

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Transfer Criminal Petition No.68 of 2015

ORDER:

In this petition filed under Sec.407 Cr.P.C, the petitioner/complainant seeks transfer of C.C.No.194 of 2014 on the file of XV Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally at Hyderabad to the III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam.

2) The factual matrix of the case is thus:

a) The complainant's case is that the accused out of partnership dealings issued two cheques each drawn on Axis Bank Limited, Gajuwaka, Visakhapatnam. The complainant on the request of the accused presented both the cheques on 28.06.2013 in HDFC Bank Limited, Panjagutta Branch, Hyderabad and they were returned with an endorsement "insufficient funds". After issuing legal notice, the complainant filed C.C.No.49 of 2013 under Sec.138 of N.I. Act against accused on the file of III Additional Chief Metropolitan Magistrate, Nampally and later on the administrative grounds, the said case was transferred to XV Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally at Hyderabad and numbered as C.C.No.195 of 2014. On 11.09.2014, the complainant was present but A.2 who is Managing Partner of A.1 firm was absent and case copies were furnished to the counsel and the matter was posted to 30.09.2014. On that date, due to leave of

Presiding Officer, the matter was posted to 11.11.2014 for examination of the accused. As A.2 was absent on 11.11.2014, NBW was issued and matter was posted to 30.12.2014. The NBW was recalled on the petition. While-so on 30.12.2014, learned Magistrate returned the complaint to the petitioner for filing in appropriate Court in view of the Apex Court's judgment in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another***^[1].

b) The further case of the complainant is that he submitted the file before III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam on 29.01.2015 within whose jurisdiction the cheques were drawn from the Bank and issued by the accused and later bounced. However, learned III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam returned the complaint on 06.02.2015 with the following order:

*"The observation of the Apex Court at Paragraph 20 in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another*** (2014 (2) ALD (Crl.) 190 (SC)) would be tantamount to saying, 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, the bar engrafted in Dashrath Rupsingh Rathod case not attracted in C.C.No.49/2014. Therefore, the complainant is directed to ventilate his grievance in an appropriate forum."*

Hence the present petition by the complainant.

3) Heard.

4) A perusal of the order of learned III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam shows that the learned Magistrate opined that consequent to the summons if the accused made his appearance, the case shall continue in the Court where it was instituted. That was why he refused to take cognizance of the case. I am afraid, this view is incorrect, in view of the recent decision of this High Court in the case of **Sri Kalakoti Niranjan Reddy vs The State of Andhra Pradesh** ^[2] (Crl.P.No.7701 of 2013 dated 09.03.2015) wherein the directions given by Apex Court in **Dashrath Rupsingh Rathod's** case (1 supra) are explained, thus:

“Para 9: As already stated supra, the contention of learned counsel for respondent/ complainant is that if the case has reached to a stage, where post-summoning, the accused made his appearance, then case need not be transferred from the Court which lacks territorial jurisdiction to the Court which possess. I am afraid, this interpretation of the complainant is wrong for the reason that if that were its intention, the Hon’ble Apex Court would have simply mentioned that post-summoning and appearance of the accused, the proceedings will continue at that place and it would not have added the further clause “the recording of evidence has commenced as envisaged in Sec.145 (2) of N.I.Act”. The interpretation of the complainant totally omits the above clause and makes it nugatory. Hence the said interpretation cannot be accepted. So the observation of Apex Court should be understood in the sense that consequent to the summoning and appearance of the accused, if the recording of evidence has commenced as laid down under Sec.145(2) of N.I.Act, then irrespective of the fact that the case was filed and pending in the Court having no territorial jurisdiction, it shall be continued in that Court. On the other hand, if that stage has not reached, the case shall be returned to the complainant for filing in the proper Court. It

must be noted that the Apex Court has given the clarification also regarding what amounts to the commencement of recording of evidence as envisaged under Sec.145(2) of N.I.Act. If at the pre-summoning stage i.e, pre-cognizance stage the complainant led evidence either by affidavit or by oral statement, that cannot be treated as commencement of the recording of the evidence as envisaged under Sec.145(2) of N.I.Act. Such sworn statement in the form of oral submission or written affidavit given by the complainant for taking cognizance of the case cannot be treated as evidence in the main case for deciding whether or not to transfer the case. From this clarification of Hon'ble Apex Court, it is manifest that when only sworn statement in the form of written affidavit or oral statement which was reduced to writing was available but no evidence in trial was commenced in terms of Sec.145(2) of N.I.Act, the case is liable to be returned to the complainant for filing in the proper court. This is the obvious intendment of the Apex Court."

Thus applying the above clarification of ***Dashrath Rupsingh Rathod's*** case (1 supra) to the facts of the present case, by the date of judgment in ***Dashrath Rupsingh Rathod's*** case (1 supra) i.e. 01.08.2014, the appearance of Accused No.2 was made in C.C.No.49 of 2014 (New C.C.No.194 of 2014) but the recording of evidence was not commenced. Therefore, by virtue of the ruling in ***Dashrath Rupsingh Rathod's*** case (1 supra), the C.C.No.194 of 2014 (old C.C.No.49 of 2014) is liable to be returned for presentation in proper court and learned XV Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally at Hyderabad did exactly the same. However, learned III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam on an erroneous interpretation of ***Dashrath Rupsingh Rathod's*** case (1 supra), returned the file.

5) In the result, this Transfer Criminal Petition is allowed and the impugned order is set aside and learned III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam is directed to take cognizance of the complaint (C.C.No.194 of 2014) and dispose of the same on merits.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 23.03.2015

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[\[1\]](#) (2014) 9 Supreme Court Cases 129

[\[2\]](#) Unreported judgment in Crl.P.No.7701 of 2013 dated 09.03.2015