

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.120 of 2013

Mohammed Irfan .. Petitioner(Accused)

Vs

Mahammed Sabir ... Respondent(Complainant)

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to set aside the order dated 12.10.2012 passed in C.M.P.No.651/12 in C.C.No.250/09, by the learned Judicial Magistrate, Palladam.

For Petitioner : Ms.Jayasri Baskar

For Respondent : Mr.S.Senthilkumar

O R D E R

Criminal Revision is directed against the order made in CMP No.651 of 2012 dated 12.10.2012 in C.C.No.250 of 2009 on the file of the learned Judicial Magistrate, Palladam, dismissing the petition filed under Section 191 Cr.P.C.

2. Material on record discloses that the petitioner, has issued four cheques dated 15.10.2009 bearing Nos.360370 to 360373 each for a sum of Rs.1,99,000/-. cheques presented in ICICI Bank by the respondent have been returned with an endorsement dated 16.10.2009 on the depositor's instruction to stop payment. Thereafter, the respondent issued a statutory notice dated 24.10.2009, which has been acknowledged on 28.10.2009 by the petitioner, alleging commission of offences under Section 138 of the Negotiable Instruments Act. Complaint preferred has been taken on record in C.C.No.250 of 2009 by the learned Judicial Magistrate, Palladam.

3. It is admitted by the learned counsel for the parties in this revision petition that when C.C.No.250 of 2009 was posted for cross examination of PW1, CMP No.651 of 2012 under Section 191 Cr.P.C., was

filed by the revision petitioner to dismiss the complaint on the ground that it has no territorial jurisdiction to take cognizance of the case or in the alternative to direct the respondent/complainant to file the complaint before the appropriate Court at Tiruppur or Coimbatore, having territorial jurisdiction.

4. Facts in nutshell are that Cheques Exs.P1 to P4, were issued at Coimbatore, drawn in ICICI Bank, deposited for collection at Corporation Bank, Coimbatore, now at Tiruppur District. Return memos were issued from Tiruppur and Coimbatore District. Statutory notice Ex.P10 was issued and received by the petitioner/accused at Coimbatore. Thus, it was argued before the learned Judicial Magistrate, Palladam that merely because the statutory notice was issued from Palladam, the Court lacked jurisdiction. Opposing the said CrI.M.P.No.651 of 2012, the respondent has contended inter alia that the Court at Palladam had jurisdiction. Objections were also raised that petition filed under Section 191 Cr.P.C., was only with an intention to drag on the proceedings and to defeat the claim of the cheque amount.

5. After considering the rival submissions and Section 191 Cr.P.C., the Court below, by observing that the said provision could be invoked only for transfer of a case from one Magistrate to another, when there was no territorial jurisdiction and having regard to the fact the 5 areas of transactions were involved in a case under Section 138 of the Negotiable Instruments Act, viz., (i) Bank in which the cheque was drawn, (ii) Presentation of the cheque with the concerned bank, (iii) Return of the cheque by the drawee bank, (iv) giving the notice in writing to the drawee of the cheque and viz., demand for payment and (v) failure of the drawer to make payment within 15 days of the receipt of the statutory notice, and taking note of the then prevailing position of law, the learned Judicial Magistrate, Palladam, held that the Court had competence to entertain the complaint and further observed that Section 191 Cr.P.C is not applicable to the facts of the case. Accordingly, the learned Judicial Magistrate, Palladam, dismissed the petition in CMP No.651 of 2012 vide order dated 12.10.2012. Being aggrieved by the same, the present revision petition is filed.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. In a latest three Bench judgment in, Dashrath Rupsingh Rathod Vs. State of Maharashtra and Another, reported in (2014) 3 SCC (Cri) 673 : (2014) 9 SCC 129, the Apex Court at paragraph Nos.21 and 22 held as follows:

"21. The interpretation of Section 138 of the NI Act which commends itself to us is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly the JMFC at the place where this occurs is ordinarily where the Complaint must be filed, entertained and tried. The cognizance of the crime by the JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the Section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the Complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the Complaints even though non-compliance thereof will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall decide by this Judgment. We clarify that the Complainant is statutorily bound to comply with Section 177 etc. of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.

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."

