

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 29th May, 2015

+ **CRL.M.C. NO.1509/2015 & CRL.M.A. NOS. 5553/2015**

M/S SHREE LAXMI TRADING CORPORATION & ORS.

..... Petitioners

Through Ms.Shanta Devi Raman, Adv. with
Mr. Garud M.V., Adv

versus

M/S PEC LTD.

..... Respondent

Through None

CRL.M.C. NO.1949/2015 & CRL.M.A. NOS.6961/2015

M/S SHREE LAXMI TRADING CORPORATION & ORS.

..... Petitioners

Through Ms.Shanta Devi Raman, Adv. with
Mr. Garud M.V., Adv

versus

M/S PEC LTD.

..... Respondent

Through None

CRL.M.C. NO.1951/2015 & CRL.M.A. NOS.6965/2015

M/S SHREE LAXMI TRADING CORPORATION & ORS.

..... Petitioners

Through Ms.Shanta Devi Raman, Adv. with
Mr. Garud M.V., Adv

versus

M/S PEC LTD.

..... Respondent

Through None

CRL.M.C. NO.1952/2015 & CRL.M.A. NOS.6967/2015

M/S SHREE LAXMI TRADING CORPORATION & ORS.

..... Petitioners

Through Ms.Shanta Devi Raman, Adv. with
Mr. Garud M.V., Adv

versus

M/S PEC LTD.

..... Respondent

Through None

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of this common order, I propose to decide the above mentioned petitions filed under Section 482 Cr.P.C challenging *inter alia* the impugned common order dated 24th March, 2015 passed by Additional Sessions Judge, Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi in Criminal Revision Nos. 6/2015, 11/2015, 10/2015, 9/2015 upholding the order dated 29th October, 2014 passed by Civil Judge-01/ MM, Patiala House Courts, New Delhi in Complaint Case Nos. 16/2013 and 78/2013, 261/2013, 17/2013, 41/2013 whereby the prayer of the petitioners for returning the Complaint Cases was rejected in view of the judgment passed by the Supreme Court in ***Dashrat Rupsingh Rathod Vs. State of Maharashtra & Anr*** reported in 2014 (9) SCC129.

2. Brief facts of the case are that the petitioners were summoned for the offence punishable under Section 138 read with Section 142 of The Negotiable Instruments Act, 1881 (hereinafter referred to as the "Act"). Thereafter, notices under Section 251 Cr.P.C were served upon the petitioners. They pleaded not guilty and claimed trial. Thereafter the matter was posted for cross examination of CW1/complainant's witnesses. Many adjournments were obtained for the purposes of cross examination. The question of territorial jurisdiction was raised by the petitioners immediately when the judgment of ***Dashrath Rupsingh Rathod*** (supra) was rendered by the Supreme Court. The main contentions of the petitioners are that the drawee bank is situated in Mumbai and also the stage of recording of evidence under Section 145 (2) of the Act has yet not commenced, therefore the complaint is liable to be returned to the complainant for filing in the Court who has competent jurisdiction to try the same.

3. The trial court rejected the plea of the petitioners by order dated 29th November, 2014. The said order was challenged by the petitioners on filing of Revision Petitions on the grounds that Metropolitan Magistrate did not consider the legal position in a proper manner and the same was incorrectly passed without appreciation of law and facts.

4. The revision petitions filed by the petitioners were dismissed by a detailed order passed on 24th March, 2015 by a common judgment

and the same has been challenged by the petitioners before this Court in the present petitions.

5. As already mentioned, the argument of the petitioners is that the stage of Section 145 (2) of the Act, has not arrived in the present proceedings and therefore, the complaint needs to be returned. The reply of the respondent before the trial court was that the matter has already reached the stage of Section 145 (2) of the Act and therefore, the complaints are not liable to be returned on the issue of the territorial jurisdiction and the matter has to be proceeded further under these circumstances.

6. It has to be examined in view of the orders passed from time to time as to whether the stage of Section 145 (2) of the Act, was arrived in the present proceedings. As per record and observation by the trial court, it is apparent that the stage had arrived as early as on 19th January, 2013. Here it is necessary to refer the order passed on 20th December, 2013 by the trial court which reads as under:-

“Exemption application moved on behalf of accused no.2. Accused no.2 is exempted for today only. Ld. Advocate for accused persons has filed a print out of the order dated 05.12.2013 passed by Hon'ble High Court of Delhi continuing the interim order passed by it. It is jointly submitted by the parties that in all the complaints, the case is listed for recording of CE. Ld. Advocate for the complainant has submitted that the complainant is adopting pre summoning evidence in post summoning evidence. It is jointly submitted that there is no stay in these complaints by the higher courts. Put up for cross examination of CW 1 on 07.02.2014.”

7. Many adjournments for the purpose of cross-examination were taken by the petitioners. The exemptions for personal appearance of accused were also granted to the petitioners. It appears from the order sheets that even last and final opportunities for cross-examination of CW-1 were granted. The judgment by the Supreme Court was delivered on 1st August, 2014 and on the next date the question of territorial jurisdiction was raised on behalf of the petitioners.

8. From the scheme of Sections 251 to 255 Cr.P.C., it is apparent that once notice under Section 251 Cr.P.C. has been framed and the accused pleads not guilty, the matter goes to the stage of recording of evidence under Section 254 Cr.P.C. There is no other intermediate stage between framing of notice and recording of evidence.

