IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEALLATE JURISDICTION

WRIT PETITION NO. 696 OF 2017

Madhurika Paresh Mongia .. Petitioner
V/s.
The State of Mahrashtra & Anr. .. Respondents

WRIT PETITION NO. 697 OF 2017

Paresh Shishpal Mongia .. Petitioner
V/s.
The State of Mahrashtra & Anr. .. Respondents

Mr. M.N. Gavankar a/w Mr. Jayesh Rathod i/b Dhiren H. Shah, for the Petitioner.
Mr. A.R. Kapadnis, A.P.P. for the Respondent - State.
Mr. Pravartak Pathak, for Respondent No.2.

CORAM : PRAKASH D. NAIK, J.

DATED : 09 AUGUST, 2017.

P.C. :-

1 The petitioners in both these Petitions are challenging the order passed by the trial Court returning the complaint filed by the petitioners on the ground of jurisdiction.

2 The petitioner in Writ Petition No.696 of 2017 is the original complainant in S.C.C.. No.3296 of 2016. The said complaint was filed for an offence punishable under Section 138 of the Negotiable Instruments Act, against respondent No.2. Respondent No.2 issued three cheques in favour of the petitioner dated 15.05.2015 for different amount. The said cheques were drawn on H.D.F.C. Bank, Nashik Branch. The petitioner is having account in N.K.G.S.B. Bank at Nashik. However, for the sake of convenience and since the petitioner is residing in Mumbai, cheques were deposited in N.K.G.S.B. Bank, Kandivali Branch, Mumbai, which were dishonoured on 21.05.2015 on account of funds insufficient.

3 The petitioner in Writ Petition No.697 of 2017 is the complainant in S.C. No.3297 of 2015. Respondent No.2 is impleaded as an accused in the said complaint. The cheques in question were issued by respondent No.2 on 15.05.2015, were drawn on H.D.F.C. Mulund Branch. The petitioner is having an account with N.K.G.S.B. Bank at Nashik. For the sake of convenience the cheques were deposited in N.K.G.S.B. Bank, Kandivli Branch.

4 The petitioners had filed the complaints before the Court of J.M.F.C. Nashik. The process was issued against respondent No.2 for the

aforesaid offence on 05.09.2015. In pursuant to that the preliminary issue was raised at the instance of respondent No.2 that the said Court will have no jurisdiction to entertain the complaints on account of the fact that the cheques were deposited by the complainant in the N.K.G.S.B. Bank at Kandivli branch. The trial Court by order dated 16.11.2016 returned the complaints to the petitioners on the ground that said Court had no jurisdiction to entertain the same. While passing the said order, it has been observed that the cheques in respect to the bouncing case can be filed in the Court at the place where the bank in which the payee has account is located. It is also observed that there are two types of cheques, a bearer cheque or a cross cheque. A bearer cheque can be encashed across the counter in the bank without routing it through any bank account on the other hand cross cheque cannot be encashed across the counter in a bank. It can be encashed only through a bank account. It is further observed that as per new amendment, clause (a) of Section 142(2) of the Act speaks of crossed cheque which can be presented through account and even bearer cheque may be presented for encashing through an account in which the amount will be deposited in the account of payee holder in due course. It is also observed that as per clause (b) of Section 142(2) of Negotiable Instruments Act, those cheques which are encashed otherwise than through an account. It can be applicable only to bearer cheque which can be encashed across the counter, without routing it through an account. If cheque is dishonoured, as per amended provision complaint has to be filed at the place where drawer maintains the account. The intention appears to take care of situation where the person encashing it across the counter may not have account in the bank and he may directly collect cash from the bank. In such situation clause (1) would have been meaningless. It was further observed that on perusal of the disputed cheques, it appears that the cheque was presented in Charkop Kandivli Branch of N.K.G.S.B. and, therefore, the complaint can be filed only in Mumbai in the Court having jurisdiction over the area where the cheques were deposited. It was observed that in aforesaid circumstances, the said Court has no jurisdiction to try and entertain the said complaint. The complaints were, therefore, returned to the petitioner for presenting the same in the proper Court subject to limitation.

