transfer the complaint in S.T.C.No.2613 of 2013 from the learned Judicial Magistrate No.I, Gobichettipalayam, to the learned XIII Metropolitan Magistrate, Egmore, Chennai. The said petition was disposed of by this Court by order dated 04.02.2015, directing the petitioner to file a petition before the learned Judicial Magistrate No.I, Erode, seeking for return of the complaint to the respondent and the Magistrate inturn is directed to pass orders within a stipulated time. Thereafter, the petitioner had filed C.M.P.No.2299 of 2015 before the Trial Court contending that the Trial Court has no jurisdiction to try the said case and requested the Trial Court to

return the complaint to the complainant so as to be presented before the learned XIII Metropolitan Magistrate, Egmore, Chennai, as per the judgment of the Hon'ble Supreme Court reported in 2014(4) CTC 666, Dashrath Rupsingh Rathod vs. State of Maharashtra. The learned Magistrate dismissed the said petition by order dated 23.06.2015. Challenging the same, the petitioner is before this Court by filing this Criminal Revision Case.

3. Mr.N.Manokaran, learned counsel for the petitioner by relying on the decision cited supra would submit that the Court within whose territorial jurisdiction Bank, where the cheque got dishonoured, is located alone has got territorial jurisdiction to try the offence and therefore, the learned XIII Metropolitan Magistrate, Egmore, alone has got territorial jurisdiction to try the case. He would further submit that as per Section 145(2) of the Negotiable Instruments Act (for short, "The Act"), only on an application of the prosecution or the accused, the Court, if deems fit, may summon any witness, who has given evidence on affidavit already, for the purpose of cross-examination and the said stage has not reached in S.T.C.No.2613 of 2013. He would further submit that Section 145(2) of the Act does not speak of actual cross-examination to be done by the adverse party, instead, it speaks only of the power of the Court to summon the witness for the purpose of cross-examination, who had earlier filed affidavit in the place of chief-examination. If the Trial Court had exercised its power to summon the witness for the purpose of cross-examination, for all purposes, it shall be held that the case has reached the stage of Section 145(2) of the Act. He would further add that since the Trial Court has exercised the power to summon the witness, it shall not be held that the stage of Section 145(2) of the Act has reached and further, in the case in hand, no petition was filed under Section 145(2) of the Act before the Trial Court to summon the witness. To substantiate his contention, he would rely on the judgment of this Court reported in 2015(2) MWN (Cr.) DCC 107 (Mad.), Murugesan vs. T.K.Ramasamy, wherein, this Court has followed the judgment of the Hon'ble Supreme Court reported in 2014(4) CTC 666, Dashrath Rupsingh Rathod vs. State of Maharashtra.

4. I have carefully perused the judgment of the Hon'ble Supreme Court reported in 2014(4) CTC 666, Dashrath Rupsingh Rathod vs. State of Maharashtra and the judgment of this Court reported in 2015(2) MWN (Cr.) DCC 107 (Mad.), Murugesan vs. T.K.Ramasamy, which deals with the Negotiable Instruments Act, prior to the amendment. After the judgment of the Hon'ble Supreme Court there has been rendered an amendment in the Negotiable Instruments Act and an ordinance was passed on 15.06.2015, whereby, the territorial jurisdiction has been given both to the place where the Drawer as well as the Drawee is located to try the case and therefore, the subsequent development has to be taken note of.

5. In this case, no doubt, the argument of the petitioner is that unless the Trial Court has exercised the power to summon the witness, it shall not be held that the stage of Section 145(2) of the Act has reached. According to the petitioner, since, no petition was filed under Section 145(2) of the Act before the Trial Court to summon the witness, the stage of Section 145(2) of the Act has not reached. In my considered opinion, after the witness is summoned, if the adverse party chooses not to cross-examine him, it cannot be said that the case has not reached the stage of Section 145(2) of the Act. After summon was issued, the petitioner appeared before the Trial Court and at that time, he ought to have cross-examined the witness on that day, but, he has not chosen to cross-examine the witness. Further, in view of the amendment in the Negotiable Instruments Act and an ordinance was passed on 15.06.2015, whereby, the territorial jurisdiction has been given both to the place where the Drawer as well as the Drawee is located to try the case, the argument of the petitioner does not merit acceptance. It is pertinent to point out that both accused and complainant are residing at Gobichettipalayam and hence, there is no ground made out for transferring the case, that too, after a year, when the chief-examination has been done on 04.02.2014. Hence, the order passed by the Trial Court, dated 23.06.2015, is confirmed. This Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Gobichettipalayam.

2. The Judicial Magistrate No.I,
Gobichettipalayam.

1 CC to Mr.N.Manokaran, Advocate SR.No. 38174

CRL.R.C.No. 750 of 2015

CTK (CO)

PSI (21.08.2015)