

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1046 OF 2015

M/S NAVKETAN PHARMA PVT LTD.
VERSUS
M/S ATMAN PHARMACEUTICALS INDIA PVT LTD. &
ANOTHER

...
Advocate for Applicant : Mr S W Munde
Advocate for Respondent 1 : Mr B S Deshmukh
APP for Respondent 2: Mr N B Patil

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CORAM : V.K. JADHAV, J.
Dated: January 14, 2016

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PER COURT :-

1. The applicant is the original complainant in SCC No.6150/2005 filed against respondent no.1 for the offence punishable u/s 138 of the Negotiable Instruments Act, pending before the 10th Judicial Magistrate First Class, Aurangabad. Learned Judicial Magistrate First Class, Aurangabad, by relying on the judgment of Dashrath Rupsing Rathod Vs. State of Maharashtra and others (Cri Appeal No.2287/2009) has returned the complaint for presenting the same before the competent Court i.e. the Court at Jalgaon. The applicant/original complainant has thus filed present writ petition.

2. Learned counsel for the applicant submits that the cheque was presented in the account of the applicant

maintained in Devgiri Nagari Sahakari Bank Ltd, at Aurangabad and it was dishonoured for the reason “Insufficient Funds” in the account of the accused. Learned counsel further submits that, as per amendment to Section 142, the offence u/s 138 shall be inquired into only by a 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 account, is situated. Learned counsel further submits that, in the case in hand, the applicant/original complainant maintains the account in the branch situated at Aurangabad.

3. Learned counsel for the applicant further submits that in the year 2008, the applicant/original complainant has filed his affidavit of evidence and the applicant was not subjected to cross examination by the other side. Learned counsel submits that in view of this, even the said case Dashrath Rupsing Rathod Vs. State of Maharashtra cannot be made applicable to the facts and circumstances of the present case.

4. Learned counsel for respondent no.1/accused submits that, the trial Court has rightly passed the order in view of

the authoritative pronouncement in a case of Dashrath Rupsing Rathod Vs. State of Maharashtra. Learned counsel submits that, there is no substance in the application and, the application is liable to be rejected.

5. I have also heard the learned APP for respondent no.2 – State.

6. So far as amendment to Section 142 of the Negotiable Instruments Act is concerned, the amendment is carried out by Act No.26/2015 with effect from 15.6.2015. In case of Dashrath Rupsing Rathod Vs. State of Maharashtra and another reported **in 2014(5) Bom C.R. 243** (supra) in paragraph No.20 of the Judgment, the Apex Court has directed that, the 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.

7. In the case in hand, in the year 2008 the applicant/original complainant has filed his affidavit of evidence and accused no.1 remained absent and it is recorded that accused no.2 was not ready to cross examine

the witness. Thus, cross examination by the accused is recorded as declined.

8. In light of the above observations of the Apex Court in paragraph No.20 of the Judgment, the proceeding will continue before the 10th Judicial Magistrate First Class, Aurangabad. Hence, following order.

ORDER

1. Criminal Application is hereby allowed.
2. The impugned order passed by the 10th Judicial Magistrate First Class, Aurangabad dated 12.12.2014 below Exh.1 in SCC No. 6150/2005 is hereby quashed and set aside.
3. Application is accordingly disposed of.
4. The applicant and respondents shall remain present before the Trial Court on 27.1.2016.

(V.K. JADHAV, J.)

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aaa/-