

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1509 of 2013

ORDER :

Aggrieved by the order dated 04.07.2013 in C.C.No.195 of 2011 passed by the XIII Special Magistrate, Hyderabad, this revision is filed by the petitioner/ complainant.

2. The complainant of a dishonour cheque filed a complaint against two accused/respondents 1 and 2 herein, for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') and taken cognizance originally before the learned III Additional Metropolitan Magistrate, Nampally, Hyderabad, by allotting C.C.No.1560 of 2009 and on transfer, renumbered before the learned XIII Special Magistrate, Hyderabad, as C.C.No.195 of 2011. It was while pending, the same was returned by detailed order dated 04.07.2013, which is now impugned and the same is after completion of trial and in the course of hearing arguments saying either the Court, which entertained the private complaint by taking cognizance and the Court, which deals with on transfer have no jurisdiction,

for the place, where the complainant presented the cheque that was returned dishonoured does not constitute part of cause of action to confer jurisdiction. It is the same now subject matter of the revision.

3. The respondents 1 and 2/ A1 and A2 to the said private complaint case, of whom, notice by personal service ordered by this Court, that of respondent No.2 returned as left unclaimed and respondent No.1 has intimated and as step-in-aid to it, even substitute service ordered by this Court in CrI.MP.No.4792 of 2016 dated 14.12.2016 and the same is published and proof filed in U.S.R.No.8611 of 2016, the respondents 1 and 2/ A1 and A2 did not turn up. Hence taken as heard.

4. Heard the learned counsel for the revision petitioner/ complainant and perused the impugned order and also Sections 142 and 142A of the amended Act 26 of 2015.

5. The expression of the Apex Court in K.Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510), that was also referred by the lower Court in para-18 clearly speaks even giving of notice and presentation of the cheque for encashment, those places also conferred part of cause of action, gives jurisdiction under Section 178

of Cr.P.C. The lower Court, referred, however, a judgment of this Court and one more judgment of the Apex Court in *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* (2001(3) SCC 609), stating that the cheque to be presented at the bank on which it is drawn and the bank mentioned is accused bank. No doubt, in a subsequent expression of two Judge bench of the Apex Court in *Escorts Limited v. Rama Mukherjee*¹, it was held even the cheque presented by the complainant in his bank for collection, gives jurisdiction from part of cause of action arisen therein. In fact, subsequent to the said expression in *Escorts Limited (supra)*, dated 17.09.2013, the Apex Court in *Dashrath Rupsingh Rathod v. State of Maharashtra*² observed that it is only in the accused bank, where the cheque is presented gives jurisdiction and not merely because it is presented at the convenience of the complainant at the collecting bank.

6. To settle the controversy, in fact, by Ordinance 6 of 2015, Section 142 of the Act is amended and Section 142(A) of additionally incorporated and the Ordinance ripen into regular amended Act of 2015.

¹ 2014(2) SCC 255

² 2014(3) ALT Criminal 129

7. As per the Amended Act, sub-section (2) of Section 142 and Section 142(A) of the Negotiable Instruments Act are inserted, which read as follows:

142. Cognizance of offences.- Notwithstanding anything contained in [the Code](#) of Criminal Procedure, 1973 (2 of 1974)-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

2) The offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction:-
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- (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.

Explanation: For the purposes of Clause (a), where a cheque is delivered for collection at any branch of the Bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the Bank in which the payee or holder in due course, as the case may be, maintains the account.”

142(A)---(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or directions of any Court, all cases arising out of Section 138 which were pending in any Court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the

Court having jurisdiction under sub-section (2) of Section 142, as if that sub-section had been in force at all material times.”

8. Thus, it is clear from the above that the place of collecting bank also gives jurisdiction to maintain a complaint. Thereby, the order of the lower Court returning the complaint in not entertaining at the fag end of the trial is since unsustainable it is liable to be set aside.

9. Accordingly, the Criminal Revision Case is allowed holding that the lower Court got jurisdiction to decide the complaint on merits, with a direction to receive without insisting for any delay in representation if represented within one week from the date of receipt of copy of this order and issue fresh summons to the accused so as to proceed further in accordance with law.

10. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21-02-2017

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Note:

L.R. copy to be marked-yes.

* HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL REVISION CASE No.1509 of 2013

%21-02-2017

Between:

M/ s.Kirby Building Systems India Limited

Pashamylaram, Medak District

...petitioner

Vs.

1. M/ s.R.V.Fabricators,

Dulapalli Village, Ranga Reddy District and two others ... respondents

!Counsel for the petitioner : M/ s.Indus Law Firm

Counsel for the Respondent No.3: learned Public Prosecutor

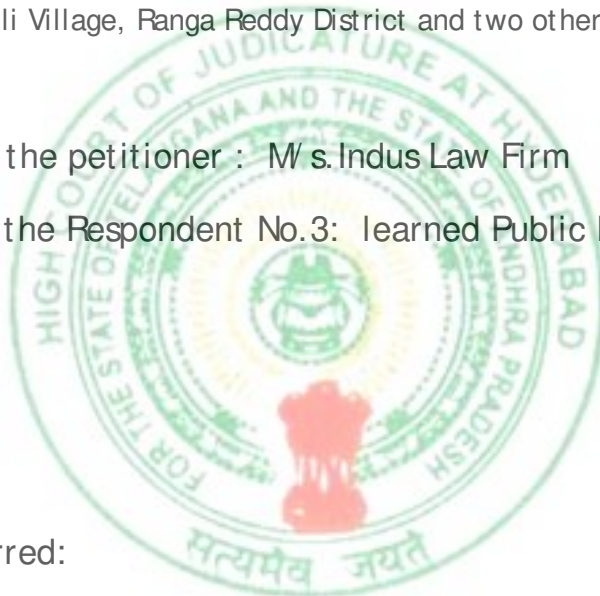
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? Cases referred:

¹ 2014(2) SCC 255

² 2014(3) ALT Criminal 129



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL REVISION CASE No.1509 of 2013

Between:

M/ s.Kirby Building Systems India Limited
Pashamylaram, Medak District ...petitioner

Vs.

1. M/ s.R.V.Fabricators,
Dulapalli Village, Ranga Reddy District and two others ... respondents

DATE OF JUDGMENT PRONOUNCED: 21.02.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/ No |
| 3 | Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? | Yes/ No |

