THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.422 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') by the petitioner/complainant is directed against the order, dated 19.01.2017, of the learned XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad, passed in Crl.SR.No.130 of 2017 in C.C.No.640 of 2015.

2. I have herd the submissions of *Sri T.Bala Mohan Reddy*, learned counsel appearing for the petitioner, of *Sri C.Appaiah Sarma,* learned counsel appearing for the respondents 1 to 10 and of the learned Public Prosecutor appearing for the 11th respondent-State of Telangana. I have perused the material record.

3. The facts of the case, which lie in a narrow compass, in brief, are as follows: "The petitioner-Compnay filed a complaint against the respondents/accused 1 to 10 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. According to the case of the petitioner-Company, the cheque, bearing no.039673, dated 16.12.2013, for a sum of Rs.1,00,00,000/- and another cheque bearing no.039674, dated 16.12.2013, for a sum of Rs.1,00,00,000/- drawn on Union Bank of India, Station Road, Secunderabad, were issued in favour of the petitioner-Company towards discharge of a legally enforceable debt and that the said cheques being payable at par were presented by the petitioner-Company through its bank, viz., ICICI Bank Limited, Khairatabad Branch, Hyderabad, for realization and that the said cheques were later dishonoured and were returned with an endorsement 'insufficient funds' and that thereafter, the complaint was filed after following the envisaged statutory procedure. The case was initially filed in the competent criminal Court at Secunderabad, on the ground that the Bank of the accused is situated within the territorial limits of the said Court. Later, for

administrative or other reasons, the case was transferred to the present Court at Erramanzil, and is assigned the number C.C.No.640 of 2015. However, the relevant provisions of the NI Act were amended in the year 2015. In view of the amended provision of Section 142(2) of the NI Act, the complaint case has to be instituted in a Court having jurisdiction over the place, where the bank of the petitioner-Compnay/complainant is situated. In the case on hand, the complainant's bank was ICICI Bank Limited, Vashi Branch, New Mumbai, Mumbai. As the bank of the Petitioner-Compmnay/complainant is situated within the territorial limits of the Magistrate's Court Vashi at Belapur, Mumbai, the said Court is only having jurisdiction and is competent to take cognizance and try the case, as per the facts of the case and the averments of the complaint. Therefore, the petitioner-Company/complainant filed a memo to return the case for presentation to proper Court or to transfer the case to the Court of Judicial Magistrate of First Class, Vashi, at Belapur, Mumbai, having jurisdiction to take cognizance and try the case. The said memo was resisted by the respondents/accused 1 to 10. On merits and by the order impugned in this revision case, the trial Court rejected the said memo of the petitioner-Company. Therefore, the petitioner-Company is before this Court."

4. Learned counsel for the petitioner complainant, while reiterating the above said facts, which lead to the filing of the present criminal revision case, would further submit as follows: "The trial Court failed to appreciate the facts and the amended provision of Section 142(2) of the NI Act. The trial Court placed heavy reliance on the contentions in the counter of the respondents/accused. At the time of filing of the case, as per the then obtaining legal position, the jurisdiction for entertaining the compliant was with the Court at Secunderabad as the bank of the accused is situated within the territorial limits of the said Court at Secunderabad. However, by virtue of the amended provision of the Act, the jurisdiction now vests with the Court at Vashi, at Belapur, Mumbai, as the basis for jurisdiction is the location of the Bank of the complainant/petitioner. Therefore, and in view of the clear

stipulation of the amended provisions of the NI Act, the complaint case of the petitioner/Company has to be transferred to the Court of the learned Magistrate at Vashi, Belapur, Mumbai, for trial. The explanation to the said amended Section clearly applies to the facts of the present case. The cheques are payable at par and can be presented at any branch of the banker of the petitioner/complainant. But, the jurisdiction would always be determined on the basis of the location of the branch in which the complainant/petitioner is having account, but not the branch where the cheque is presented for collection. The cheque return memo and the certificate were issued by Vashi Branch, where the petitioner-Company is having its account. Hence, the order impugned is liable to be set aside; and, the petitioner/complainant's case is to be withdrawn from the file of the Court of XVIII Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad, and has to be transferred to the Court of the learned Judicial Magistrate of First Class, at Vashi at Bealapur, for trial and disposal in accordance with the procedure established by law."

5. Per contra, the learned counsel for the respondents 1 to 10 supported the orders of the Court below and stated as follows: "The present system of banking is online banking/electronic banking. The complaint case was filed in the year 2014. As on the date of institution of the complaint, even as per the case of the petitioner/complainant, the case was rightly instituted in the Court at Secunderabad. The case was later transferred to the Court at Erramanzil for administrative and other reasons. Therefore, the said Court is having jurisdiction to entertain and try the case. The present system of banking of all banks, particularly, ICICI Bank is online banking. Though the petitioner/ complainant might be having a bank account in ICICI bank, Vashi Branch, Belapur, New Mumbai, Mumbai, the cheques which were drawn on Union Bank of India, Station Road, Secunderabad, were said to have been presented for realization of the proceeds of the cheques through ICICI bank Limited, Khairatabad Branch, Hyderabad. Therefore, the Branch of the Bank on which the cheques were drawn and the branch of the Bank to which the cheques were

presented for realization are both situated within the twin cities of Hyderabad and Secunderabad. Therefore, the Court at Vashi, Belapur, Mumbai, has no jurisdiction. The amended provision, in any view of the matter, cannot be retrospectively applied to the case on hand."

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. To begin with it is to be noted that the two cheques were drawn on Union Bank of India, Station Road, Secunderabad. The said cheques were presented by the petitioner/complainant for realization to Khairatabad Branch of the ICICI Bank Ltd. The cheques were not honoured and were returned. The cheque return memo and the certificate were issued by Vashi Branch, Belapur, Mumbai, as the petitioner-Company is having its account in the said Branch. The complaint was initially filed in May, 2014, in a Competent Court at Secunderabad on the ground that the Branch of the Bank of the accused, i.e., Secunderabad Branch of Union Bank of India is located within the territorial limits of the said Court. For administrative or other reasons the case was transferred and it is now pending on the file of the Court of the learned XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad. The petitioner/Company now contends that its Bank viz., Branch of ICICI bank, which issued the cheque return memo and the certificate, is situate at Vashi, Mumbai, and that in view of the said fact and the amended provision of the N I Act, the jurisdiction vests exclusively with the Court of Judicial Magistrate of First Class, Vashi, at Belapur, Mumbai. In view of the submissions, it is apt to refer to the provision of section 142 (2) of the N I Act which reads as under:

> "(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.
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> 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."
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> "142A. (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.
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> (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.
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> (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.

The above amended provision was introduced into the principal Act, by the Negotiable Instruments Act, 2015, (Act 26 of 2015). The said Act itself mandates that that it shall be deemed to have come into force with effect from 15.06.2015. As noted the in the instant case, the Complaint was filed in May, 2014, that is, before the amended provision came into force.

8. On the above analysis, this Court finds that the Court of the learned XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Nampally, Erramanzil, Hyderabad, is having jurisdiction to entertain and try the case in C.C.No.640 of 2015 and that the request of the petitioner/Company to transfer

the case to the Court of Judicial Magistrate of First Class, Vashi, at Belapur, Mumbai, on the ground that the said Court is vested with the exclusive jurisdiction to try the case needs no countenance. For the reasons assigned this Court holds that the revision case is devoid of merit and is liable to be dismissed.

9. In the result the revision case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

13th June 2017
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