5 The petitioners have challenged the aforesaid orders. It is submitted by the learned counsel for the petitioner that the account of the petitioners is in N.K.G.S.B. bank at Nashik and not with the branch of the said bank which is situated at Charkop, Kandivali. It is submitted that for the sake of convenience as the petitioners are residing at Mumbai at the relevant point of time the cheque was deposited in the said branch. It is

submitted that in view of the amendment to section 142(2), the Court at Nashik will have jurisdiction as the account of the petitioner is in the N.K.G.S.B. Bank at Nashik. It is submitted that ultimately even if the cheque is deposited in the Charkop branch of the said Bank for clearance it will be forwarded to the bank where the petitioners are having the account. He relied upon the decision of the Supreme Court in the case of ***Bridgestone India Pvt. Ltd. Vs. Inderpal Singh***[1] as well as another decision of this Court in the case of ***Gopal Prasad Pai vs. Mandira Developers Pvt. Ltd. And Anr.*** delivered in criminal Writ Petition No.387 of 2015. He relied upon the provision of Section 142 of the Negotiable Instruments Act as amended wherein it is stipulated under clause (2) of Section 142 that -

> "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, it 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. "

1 (2016) 2 SCC 75

6 It is therefore, submitted that the trial Court has erroneously passed the order and returned the complaints to the petitioners. The said Court has jurisdiction to entertain the said complaint.

7 The learned counsel for the respondent, however, opposed reliefs sought by the petitioners. He relied upon the averments in Petition itself wherein it is mentioned that the cheques were deposited by the petitioner in the Charkop Kandivli branch of N.K.G.S.B. Bank. He submitted that although the petitioners are having an account in the bank at Nashik, they are operating the account at Kandivli branch of the said bank and therefore, that is the bank where the cheques were deposited and the Court at Mumbai will have jurisdiction to entertain the complaint. He also submitted that the complaints were silent in respect of the fact that the cheques were deposited in the Kandivli branch. He relied upon Section 142 of the Negotiable Instruments Act and in the light of the fact that the account is operated from the Kandivli branch of the said bank and since the said cheques were deposited in the said branch, the Mumbai Court will have a jurisdiction to entertain the complaints. He, therefore, submitted that no interference is called for in the order passed by the trial Court.

8 I have perused the complaint and the other documents annexed to this application. On hearing the submissions of both the sides as stated hereinabove, and also looking into the provisions of Section 142(2) of the Negotiable Instruments Act, I am of the opinion that the Court at Nashik ought to have entertained the complaint as the said Court has jurisdiction to entertain the complaints. The petitioners are having their bank account in N.K.G.S.B. Bank at Nashik. For the sake of convenience the cheques were deposited in the N.K.G.S.B. bank having its branch at Charkop, Kandivli Mumbai. The said bank cannot be said to be a bank having the account of the petitioner. For all purposes the bank of the petitioners can be said to be the bank which is situated at Nashik where the petitioners are having account. Even if the cheque is deposited for the sake of convenience in any bank ultimately it is cleared through the bank having account of the person depositing it. In the light of the decisions relied upon by the petitioners and also considering the amended provision of Section 142(2) of the Negotiable Instruments Act, I am of the opinion that the trial Court had committed error in passing the impugned orders.

9 The trial Court has unnecessarily ventured into interpretation of cross and bearer cheque and overlooked the provision of Section 142 of Negotiable Instruments Act. There is total non application of mind by the

Court. Though the complainant presented the cheques in N.K.G.S.B. bank at Charkop, Mumbai, the complainant holds the main account in N.K.G.S.B. bank at Nashik branch and not at Charkop, Mumbai. The process was issued by the Court on 05.09.2015 and the Court had thus taken cognizance of complaint. The cognizance of offence punishable under Section 138 of Negotiable Instruments Act shall be inquired into and tried by the 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. "

In the present case the complainant holds his account in branch at Nashik. Therefore, payee's account is in the bank at Nashik. The fact of presentation of cheque at Kandivli which was for convenience is irrelevant for deciding the jurisdiction of complaint. The trial Court at Nashik, thus had jurisdiction to entertain the complaint. In the case of Bridgestone India Pvt. Ltd., the Apex Court has observed that Section 142(2) (a), vests jurisdiction for initiating proceedings under Section 138 of Negotiable Instruments Act, inter-alia, in the territorial jurisdiction of the Court, where cheque is delivered for collection (through an account of the branch of bank where payee or holder in due course maintains an account. The trial Court has completely misread the provisions of law and misdiverted himself in arriving at erroneous conclusion.

10 In view of the aforesaid circumstances, the order passed by the trial Court is required to be set aside.

ORDER

i) Criminal Writ Petition No.696 of 2017 and 697 of 2017 are allowed.

ii) The impugned orders dated 16.11.2016 passed in S.C.C. No.3296 of 2015 and S.C.C. No.3297 of 2015 are quashed and set aside.

iii) The J.M.F.C. Court No.7, Nashik, shall entertain the complaints filed by the petitioners and proceed with the said complaints in accordance with law.

(PRAKASH D. NAIK, J.)