

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.1737 of 2017 &
Tr.Crl.P.No.8 of 2017

COMMON ORDER:

Crl.P.No.1737 of 2017 has been filed by the petitioner/accused to quash the proceedings in C.C.No.349 of 2016 on the file of IV Special Magistrate Court, Visakhapatnam, where the learned Metropolitan Magistrate has taken cognizance for the offence under Section 138 of Negotiable Instruments Act (for short 'the Act'), which is outcome of the private complaint of the 2nd respondent-defacto complainant and later made over the case for trial to the learned IV Special Magistrate Court.

2. Tr.Crl.P.No.8 of 2017 has also been filed by the petitioner/accused to transfer the C.C. from the file of IV Special Magistrate at Visakhapatnam to any competent Court at Rajam, Srikakulam.

3. A perusal of the contents of the complaint show that the accused borrowed an amount of Rs.6,00,000/- from the complainant on 10.02.2011 for the purpose of his family expenses, business and clearing debts and accused executed a demand promissory note in favour of the complainant on the even date at Visakhapatnam agreeing to repay the same with interest @ 24% per annum either to the complainant or his order on demand. Subsequently, the accused failed to repay the amount despite several demands made by the complainant and the accused issued a cheque bearing No.932992 drawn on ICICI Bank, Visakhapatnam on 26.08.2011 for Rs.6,00,000/- towards part payment of the debt due under the promissory note. When the

complainant presented the cheque on even date through his Banker Andhra Bank, Rajam Branch, Srikakulam, and the same was returned on the ground "Account closed" vide memo dated 16.09.2011. Thereafter, the complainant got issued legal notice dated 10.10.2011 through registered post and courier and the notice sent through registered post was returned as "addressee left without intimation" and notice sent through courier was returned as "party refused. Hence, the complaint is filed to take cognizance of the offence against the accused and to punish him.

4. The grounds urged in the quash petition are that the case is not maintainable as per the several expressions of the Apex Court as well as the High Court. Even though the address of the accused wrongly mentioned in the complaint and the summons were issued by the Court exceeding the limits and jurisdiction by taking the accused banker jurisdiction and issuing summons and consequently ordering NBW is totally abuse of process of the Court even though not having jurisdiction as per the amended Section 138 of the Act dated 15.06.2015.

5. The accused earlier filed Tr.Crl.P.No.8 of 2017 for transfer of C.C. from IV Special Magistrate Court, Visakhapatnam, to any competent Court at Rajam, Srikakulam District, as the jurisdiction of Visakhapatnam Court has been ousted, and to quash the proceedings against him.

6. Heard learned counsel for the petitioner/accused and also learned Public Prosecutor representing the State. Even though notice served on the 2nd respondent failed to attend, hence taken as heard to decide on merits.

7. The cheque in question was dated 26.08.2011 drawn on ICICI Bank, Dwarakanagar Branch, Visakhapatnam. The cheque when presented by complainant from his banker Andhra Bank, Rajam Branch, Srikakulam, it was returned dishonoured as per cheque return memo dated 16.09.2011 and therefrom the statutory legal notice issued that was returned unserved of postal cover and refused of courier service. So far as the cheque in question for a legally enforceable debt or not is a matter of defence on the factual aspect by facing trial and there is nothing to quash the proceedings.

8. The other contention is that the Visakhapatnam Court has no jurisdiction. The law is fairly settled from the expression of the Apex Court in **M/s. Bridgestone India Private Limited Vs. Inderpal Singh**¹ on the scope of Sections 138 to 142 of the Act and the three Judge Bench expression of the Apex Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra**² and subsequent Negotiable Instruments Act amendment in 2015 with retrospective effect wiping out the impact of the expression in **Dashrath Rupsingh supra** in its saying either the place where the cheque drawn or the place where the cheque is presented can give jurisdiction to maintain complaint anywhere. Thus, there is no lack of territorial jurisdiction for the Visakhapatnam Metropolitan Magistrate Court concerned to take cognizance. There is nothing even to show the Special Magistrate is of the rank of second class Magistrate and there is a statutory bar for trial by Special Magistrate.

¹ 2016 (2) SCC 75

² (2014) 9 SCC 129

9. Thus there are no merits in the quash petition to allow, but for left open all available defence before the trial Court if any.

10. There remains the petition for transfer of the case from Visakhapatnam to Rajam Court. In fact the complainant and the accused shown in their cause title including from the quash petition and the transfer petition as both at Visakhapatnam and thus there is practically nothing to transfer the case to the inconvenience of both to Rajam Court for nothing to say Visakhapatnam Court has no jurisdiction. Petitioner for any inconvenience to attend regularly in person by virtue of the order can move the trial Court to permit to represent through special vakalat holder under Section 205 Cr.P.C. to hear and consider with necessary conditions of personal appearance as and when required.

11. Accordingly and in the result, both the Criminal Petition and Transfer Criminal Petition are dismissed.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.09.2017
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