IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 366 OF 2007

Adarsh S/o. Vishwa Bandhu Bansal,
Age 35 years, Occ. Business,
Proprietor of M/S. Adarsh Traders,
R/o. C/o. Shop No. 73-74,
New Grain Market, Kurukshetra,
Haryana. …Applicant

VERSUS

1. The State of Maharashtra,
Through the Public Prosecutor,
High Court Bench at Aurangabad.

2. M/S. Bayer Crop Science Limited,
A company in corporate & registered
Under companies Act, 1956,
Through Power of Attorney holder
Narhari S/o. Bhimrao Sapkal,
Age 30 years, Occ. Service,
R/o. 21, Samata Colony,
Vinayak Nagar, Ahmednagar,
Tq. & Dist. Ahmednagar. ...Respondents.

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Advocate for Applicant : Mr. M M Joshi,
APP for Respondent No.1-State: Mr. P.G Borade
Advocate for Respondent No.2 : Mr. L.B. Palod

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CORAM : V. K. JADHAV, J.
DATED : 26th SEPTEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the order of issuance of process, dated 28.6.2006, passed by the learned J.M.F.C. Court No.3, Ahmednagar for the offence punishable under Section 138 of Negotiable

Instruments Act 1881 (hereinafter for the sake of brevity referred to as “the said Act”), the applicant original accused, has preferred this criminal application.

2. Brief facts giving rise to the present application are as follows:-

a) Respondent No.2, a public limited company, has filed a complaint against present applicant for having committed offence punishable under Section 138 of the said Act. The learned Magistrate has recorded verification statement of respondent No.2 and pleased to pass order below Exh.1 of issuance of process against the applicant for the offence punishable under Section 138 of the said Act. Hence, this criminal application.

3. Learned counsel for the applicant submits that it has alleged in the complaint that the Head Office of respondent No.2 complainant is situated at Mumbai and respondent No.2 company is having its business all over the country, including Ahmednagar district. It has further alleged in the complaint that the present applicant accused has issued cheque dated 20.3.2006 for an amount of Rs.21,25,390/- drawn on State Bank of Patiala, Kurukshetra Branch, in favour of respondent No.2 company towards part payment of dues of existing liability. It has further mentioned in the complaint that the said

cheque was presented by respondent No.2 complainant for realization through its banker Deutsche Bank, DB, New Delhi. However, the said cheque returned with a remark “account closed”. Respondent No.2 original complainant had issued notice from Ahmednagar and thereafter the complaint came to be filed before the Magistrate in Ahmednagar district. Learned counsel submits that the Magistrate without considering the point of maintainability of the complaint for want of jurisdiction, has mechanically issued process. Learned counsel submits that in view of provisions of Section 142 (2) r.w. Section 142-A of the said Act, Ahmednagar court has no jurisdiction to entertain the complaint and thus, the complaint is liable to be dismissed.

4. Learned counsel for respondent No.2 complainant submits that respondent No.2 company is admittedly carrying on business all over the country, including district Ahmednagar and after dishonour of cheque, demand notice has been issued from Ahmednagar. In view of provisions of Section 142 (2) r.w. 142-A of the said Act, at the most the Magistrate can transfer the case to the court having jurisdiction to try and dispose of the said complaint.

5. Sub-section (2) of Section 142 and section 142-A of the said Act read as under:-

“**142. Cognizance of offences.** —(1) …...

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.”

"142-A. Validation for transfer of pending cases.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

6. In view of sub-section (2) of Section 142 of the said Act, an offence under Section 138 of the said Act shall be inquired into and tried only by the Court within whose local jurisdiction, if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. In view of this, the Magistrate at Ahmednagar has no jurisdiction to entertain the complaint when admittedly respondent No.2 has presented the cheque for realization through Deutsche Bank, DB, New Delhi.

7. In view of provisions of Section 142-A and even in view of the

Section 201 of the Cr.P.C. and further in the light of observations of the Apex Court in the case of ***Dashrath Rupsingh Rathod V/s State of Maharashtra and another, reported in (2014) 9 SCC 129***, the Magistrate ought to have transferred the case on his own to the court having jurisdiction to try and dispose of the complaint. However, on this ground alone the complaint cannot be dismissed. Hence, I proceed to pass the following order:-

O R D E R

I. Criminal application is hereby partly allowed.

II. The order below Ex.1 dated 28.6.2006 in complaint S.T.C.No. 4438 of 2006 passed by learned J.M.F.C. Court No.3, Ahmednagar is hereby quashed and set aside, with following direction:-

“The Magistrate shall transfer the complaint bearing S.T.C. No. 4438 of 2006 to the Court having jurisdiction under sub-section (2) of Section 142 of Negotiable Instruments Act, 1881 to try and dispose of the complaint.”

III. Criminal application is disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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