

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Cr1.O.P. No.12142 of 2009
and
M.P.Nos.1 and 2 of 2009

V.Elumalai

... Petitioner

vs.

A.Bharathi

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash S.T.C.No.2 of 2008 on the file of Additional District Munsif Court, Gingee.

For Petitioner : Mr.D.Ravichander
For Respondent : Ms.Kannaki

O R D E R

This petition is filed to quash the proceedings in S.T.C.No.2 of 2008 on the file of the Additional District Munsif Court, Gingee.

2. The respondent filed the above private complaint under Section 138 of the N.I.Act and the same is challenged in this petition.

3. It is submitted by the learned counsel for the petitioner that the learned Additional District Munsif has no power to take cognizance of the offence triable under Section 138 of the N.I.Act. He also submitted that having regard to the judgment of the Hon'ble Supreme Court reported in 2014 (4) CTC 666, SC, FB in the matter of Dashrath Rupsingh Rathod vs State Of Maharashtra & Another, the Gingee Court has no jurisdiction as the cheque was drawn on HDFC Bank at Madipakkam, Chennai and the respondent/complainant was residing at Ginee and she presented the cheque for collection before the State Bank of India, Chengalputtu Branch. He therefore submitted that the Court at Ginee has no jurisdiction to entertain the complaint.

4. Heard the learned junior counsel for the respondent who represented that their Senior Counsel is not in station and prayed for time.

5. As the petitioner has raised jurisdiction issue, a report was called for from the learned Additional District Munsif, Gingee and he submitted a report on 9.7.2009 stating that no notification was issued conferring powers on the Additional District Munsif, Gingee, with that of the Judicial Magistrate to receive and take cognizance of the complaints arising under Sections 138 and 142 of the N.I.Act and power was conferred only to try the cases which have been made out by this Court as per Notification No.124/2006 in R.O.C.No.68/2006 Con.B2, dated 29.6.2006. It is therefore seen from the report of the learned Additional District Munsif, Gingee that the Additional District Munsif, Gingee has no power to take cognizance of the case under section 138 of the N.I.Act.

6. A Full Bench of this Court in 2014 (1) CTC 1 in the matter of Mahender Goyal Vs. Kadamba International, laid down the procedure to be followed by the Judicial Magistrates if the Court lacks territorial jurisdiction of any complaint received. In the judgment reported in (2014) 10 Supreme Court Cases 708 in the matter of Vinay Kumar Shailendra Vs. Delhi High Court Legal Services Committee and another, the Hon'ble Supreme Court following the judgement in Dashrath Rupsingh Rathod vs State Of Maharashtra & Another, reported in (2014) 9 SCC 129 : (2014) 3 SCC (Cri)673, also held that the prosecution can only be launched at a place where the cheque was dishonoured.

7. As the Additional District Munsif, Gingee has no jurisdiction to take cognizance under section 138 of the N.I.Act and having regard to the procedure laid down by the Full Bench of this Court reported in 2014 (1) CTC 1 supra, the petition is disposed of by directing the learned Additional District Munsif, Gingee to follow the procedure laid down by the Full Bench of this Court and do the needful for returning the papers in STC No.2 of 2008 for presentation before the proper Court. The connected Miscellaneous Petitions are closed.

asvm

-s/d-
Assistant Registrar(J)
Dt:11/2/2015

True Copy

Sub-Assistant Registrar

To

The Additional District Munsif Court,
Gingee.

+ 1 cc to Mr.D.Ravichander, Advocate SR 5506

+ 1 cc to Mr.V.Udayakumar, Advocate SR 5749

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and
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