9. As far as a complaint under Section 138 of the Act is concerned, Section 143 of the Act provides that all offences under the said Chapter are to be tried in accordance with the provisions of the Sections 262 to 265 Cr.P.C., which provides for summary trials. Section 145 (1) of the Act provides for reception of evidence on affidavit and 145 (2) of the Act provides an opportunity to the accused to move an application for cross examination of the complainant or his witnesses. Even under such procedure, there is no intermediate stage between framing of notice under Section 251 Cr.P.C. and recording of evidence, either under Section 145(1) or (2) of the Act, Once notice under Section 251 Cr.P.C. stood framed, a complaint under Section 138 of the Act has reached the stage of recording of evidence.

10. The only manner in which a meaningful interpretation can be given to the directions of the Supreme Court would be that those cases in which notice under Section 251 Cr.P.C. stood framed would have to be retained in respective Courts where they have originally been filed as they have reached the stage of recording of evidence.

11. In the case of ***Dashrath Rupsingh Rathod*** (supra), Supreme Court in paras no.19 and 20 of the said judgment has held as under:-

"19. The interpretation of Section 138 of the NI Act which commends itself to us is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly the JMFC at, the place, where this occurs, is ordinarily where the Complaint must be filed, entertained and tried. The cognizance of the crime by the JMFC at that place however, can be taken only when the concomitants or constituents, contemplated by the Section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the Complainant chooses to present the cheque for encashment by his bank are not relevant for the purposes of territorial jurisdiction of the Complaints even though non-compliance thereof will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived by the High Courts even in the few cases that we shall decide by this judgment. We clarify that the Complainant is statutorily bound to comply with Section 177 etc. of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.

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 on 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 proceed 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 these where the accused/ respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with 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." (emphasis supplied).

12. It is settled law that a judgment has to be read in the context in which it was rendered. The same was reiterated by the Supreme Court in the cases of ***State of MP vs. Narmada Bachao Andolan***

(2011) 7 SCC 639, **JIK Industries Ltd. vs. Amarlal V. Juman** 2012 (3) SCC 255 and **Voltas Ltd. vs. Rolta India Ltd.** 2014 (4) SCC 516.

13. The judgment of the Supreme Court has taken care about the pending matters and depending upon the stage of the matters. The Supreme Court has drawn the distinction of pending matters into two categories as per the stage reached. The purpose of division of pending matters in such a manner was to ensure that matters that had reached a particular stage would not have to be instituted afresh so as to save time and costs of the parties. Any other interpretation to the contrary would not be permissible. Though many orders have been passed by this Court as well as by other High Courts by giving their interpretation. In many orders contrary view is taken. However, this Court is of the view that after rendering the judgment in the case of **Dashrath Rupsingh** (supra) an interpretation if required has to be drawn by reading the said judgment itself.

14. Delhi High Court in the case of **Cisco Systems Capital (India) Pvt. Ltd vs. New Delhi Tele Tech Pvt Ltd & Ors.**, 2015 (147) DRJ 306 elaborated on this question of law and held as under:

"18. There may be three situations when notice in terms of Section 251 of Cr.P.C is served upon an accused;

(i) After framing of notice in terms of Section 251 of Cr.P.C the matter is fixed for DE as no application as envisaged in Section 145(2) of the Act is moved by the accused;

(ii) After framing of notice in terms of Section 251 of Cr.P.C., an application under Section 145(2) of the Act is moved by an accused but it is yet to be allowed by a Magistrate; and

(iii) After serving notice under Section 251 Cr.P.C., the application moved under Section 145(2) of the Act by an accused for cross examination of the complainant, has been allowed by the Magistrate.

19. The question arises as to whether trial would be said to have commenced in all the aforesaid three situations or not. The answer has to be in negative in first two situations. It is only in the third situation when the application under Section 145(2) of the Act has been allowed by the Magistrate only then trial would be said to have commenced within the meaning of Section 145(2) of the Act."

15. The judgment of ***Dashrath Rupsingh Rathod*** (supra) mandates that the cases which were prior to the stage of Section 145 (2) of the Act only were ordered to be transferred to the Courts having jurisdiction in terms of findings of above mentioned judgment. It is evident from the judgment of the Supreme Court who bifurcated pending matters into two categories, it was directed 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"

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 from the Court ordinarily possessing territorial; jurisdiction, to the Court where it is presently pending"

"All other Complaints (obviously including these where the accused/ respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court..."

16. Counsel for the petitioners has admitted the fact that the respondent has admittedly adopted pre-summoning evidence as post summoning evidence. The said statement was made by the respondent on 20th December, 2013 and the matters were put up for cross-examination on behalf of the petitioners for 7th February, 2014. It shows that orders are passed for taking evidence which has already been adduced in view of statement made by the counsel before the Court on 20th December, 2013.

17. The interpretation now given by the petitioners is not acceptable when the trial has already commenced and the matters were adjourned at the request of the petitioners. If such an approach is adopted, it would be considered as *non-est* approach. The petitioners' cheques worth crores of rupees have been dishonoured. They are only interested to raise the plea of jurisdiction. There is no positive response from the petitioners' side as to why they are not claiming their liabilities. None of the decisions of the counsel would help the case of the petitioners, if the judgment of Supreme Court is read in a meaningful manner. In fact the said decision itself goes against the petitioners in view of admitted facts of the present matters.

18. For the reasons mentioned above, I do not find any infirmity in the impugned orders. The present petitions are dismissed.

(MANMOHAN SINGH)
JUDGE

MAY 29, 2015