

In the High Court of Punjab and Haryana at Chandigarh

CRM M-11723 of 2015 (O&M)
Date of Decision: May 29, 2015

M/s Jogur Apparel & Clothing Pvt. Ltd. and another

... Petitioners

Versus

Pardeep Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. L.M. Grover, Advocate,
for the petitioners.

Paramjeet Singh, J. (Oral)

Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing order dated 06.02.2015 (Annexure P/1) passed by learned Additional Sessions Judge, Ludhiana whereby revision petition filed by the petitioners has been dismissed, as well as, orders dated 04.11.2014 (Annexure P/2) and 29.11.2014 (Annexure P/3) passed by learned Judicial Magistrate First Class, Ludhiana.

Brief facts of the case are that a complaint under Section 138 of the Negotiable Instrument Act was filed against the petitioners.

Thereafter, the petitioners appeared in the Court and filed an application before the trial Court, stating that the cheque in question is drawn on HDFC Bank, Gurgaon, which comes under the jurisdiction of Gurgaon Courts. In the application, the petitioners alleged that neither an application under Section 145(2) of Negotiable Instruments Act has been filed nor the evidence has commenced, therefore, the complaint be returned to the complainant. Vide order dated 04.11.2014 (Annexure P/2), learned Judicial Magistrate First Class, Ludhiana, dismissed the application. Aggrieved against the said order, petitioners preferred a criminal revision before the learned Additional Sessions Judge and the same has also been dismissed by learned Additional Sessions Judge, Ludhiana vide order dated 06.02.2015 (Annexure P/1). Hence, this petition.

Perusal of the record shows that all the proceedings commenced before 01.08.2014. In the present case, the evidence at post summoning stage has already commenced and notice has been framed on 25.04.2014. Although the evidence has not been completed nor some witnesses have been examined, but once the date has been given for leading evidence of the complainant that means proceedings stand commenced.

Hon'ble Supreme Court in *Ultra Tech Cement Ltd. vs. Rakesh Kumar Singh and another, Crl. Appeal No. 717 of 2015, decided on 24.04.2015,* has held that the proceedings initiated prior to the

rendering of the judgment of Hon'ble Supreme Court in **Dashrath Rupsingh Rathod vs. State of Maharashtra and another, (2014) 9 SCC 129**, on 01.08.2014 will be preserved at the place they were filed, only when “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”. In order to further explain its intent, the judgment clarifies, that mere leading of evidence at the pre-summoning stage, either by way of affidavit or by oral statement will not exclude applicability of the judgment in **Dashrath Rupsingh Rathod's case** (supra). In fact, it is a second revision which is not maintainable.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

May 29, 2015
vkd

[Paramjeet Singh]
Judge