8. It is the admitted case of the learned counsel appearing for the parties that the complainant has filed proof affidavit and marked Exs.P1 to P11 on 16.06.2011, and that the case was posted for cross examination of PW1. Thus, it could be seen that recording of evidence has commenced as envisaged under Section 145 of the Negotiable Instruments Act, 1881.

9. In the abovesaid reported judgment, the Apex Court has categorically held that only those cases wherein, after summoning and appearance of the accused, and where recording of evidence, has already commenced as envisaged in Section 145(2) of the Negotiable Instruments Act and 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 from the court ordinarily possessing territorial jurisdiction, to the Court where it is presently pending. Exceptions have been made only to the other complaints (obviously including those where the respondent-accused has not been properly served), to be returned to the complainant for filing it in the proper Court, in consonance with the law laid down by the Apex Court.

10. Reverting back to the case on hand, as proceedings have gone up to the stage of Section 145 (2) of the Negotiable Instruments Act, 1881, there is no need to interfere at this stage, directing return of the complaint, to the respondent for filing it in the appropriate Court.

11. In the light of the latest judgment stated supra, there is no need to transfer the case in C.C.No.250 of 2009 on the file of learned Judicial Magistrate, Palladam, to any other Court. Proceedings in C.C.No.250 of 2009 shall continue, in the same Court, in accordance with law. The Criminal Revision Case is dismissed.

12. As the Criminal cases is stated to be pending from 2009, learned Judicial Magistrate, Palladam, is directed to expedite the trial and dispose of the same, in accordance with law, within four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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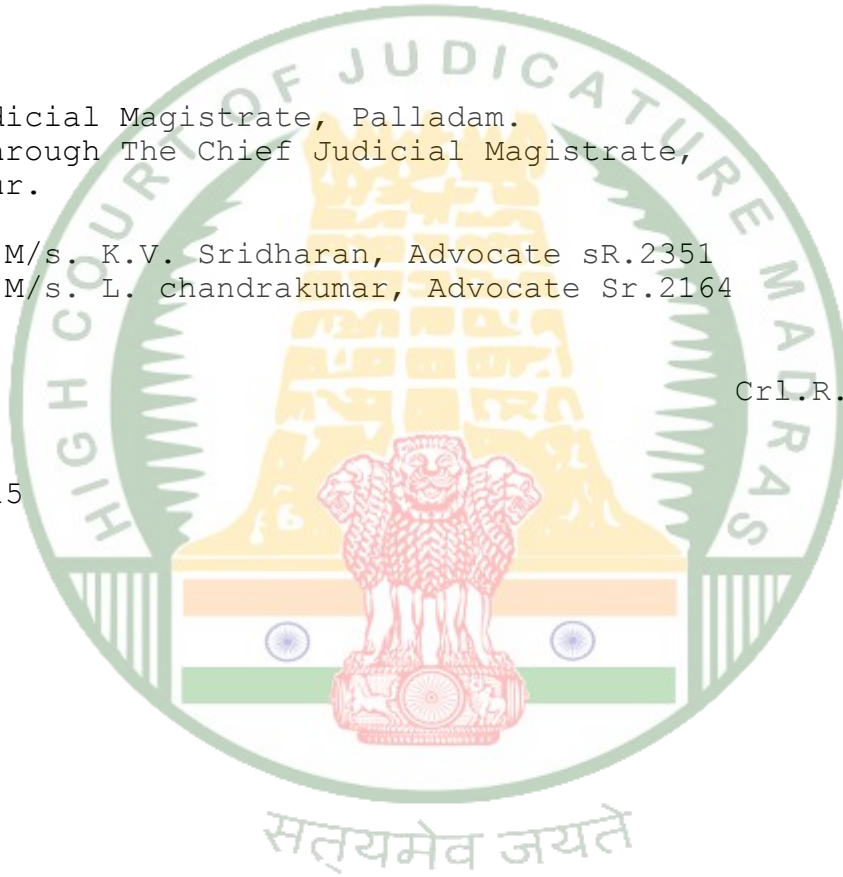
To

1. The Judicial Magistrate, Palladam.
2. -do- Through The Chief Judicial Magistrate, Tiruppur.

- + 1 cc to M/s. K.V. Sridharan, Advocate sR.2351
+ 1 cc to M/s. L. chandrakumar, Advocate Sr.2164

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