

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31277 of 2015.
Decided on:-16.09.2015.

Ankit Goyal.

.....Petitioner.

Versus

Ram Bilash Sharma.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Ravinder Phogat, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner Ankit Goyal has filed the present petition under Section 482 Cr.PC for quashing the orders dated 29.5.2015 (Annexure P-24) and 28.8.2015 (Annexure P-27). Vide order dated 29.5.2015, learned Magistrate had dismissed the application moved by the petitioner-accused for dismissal of the complaint for want of jurisdiction, whereas vide order dated 28.8.2015, learned Sessions Judge has dismissed the revision petition against order dated 29.5.2015 passed by the Judicial Magistrate 1st Class, Bhiwani.

Briefly stated, the respondent-complainant has filed the criminal complaint against the petitioner-accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). When the case

was pending before the trial Court, the petitioner moved an application for dismissal of the complaint for want of jurisdiction on the premises that the cheques in question were never issued in favour of the respondent-complainant, rather, the same were stolen in the area of Chirawa City, Rajasthan and this fact was brought to the notice of the concerned bank as well as the local police of Chirawa. Despite the aforesaid report, the complainant filed the present complaint on the basis of the aforesaid cheques. It was further pleaded that the drawee bank is situated at Chirawa and, therefore, the Court at Bhiwani has no jurisdiction to try the complaint. Accordingly, dismissal of complaint for want of jurisdiction was sought with a further direction that the matter be transferred to the learned Court having jurisdiction over the matter i.e. Chirawa in Rajasthan.

The learned Magistrate had dismissed the application of the petitioner-accused vide order dated 29.5.2015 by observing as under:

“6. In this case, the complainant has sought transfer of the case on the ground that drawee Bank is situated in Chirawa. However, it had been held by the Hon'ble Supreme Court in case titled as K. Bhaskaran versus Shankaran Vaidyan AIR 1999 SC 3762 that the complaint under section 138 NI. Act can also be filed where the cheque was presented for encashment. In the present case, the cheques were presented for encashment in Bhiwani, therefore, the Court at Bhiwani will be jurisdiction to try the case. The judgment of K. Bhaskaran case (supra) has been overruled by the Supreme Court in case Dasrath

RupSingh Rathod case (supra) and the court has held as follows:

“A reading of section 138 NI Act in conjunction with section 138 NI Act in conjunction with section 177 Cr.P.C. leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed. Hence, complaint can be filed before the Magistrate where cheque was dishonoured by drawee Bank. Complaint not maintainable at the place where cheque was drawn or delivery of statutory demand notice nor at the place where complainant chooses to present the cheque for encashment.”

7. *However, it is further held by the SC in the Dasrath Singh case (supra) that only those were transferred to the court of jurisdiction where post summoning evidence has not started. However, in the present case, post summoning evidence had been started on 6-5-2014 and the judgment in Dasrath Singh case (supra) has been passed on 1-8-2014. In this way, in accordance with the direction of the Hon'ble Supreme Court, the present case will not be transferred rather it will be dealt by the Court at Bhiwani only.*

Hence, the application in hand is devoid of any merit and resultantly it is dismissed.”

Aggrieved with the aforesaid order dated 29.5.2015, the petitioner filed a revision petition before learned Sessions Judge, Bhiwani, but the said revision petition was also dismissed by the revisional Court by

observing as under:

“9. From the perusal of lower court record, it is established that the complainant has been running his company under the name and style of “Haryana Trading Company” whose principle place of business within the State of Haryana is situated at Main Road, New Bharat Nagar, Bhiwani and this fact is proved from documents Exhibits P7 and P8 , the Certificates of Registration placed on the file. It is further evident that the cheques in question were presented for encashment with Syndicate Bank, Bhiwani and this fact has been deposed by PW3 Parmod Jain, Branch Manager of Syndicate Bank, Bhiwani. Further, from the documents placed on the file it is proved that the complainant has also his Head office at Bhiwani. In such circumstances, the jurisdiction of learned trial court at Bhiwani can not be ousted to try and decide the complaint.

10. Further, perusal of record of learned trial Court reveals that the accused- revisionist had already availed as many as four opportunities to lead his evidence in defence. Firstly, the case was fixed for 1.5.2015 for the defence evidence and then it was adjourned to 2.5.2015 but no evidence was led by the accused. Then the case was fixed for 12.5.2015 and on that day also, no defence evidence of the accused was present and then the case was adjourned to 29.5.2015 for defence evidence of the accused and last opportunity was granted to the accused to lead his evidence on 29.5.2015 but the accused failed to lead any evidence in his defence evidence and this shows that sufficient opportunities had been given to the accused for his

evidence and due to laxity on the part of the accused to conclude his evidence, the learned trial Court was right in closing the defence evidence of the accused. Hence, the impugned orders passed by learned trial Court are well reasoned and can not be interfered with by this Court.”

Learned counsel for the petitioner has contended that the respondent-complainant is doing business in Chirawa and, therefore, the Court at Bhiwani has no jurisdiction, but this fact has not been considered by the Courts below. He has further submitted that the cheques in question were lost/stolen from Chirawa (Rajasthan). The drawee bank is situated within the territorial jurisdiction of the Magistrate at Chirawa. Therefore, the complaint filed at Bhiwani was liable to be dismissed for want of jurisdiction or the complaint is liable to be returned for presentation before the Court having jurisdiction at Chirawa.

Learned counsel for the petitioner has placed reliance upon the judgment in ***Sree Mahesh Stationaries and another Versus India Bulls Financial Services Limited 2015(1) LJR 458 (Supreme Court)*** to contend that by relying upon the judgment of ***Dashrath Rupsingh Rathod v. State of Maharashtra and another 2014(3) RCR (Criminal) 904 (Supreme Court)***, the Apex Court has interpreted the law and ordered transfer of similar complaint after post-summoning proceedings while distinguishing the judgment in ***Dashrath Rupsingh Rathod's case (supra)***. He has further contended that judgment rendered in the case of ***Sree Mahesh Stationaries***

and another's case (supra) was ignored by the learned Courts below, which has resulted miscarriage of justice to the petitioner.

I have heard learned counsel for the petitioner.

A perusal of the order dated 28.8.2015 (Annexure P-27) clearly shows that the complaint is pending before the learned Magistrate, Bhiwani and the petitioner-accused has already availed four opportunities to lead evidence in his defence. Firstly, the case was fixed for 1.5.2015 for defence evidence. Thereafter, it was adjourned to 2.5.2015, but no evidence was led by the petitioner-accused. Again the case was fixed for 12.5.2015 for defence evidence and on that day also, no defence evidence was produced by the petitioner-accused. Thereafter, the case was adjourned for 29.5.2015 and last opportunity was granted to the petitioner to conclude his defence evidence. Even on 29.5.2015, the petitioner-accused failed to lead any evidence in his defence. Therefore, taking into consideration ***Dashrath Rupsingh Rathod's case (supra)*** wherein the Hon'ble Supreme Court has directed that the complaints under Section 138 of the Act which have reached the evidence stage or say stage of Section 145(2) of the Act stand transferred to the Courts where these are pending. To put it straight, in a complaint case under Section 138 of the Act, if the proceedings are at the stage of evidence, the complaint cannot be transferred to any other Court and has to be continued before the Court where it is pending.

Reverting back to the facts of the present case, the present

complaint is pending before the learned Magistrate for defence evidence and despite availing number of opportunities, the petitioner-accused has not adduced his evidence. Therefore, taking into consideration the judgment passed in ***Dashrath Rupsingh Rathod's case (supra)***, the present petition, being without any merit, is dismissed.

September 16, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE