

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2015

Date of decision: 11.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No.2125 of 2015

and

M.P.No.1 of 2015

United Travel Services,
A Division of United Visa Services Private Ltd.,
represented by its Director,
S.Arul Lazaran,
No.8 & 9, 1st Floor,
"Sindhur Plaza" No.42,
Montieth Road,
Egmore, Chennai - 600 008. ... Petitioner/Complainant

vs.

1. PGC Textiles Corporation Pvt.Ltd.,
rep. by its Chairman cum Managing Director,
Mr.D.Prem, "Prem Gardens",
5-A, Rajaji Nagar, P.N.Road,
Tiruppur - 641 602.

2. D.Prem

3. Aadith D.Vikram

... Respondents/Accused 1 to 3

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 18.12.2014 passed by the learned II Fast Track Court, Metropolitan Magistrate, Egmore, Chennai, in C.C.No.2303 of 2013 and consequently, direct the learned II Fast Track Court, Metropolitan Magistrate, Egmore, Chennai, to take the complaint in C.C.No.2303 of 2013 on the file of II Fast Track Court Metropolitan Magistrate, Egmore, Chennai and proceed in accordance with law and dispose of the same as expeditiously as possible within a time frame.

For Petitioner

: Mr.Abdukumar Rajaratnam
for M/s.Vijayalakshmi K. Rajaratnam

O R D E R

The complainant in C.C.No.2303 of 2013 on the file of the Fast Track court No.II/Metropolitan Magistrate Court, Egmore is the petitioner.

2. The petitioner/complainant filed the above complaint against the respondents under Section 138 of the Negotiable Instruments Act, 1881 before XIV Metropolitan Magistrate Court, Egmore, Chennai and the learned XIV Metropolitan Magistrate, after recording sworn statement, took cognizance of the case under section 138 of the Negotiable Instruments Act, 1881 and transferred the case to Fast Track Court No.II, Egmore, Chennai and thereafter, summons was issued to the respondents and they entered appearance and the case was periodically adjourned. On 18.12.2014, the Fast Track Court No.II, Egmore, Chennai, passed an order returning the case records to the complainant/petitioner herein stating that as per the judgment of the Hon'ble Supreme Court rendered in Dashrath Rupsingh Rathod Versus State of Maharashtra and another reported in (2014) 9 Supreme Court Cases 129, the Court has no jurisdiction. This order is challenged in this petition.

3. Mr.Abdukumar Rajaratnam, learned counsel representing the petitioner submitted that the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, without properly appreciating the judgment of the Hon'ble Supreme Court reported in 2014 (9) SCC 129 supra, the provision of Section 145 of the Negotiable Instruments Act, 1881 and also the procedure to be followed in summons case, erred in returning the papers for presentation before the proper Court. He submitted that the cheques were drawn on Indian Overseas Bank, Tiruppur Main Branch, Tiruppur, and therefore, as per the judgment of the Hon'ble Supreme Court reported in 2014 (9) SCC 129 supra, the case has to be filed before the Court which has jurisdiction over the Bank which returned the cheques on the ground of insufficient funds. However, he submitted that the learned Magistrate without properly appreciating Paragraph 22 of the judgment reported in 2014 (9) SCC 129 supra, erred in returning the papers and as per the judgment of the Hon'ble Supreme Court, when the proceeding has gone to the stage of Section 145(2) of the Negotiable Instruments Act, 1881, the same Court shall retain the case. He submitted that in this case, admittedly, sworn statement of the complainant was taken by the learned XIV Metropolitan Magistrate and thereafter, cognizance was taken and after the respondents appeared and were questioned, the Magistrate has to direct the accused to cross-examine the complainant whose affidavit was already taken while taking cognizance of the case and therefore, the case has gone to the stage of Section 145(2) of the Negotiable Instruments Act, 1881 and therefore, the Court is competent to retain the case and there is no need to transfer the case to the other Court. In other words, he submitted that once the sworn statement was recorded while taking

cognizance of a private complaint and summons was issued to the accused and accused denied the charge, the next step is to call upon the accused to cross-examine the complainant whose affidavit was already taken by treating the same as chief examination and therefore, the trial has commenced or the proceeding has gone to the stage of Section 145 (2) of the Negotiable Instruments Act, 1881 after the accused denied the charge and therefore, as per the judgment of the Hon'ble Supreme Court, the case need not be transferred. In support of his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in (2014) 5 Supreme Court Cases 590 in the matter of Indian Bank Association and others Versus Union of India and others and relied upon Paragraph 18 of the judgment and submitted that there was no necessity to recall and examine the complainant after summoning of the accused and therefore, when the accused was questioned, the case has gone to the stage of Section 145 (2) of the Negotiable Instruments Act, 1881 and hence, the case need not be transferred.

