

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

**Crl. Misc. No. M-5110 of 2015
Date of Decision: 20.11.2015.**

Jagpal Singh

.....Petitioner

Vs.

Chander Mohan

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. A.K.Garg, Advocate
for the petitioner.

None for the respondent.

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 19.1.2015 (Annexure P-5).

Learned counsel for the petitioner has submitted that the Trial Court has erred in returning the complaint to the petitioner for presentation before the Court of competent jurisdiction as the complaint in question was liable to continue before the Court at Malerkotla as the trial has commenced. In this regard, learned counsel has placed reliance on observations made by the Apex Court in '***Dashrath Rupsingh Rathod versus State of Maharashtra and another***' 2014(3) R.C.R (Criminal) 904'.

None has appeared on behalf of the respondent despite service.

Petitioner has filed complaint against the respondent

qua dishonour of cheque dated 3.6.2013 in the sum of ₹ 1,00,000/-. Vide the impugned order dated 19.1.2015 (Annexure P-5), the Trial Court allowed the application moved by the respondent for return of the complaint to the petitioner in view of decision given by the Apex Court in *Dashrath Rupsingh Rathod's* case (supra). With regard to cases where recording of evidence had commenced, the Apex Court in *Dashrath Rupsingh Rathod's* case (supra) has held as under:-

“20. 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.”

In the present case, a perusal of the record of the Trial Court reveals that notice of accusation was served on the respondent on 27.8.2014. Thereafter, examination-in-chief of the petitioner was recorded and his cross-examination was deferred at the request of the counsel for the respondent. Thus, recording of the evidence had commenced and in view of the observations made by the Apex Court, reproduced above, the complaint in question was liable to continue before the Trial Court.

Accordingly, this petition is allowed. Impugned order

dated 19.1.2015 (Annexure P-5) is set aside. Trial Court is directed to dispose of the complaint, in accordance with law.

**(SABINA)
JUDGE**

November 20, 2015
Gurpreet