

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

Crl. Misc. No. M-39318 of 2014

M/s South Asian Agro Industries Ltd. and othersPetitioners

Versus

M/s Indiabulls Financial Services Ltd.Respondent
2.

Crl. Misc. No. M-39319 of 2014

Seshavatharam Manepalli and othersPetitioners

Versus

M/s Indiabulls Financial Services Ltd.Respondent
3.

Crl. Misc. No. M-39320 of 2014

M/s Surya Chakra Global Enviro Power Ltd. and othersPetitioners

Versus

M/s Indiabulls Financial Services Ltd.Respondent
4.

Crl. Misc. No. M-39321 of 2014

Seshavatharam Manepalli and othersPetitioners

Versus

M/s Indiabulls Financial Services Ltd.Respondent
5.

Crl. Misc. No. M-39322 of 2014

M/s South Asian Agro Industries Ltd. and othersPetitioners

Versus

M/s Indiabulls Financial Services Ltd.Respondent
6.

Crl. Misc. No. M-39323 of 2014

Seshavatharam Manepalli and othersPetitioners

Versus

Crl. Misc. No. M-39318 of 2014

(2)

M/s Indiabulls Financial Services Ltd.

.....Respondent

7.

Crl. Misc. No. M-39324 of 2014

M/s Surya Chakra Global Enviro Power Ltd. and others

.....Petitioners

Versus

M/s Indiabulls Financial Services Ltd.

.....Respondent

8.

Crl. Misc. No. M-39325 of 2014

Seshavatharam Manepalli and others

.....Petitioners

Versus

M/s Indiabulls Financial Services Ltd.

.....Respondent

9.

Crl. Misc. No. M-40014 of 2014

Pet Metal Pvt. Ltd. and others

.....Petitioners

Versus

M/s Indiabulls Financial Services Ltd.

.....Respondent

10.

Crl. Misc. No. M-40076 of 2014

Pet Metal Pvt. Ltd. and others

.....Petitioners

Versus

M/s Indiabulls Financial Services Ltd.

.....Respondent

11.

Crl. Misc. No. M-40133 of 2014

Pet Metal Pvt. Ltd. and another

.....Petitioners

Versus

M/s Indiabulls Financial Services Ltd.

.....Respondent

DATE OF DECISION: 10.2.2015

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. M.S. Nain, Advocate
for the petitioners in Crl. Misc. Nos. M-39318-25 of 2014.

Mr. Vivek B. Gupta, Advocate with
Mr. Mohit Jaggi, Advocate
for the petitioners in Crl. Misc. Nos. 40014,40076 and 40133
of 2014.

Mrs. Kiran Bala Jain, Advocate
for the respondent.

DAYA CHAUDHARY, J.

By this judgment, 11 petitions bearing Crl. Misc. Nos. M-39318-25,40014,40076 and 40133 of 2014 shall be disposed of as common question of law and facts are involved in all the cases. However, for the sake of convenience, facts are being extracted from Crl. Misc. No. M-39318 of 2014.

Briefly, the facts of the case are that petitioners are facing trial in a complaint case under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). During pendency of the proceedings, the petitioners moved an application for seeking transfer of the complaint to the Court having competent jurisdiction in view of ratio of judgment of Hon'ble the Apex Court in the case of **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another** (2014) 9 SCC 129, which was dismissed on the ground that stage of recording of the evidence has already commenced. The impugned order of dismissal of application for transfer of the complaint is the subject matter of challenge in the present

petition. Earlier also the petitioners have approached this Court by way of filing Crl. Misc. No. M-13285 of 2013, which was disposed of by this Court with a direction to the trial Court to consider the application for transfer of the case of the petitioners in view of ratio of judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)** and pass necessary order within a period of two weeks from the date of receipt of copy of the order. It was also mentioned that in case any such application has not been moved by the petitioners, then they are at liberty to move an application for transfer of complaint. In compliance of that direction, the petitioners moved an application for transfer of the case on 9.9.2014, which was dismissed vide order dated 29.10.2014 on the ground that complaint cannot be transferred because of stage of the case.

Learned counsel for the petitioners contends that the impugned order has not been passed in view of ratio of judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)** and it has wrongly been mentioned that the evidence has already commenced, whereas, statement of even a single witness has not been recorded. Thus, dismissing the application filed by the petitioner simply on the ground that case is fixed for recording of evidence is not sufficient. Learned counsel further contends that no prejudice is going to be caused to the complainant in case the complaints are transferred to the Court having competent jurisdiction at Hyderabad. There were total eight complaint cases before the trial Court at Gurgaon and out of eight, four complaint cases have already been transferred by the trial Court, whereas, all the complaints are inter-connected and arise out of the same loan transactions. Learned counsel for the petitioners also contends that evidence has yet not commenced as only notice of accusation has been served upon the accused but no witness has been examined. Lastly

learned counsel for the petitioners submits that the case of the petitioners is squarely covered by the judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)** and the complaints are liable to be transferred to the court having competent jurisdiction just to avoid the multiplicity of litigation and to avoid divergent decisions. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Sree Mahesh Stationaries and another Vs. Indiabulls Financial Services Ltd.** (Transfer Petition (Crl.) No. 403 of 2013 decided on 5.8.2014) as well as of this Court in **Sameer Bharati Vs. State of Haryana and another** 2013 (1) AICLR 364, in support of his contentions.