4. To appreciate the contention of the learned counsel for the petitioner, we will have to see the judgment of the Hon'ble Supreme Court reported in 2014 (9) SCC 129 supra, particularly, Paragraph 22, Section 145(2) of the Negotiable Instruments Act, 1881 and the judgment of the Hon'ble Supreme Court reported in (2014) 5 Supreme Court Cases 590 supra and also the procedure laid down by the Code of Criminal Procedure regarding summary cases and summary trials.

5. Paragraph 22 of the judgment reported in 2014 (9) SCC 129 supra reads as follows:-

22. 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. 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. From the above Paragraph, the Hon'ble Supreme Court keeping in mind the hardship that can be caused to the parties made the following observation:-

"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.

7. It is admitted that in the present case, sworn statement was recorded and accused appeared on summons and they were questioned and they denied the charge. At that stage, the case was returned by the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai. It is submitted by the learned counsel for the petitioner, Mr.Abdukumar that as per the judgment of the Hon'ble Supreme Court referred to above where the proceedings have gone to the stage of Section 145(2) or beyond shall be retained in the same Court irrespective of the place where cheque was dishonoured and he attempted to interpret the phrase, "where proceedings have gone to the stage of Section 145(2)" to mean that after recording of the sworn statement and after the accused denied the charge, there is no need for taking chief examination of the complainant once again by directing the complainant to file proof affidavit and the proof affidavit given by the complainant at the time of sworn statement can be considered as the chief examination and the accused can be directed to cross-examine the complainant and therefore, the evidence was already taken and it amounts to reaching the stage of Section 145 (2) and therefore, the same Court can retain the case. For that, he relied upon Paragraph 18 of the judgment reported in (2014) 5 Supreme Court Cases 590 supra.

8. I am unable to accept the contention of the learned counsel for the petitioner. In Paragraph 22 referred to above, it has been made clear 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. Therefore, after the appearance of the accused and after the denial of the charge, if evidence was taken by the Magistrate that stage can be considered as the stage as envisaged under Section 145(2) of the Negotiable Instruments Act, 1881 and prior to that, it cannot be stated that the proceedings has gone to the stage of section 145(2) of the Negotiable Instruments Act, 1881.

9. Section 145(2) of the Negotiable Instruments Act 1881 reads as follows:-

"The Court may, if it thinks fit, and shall on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

As per section 145(2) of the Act, on the application of the prosecution or the accused, the Court shall summon and examine any person giving evidence on affidavit as to the facts contained therein.

10. The procedure in respect of summons case is stated in Chapter XX of the Cr.P.C. and as per Section 251 of the Cr.P.C., when the accused appears or is brought before the Magistrate, the

particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. Under Section 252 of the Cr.P.C., if the accused pleads guilty, the Magistrate shall record the plea of guilty and convict him in his discretion. Section 254 of the Cr.P.C., if the Magistrate does not convict the accused under Section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produces in his defence.

11. Chapter XXI of the Cr.P.C., deals with summary trials and as per section 262 of the Cr.P.C., the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned. Therefore, in summary trials, the procedure contemplated for summons case shall be followed. As per Section 254 of the Cr.P.C., when the Magistrate does not convict the accused under section 252 or 253 of the Cr.P.C., the Magistrate shall proceed to hear the prosecution and take all such evidence in that context.

12. If one read section 145 (2) of the Negotiable Instruments Act, 1881, it is made clear that on the application of the prosecution or the accused, the Court may summon or examine any person giving evidence on affidavit examining as to the facts contained therein. Therefore, a reading of the procedure contemplated for trial of summons cases and section 145 of the Negotiable Instruments Act, 1881, the proceedings will go to the stage of section 145 of the Act, when the Magistrate proceeds to hear the prosecution and take all such evidence as may be produced or summoned in witness and examined on the application of the prosecution, till such stage is arrived, it cannot be stated that the proceeding has gone to the stage of section 145(2) of the Act. Admittedly, in this case, the Magistrate has not proceeded to hear the prosecution and take all evidence and the accused were questioned and the case was adjourned. Therefore, it cannot be stated that the case has gone to the stage section 145(2) of the Negotiable Instruments Act, 1881 when the accused was questioned and therefore, as per the Hon'ble Supreme Court's judgment reported in 2014 (9) SCC 129 supra, the Magistrate has got jurisdiction.

13. The judgment reported in (2014) 5 Supreme Court Cases 590 supra relied upon by the learned counsel for the petitioner cannot be applied to the facts of this case. In paragraph 16, the Hon'ble Supreme Court relying upon the judgment reported in (2009) 13 SCC 201 in the matter of Radhey Shyam Garg v. Naresh Kumar Gupta, held that section 145(1) of the Negotiable Instruments Act, 1881 gives complete freedom to the complainant either to give his evidence by way of affidavit or by way of oral evidence. The Court has to accept the same even if it is given by way of an affidavit. The second part of section 145(1) of the Act provides that the complainant's statement

on affidavit may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceedings. It is further stated that section 145 is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded. In Paragraph 18 of the judgment referred to above, it has been made clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. There was no necessity to recall and re-examine the complainant after summoning of the accused unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under section 145(2) of the Act, suo motu by the Court. Thereafter, the Hon'ble Supreme Court gave the following directions:-

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise 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 recalling a 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 the affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court."

