

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.1984 of 2015

ORDER:

Heard learned counsel for petitioner and perused the impugned order dated 24.09.2014 passed by learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam.

2) A perusal of the complaint allegations and copy of the subject cheque would show that the said cheque dated 09.04.2013 was drawn on IDBI Bank, Siripuram, Visakhapatnam and the same was presented in Axis Bank Ltd., Main Road, Kakinada for collection and later it was dishonoured. Hence, the criminal case under Section 138 of Negotiable Instruments Act, 1881.

3) Following the judgment of the Apex Court in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another***^[1] the Special Mobile JFCM, Kakinada returned the C.C.No.133 of 2014 for presenting before the proper Court as per its order dated 15.09.2014, since the cheque was dishonoured by the drawee bank at Visakhapatnam and Court at Kakinada has no territorial jurisdiction as per the aforesaid decision. Then, the complainant presented the CC before the IV Additional Chief Metropolitan Magistrate, Visakhapatnam but the learned Magistrate returned the case under the following impugned order dated 24.09.2014.

*"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 Rupsing Rathod case not attracted in C.C.No.13/2014. Therefore, the complainant is directed to ventilate his grievance in an appropriate forum.”

A perusal of the impugned order shows that learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam misunderstood the guideline given by the Apex Court for either retaining or transferring a case from the Court which had no territorial jurisdiction. This High Court in **Kalakoti Niranjan Reddy vs. State of A.P.** ^[2] happened to explain the guideline in **Dashrath Rupsingh's** case (1 supra). It reads thus:

“ In a case where consequent to summons, the accused appeared and recording of evidence has commenced as envisaged under Section 145(2) of N.I.Act, 1881, the said case will continue in the same court despite lacking territorial jurisdiction by virtue of Apex Court's ruling in **Dashrath Rupsingh Rathod's** case (1 supra). Any evidence led by the complainant in the form of affidavit or oral statement during pre-summoning i.e. pre-cognizance stage cannot be treated as commencement of recording of evidence under Section 145(2) of N.I.Act to retain the case in that Court. So, also the sworn statement given by complainant at pre-cognizance stage admitted as evidence during trial cannot be construed as commencement of recording of evidence under Section 145(2) N.I.Act to retain the case in the same court.”

4) When the above clarification is applied to the instant case, by 01.08.2014 i.e. date of the judgment in **Dashrath Rupsingh Rathod's** case (1 supra), even appearance of the accused was not made and NBW was pending and hence case record

was correctly returned by the Special Mobile JFCM, Kakinada to the complainant for presenting in proper court. However, learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam misinterpreted ***Dashrath Rupsingh Rathod***'s and returned the case and hence the impugned order is liable to be set aside.

5) In the result, this Criminal Petition is allowed and the impugned order dated 24.09.2014 is set aside and learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam is directed to take cognizance of the complaint (C.C.No.133 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: 24.03.2015

Murthy

[\[1\]](#) (2014) 9 SCC 129

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