

251

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-28935 of 2016

Date of decision: April 28, 2017

Rajinder Earthmover Filling Station Pvt. Ltd. and another

.....Petitioners

Versus

A2Z Waster Management (Ludhiana) Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. S.P. Soi, Advocate for the petitioners.

Mr. Kunal Dawar, Advocate for the respondents.

A.B. CHAUDHARI, J

By the present petition, petitioners seek quashing of impugned order dated 12.05.2015 (Annexure P-3) passed by the JMIC, Ludhiana in a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') by which the trial Court declined to summon respondents herein and the revisional order dated 25.07.2016 (Annexure P-4) in contravention of the earlier order issuing process, on 16.01.2014.

The petitioners filed complaint under Section 138 of the NI Act in the Court of JMIC, Dasuya in the matter of dishonor of cheque in the sum of ₹4,05,00,000/- by the accused persons. After recording of verification statement of petitioners, JMIC, Dasuya passed an order dated 16.01.2014 (Annexure P-2) summoning all the accused to the complaint. The complaint remained pending in the said Court and

thereafter, the judgment in the case of **Dashrath Rupsingh Rathod versus State of Maharashtra and anothers**, 2014 AIR (SC) 3519 was pronounced by the Apex Court regarding the territorial jurisdiction in the cases under Section 138 of the NI Act. Pursuant to the said judgment of the Apex Court, the complaint was returned with all the documents to the petitioners by the JMIC Dasuya for filing in the Court at Ludhiana and therefore, the petitioners filed the complaint along with the documents in the Court at Ludhiana, on 16.12.2014. After filing of the complaint, JMIC, Ludhiana made order dated 12.05.2015 (Annexure P-3) and summoned only accused-respondents No.3 and 4 there, but declined to summon the other accused persons. The revision was also dismissed by the revisional Court. Hence, this petition.

In support of the petition, learned counsel for the petitioners submitted that JMIC, Ludhiana has ignored the order dated 16.01.2014 issuing process/summons to all the persons in the said criminal complaint case and passed a fresh order restricting the accused summons to a few accused persons, which was contrary to the earlier order. He, then submitted that JMIC, Ludhiana could not have made a fresh order contrary to the earlier order made by the JMIC, Dasuya, on 16.01.2014. He, therefore, prayed for setting aside the impugned orders.

Per contra, learned counsel for the contesting respondents submitted that the petitioners himself after filing of the complaint before Ludhiana Court led fresh evidence in the form of preliminary evidence. He, then submitted that JMIC, Ludhiana took cognizance of the case for the first time for that fresh case. Therefore, he was entitled to pass a fresh

order as the order dated 16.01.2014 passed by JMIC, Dasuya automatically stood extinguished or had become null and void after the said Court ceased to have territorial jurisdiction. Apart from that, according to him, the petitioners-complainant themselves led fresh evidence before the JMIC, Ludhiana and therefore, they submitted themselves to the jurisdiction. They are estopped in law from putting to challenge the impugned order. He, further submitted that in the entire petition, there is no ground raised by the petitioners that the order dated 16.01.2014 made by JMIC, Dasuya could not be ignored by JMIC, Ludhiana. In the absence of any ground in the petition, this Court should not take into consideration the said aspect of the matter. The decision in **Dashrath Rupsingh Rathod's case (supra)** was relied upon by him. He argued that as a necessary consequence of the return of the complaint along with documents for being presented in the Court of JMIC, Ludhiana, all orders made earlier by JMIC, Dasuya stood extinguished automatically. Reliance is also placed on Section 201 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.').

I have heard learned counsel for the rival parties at length and also perused the decision of the Apex Court in **Dashrath Rupsingh Rathod's case (supra)**.

Section 201 Cr. P.C. reads thus:-

“201. Procedure by Magistrate not competent to take cognizance of the case -

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement

to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.”

The submission based on above section will have to be rejected since the same relates to the Magistrate not competent to take cognizance of the case. In the present case, admittedly, JMIC, Dasuya was competent to take cognizance when he had passed the order issuing process, on 16.01.2014.

The pronouncement regarding the legal position as to the territorial jurisdiction resulted into the case being returned to the complainant by Court of JMIC, Dasuya for being presented in the Court of JMIC, Ludhiana. But, then JMIC, Dasuya had already passed the order on 16.01.2014 issuing accused summons to all the accused persons. The said Court being the competent Court had passed the order which in no case could be reviewed by JMIC, Ludhiana merely because in terms of the decision in **Dashrath Rupsingh Rathod's case (supra)**, the case was required to be returned for being presented to the Court of JMIC, Ludhiana. At any rate, the decision in **Dashrath Rupsingh Rathod's case (supra)** does not say so. On the contrary, in the case of **Adalat Prasad versus Rooplal Jindal**, 2004 (4) R.C.R. (Criminal) 1, the Apex Court stated thus, in Para 16, which is quoted hereunder:-

“16. Therefore, in our opinion the observation of this Court in the case of Mathew (supra) that for recalling an order of issuance of process erroneously, no specific provision of law is required would run counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this

Court in Mathew's case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law."

In that view of the matter, in effect, JMIC, Ludhiana had reviewed the order dated 16.01.2014 passed by JMIC, Dasuya and that is without jurisdiction and contrary to the law laid down by the Apex Court in Para 16 in **Adalat Prasad's case (supra)**. The submission that the said point had not been raised in the petition does not appeal to me since it is the duty of this Court not to allow creeping in of any judicial indiscipline as has happened in the instant case. JMIC, Ludhiana could not have ignored the order dated 16.01.2014 made by JMIC, Dasuya as the said order dated 16.01.2014 had the legal sanctity unless set aside by higher Court or had become *non est* by operation of any law. The plea of estoppel raised by the learned counsel for the respondents has been stated to be rejected since no estoppel operates against law. At any rate, the reading of the impugned order made by JMIC, Ludhiana does not even show that JMIC, Ludhiana bothered to look at the order dated 16.01.2014 that was made by JMIC, Dasuya. The decision in **Dashrath Rupsingh Rathod's case (supra)** does not even remotely state that the earlier orders made by the transferor Court before return of the complaint would automatically become null and void or would have no force or that the transferee Ludhiana Court would be entitled to make contradictory orders. Next, to sum up, the impugned order dated 12.05.2015 made by JMIC Ludhiana will have to be quashed and set aside. In the result, I make the following order:-

ORDER

- (i) CRM-M-28935 of 2016 stands disposed of;
- (ii) The order dated 12.05.2015 (Annexure P-3) passed by JMIC, Ludhiana is quashed and set aside and the order dated 16.01.2014 (Annexure P-2) passed by JMIC, Dasuya is restored;
- (iii) Liberty is reserved in favour of the respondents-accused, if so advised, to put to challenge the order dated 16.01.2014 (Annexure P-2) passed by JMIC, Dasuya before the higher Court;
- (iv) The issue of limitation shall be considered sympathetically. Parties to appear before JMIC Ludhiana on 31.07.2017 which shall then proceed further according to law.

(A.B. CHAUDHARI)
JUDGE

April 28, 2017

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Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**