14. Therefore, considering section 254 of the Cr.P.C. and the direction given by the Hon'ble Supreme Court (2014) 5 Supreme Court Cases 590 supra, in Paragraphs 23.1 to 23.5, it cannot be stated that the proceedings has gone to the stage of section 145(2) since the accused was questioned.

15. According to me, the Hon'ble Supreme Court held that there was no necessity for the complainant to give sworn statement after questioning of the accused and the earlier statement given by him can be taken as chief examination but that does not preclude the complainant from giving further evidence after the accused was questioned. The earlier sown statement recorded at the time of taking cognizance of the case may be sufficient and can be considered as chief examination and the accused may be called upon to cross-examine the complainant. But it cannot be stated that at that stage the proceeding has gone to the stage of section 145(2) of the Negotiable Instruments Act, 1881. Admittedly, in this case, no order was passed and the prosecution was not called upon to lead the evidence nor the complainant exercised the option by filing an application to treat his sworn statement as already recorded as proof affidavit after questioning of the accused and therefore, it cannot be stated that the prosecution reached the stage of section 145(2) of the Negotiable Instruments Act, 1881. Therefore, I am of the opinion that having regard to the facts of the case, that no evidence was let in by the complainant after the accused was questioned and the case was simply adjourned, it cannot be stated that the case has gone to the stage of section 145(2) of the Negotiable Instruments Act, 1881.

16. Consequently, when the case has not gone to the stage of section 145(2) of the Negotiable Instruments Act, 1881, the Magistrate has no other option to except to return the case for presentation before the Court which has jurisdiction bank which dishonoured the cheque. Admittedly, the cheque was gone to Tiruppur Branch of Indian Overseas Bank which dishonoured the cheque. Hence, the case has to be presented before the Judicial Magistrate, Tiruppur. Therefore, I do not find any infirmity in the order of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

17. Hence, the petition is dismissed. The connected Miscellaneous Petition is also dismissed.

asvm

-s/d-

Assistant Registrar (CS-III)

Dt:20/2/2015

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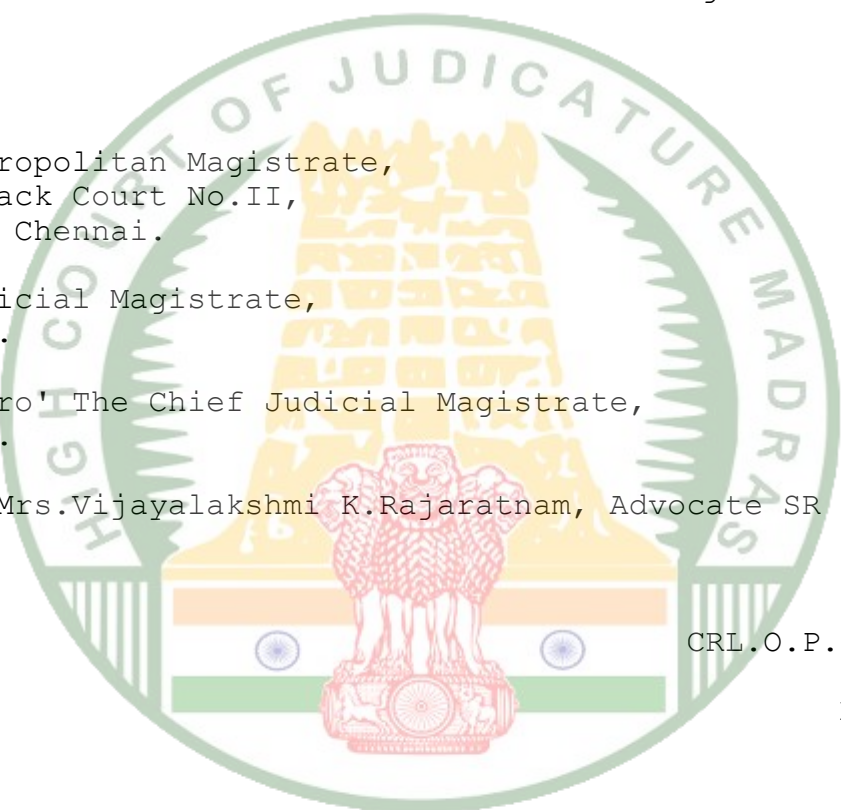
Sub-Assistant Registrar

To

1. The Metropolitan Magistrate,
Fast Track Court No.II,
Egmore, Chennai.
 2. The Judicial Magistrate,
Tirupur.
 3. -do- thro' The Chief Judicial Magistrate,
Tirupur.
- + 1 cc to Mrs.Vijayalakshmi K.Rajaratnam, Advocate SR 7498

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CRL.O.P. No.2125 of 2015
and
M.P.No.1 of 2015



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