Learned counsel for the respondent submits that in **Dashrath Rupsingh Rathod's case (supra)**, a specific mention is there that pending complaints which are at the stage of Section 145 (2) of the Act are not to be transferred. Learned counsel further contends that in all these cases, notice of accusation has been served upon the accused and now the case is fixed for evidence. Learned counsel also contends that the petitioners are lingering the cases by taking dates on various occasions and the case is already fixed for recording of evidence. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Radhey Shyam Garg Vs. Naresh Kumar Gupta** 2010 AIR (SC) 3210, in support of her contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Admittedly, the petitioners are facing trial in complaint cases under Section 138 of the Act. It is also not disputed that the petitioners in all the complaints have been served and have been represented through their counsel. The stand of the counsel for the petitioners is that the complaints should have been transferred in view of ratio of judgment of

Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)**, whereas, the stand of the respondent is that complaints cannot be transferred keeping in view the stage of the case as it has specifically been mentioned in the judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)** that complaints which are at the stage of Section 145 (2) of the Act should not be transferred.

Now the question for consideration before this Court is as to whether the complaints whereby the notice of accusation has been served can be transferred wherein evidence has commenced in view of provisions of Section 145 (2) of the Act or not. Section 145 (2) of the Act is reproduced as under:-

“(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein”.

The relevant para of the judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)**, which is relevant to decide the controversy in hand is reproduced hereunder:-

“We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e. applicability to Complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in

a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct 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. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred.”

It is clear from the abovesaid para of the judgment reproduced herein above that only in those cases where the proceedings have gone upto the stage of Section 145 (2) or beyond shall be deemed to have been transferred to the Court ordinarily having territorial jurisdiction.

As per case of the petitioners, the complaints have not reached to the stage of evidence i.e. Section 145 (2) of the Act, whereas, as per stand of the respondent, the case is fixed for cross-examination and that stage would be considered as the stage of Section 145 (2) of the Act. It is the argument of learned counsel for the petitioners that no prejudice is going to be caused to the rights of the complainant in case the complaints are transferred to the court having competent jurisdiction at Hyderabad as some of the complaints have already been transferred and those complaints were also at the same stage . All the complaints are inter connected and arise out of same loan transaction.

In view of observations made hereinabove in the judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)**, service of notice of accusation would have no effect on the case of the accused-petitioners as in the present case evidence stage has yet not commenced, and only notice of accusation has been served and statement of even a single witness has not been recorded so far.

In **Harman Electronics (P) Ltd. Vs. National Panasonic India (P) Ltd.** 2009 (1) SCC 720, the Apex Court examined the same issue and clearly ruled out that a unilateral act on the part of the complainant of issuing a notice from any part of the country would not vest the Court within whose territorial limits the notice has been issued with the power to entertain the complaint. This judgment has been affirmed by Three Judges Bench of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)**, wherein, it has been held that presentation of cheque at a place of choice of the complainant or issuance of notice from any such place do not constitute ingredients of the offence under Section 138 of the Act and cannot, therefore, confer jurisdiction upon the Court from where such acts are performed. Although learned counsel for the complainant-respondent

does not claim jurisdiction of the Courts at Gurgaon on the ground that cheque was presented for collection there only but it has been submitted to justify the filing of complaint and not to transfer the complaint in view of the stage as mentioned in judgment of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod's case (supra)**. This view has also been supported by the judgment in **Shri Ishar Alloy Steels Ltv. Vs. Jayaswals Neco Ltd.** (2001) 3 SCC 609. Therefore, the Courts at Gurgaon could not assume jurisdiction. Under similar circumstances, Hon'ble the Apex Court in the case of **Shivgiri Associates and others Vs. Metso Mineral (India) Pvt. Ltd.** (S.L.P. (Crl.) No. 7653 of 2013 decided on 20.8.2014) allowed the appeal filed by the accused and held that Courts at Gurgaon do not have territorial jurisdiction to entertain the proceedings under Section 138 of the Act and accordingly complaint was ordered to be returned to the complainant for refilling in the appropriate Court at Bangalore or Karnataka. Same view has been taken by Hon'ble the Apex Court in the case of **Vinay Kumar Shailendra Vs. Delhi High Court Legal Services Committee and another** 2014 STPL (Web) 575 SC.

Moreover, as per provisions of Sections 219 and 220 Cr.P.C., the object is to decrease the multiplicity of the litigation. In the present case, the dispute is between the same parties and the complaint in some of the cases have already been transferred, therefore, it would be in the interest of parties to face the trial at one place as the same will not only be convenient for the parties but will avoid diversity in decision only.

In view of facts as well as law position explained above, the present petitions are allowed and impugned orders dated 29.10.2014 and 20.10.2014 passed by Judicial Magistrate Ist Class, Gurgaon are set aside. The trial Court is directed to return the complaints for refilling in the appropriate Court at Hyderabad as mentioned in judgment of Hon'ble the

Apex Court in **Dashrath Rupsingh Rathod's case (supra)**. In case the complaints are refiled in the appropriate Court at Hyderabad within a period of 30 days from the date of receipt of certified copy of this order, it shall be deemed to have been filed within period of limitation. The interim orders shall stand recalled, accordingly.

The parties shall bear their respective costs.

10.2.2015
pooja

(DAYA CHAUDHARY)
JUDGE