IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25296 of 2017
Arising Out of PS.Case No. -2227 Year- 2013 Thana - BHAGALPUR COMPLAINT CASE District- BHAGALPUR

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Minaj Hussain @ Meer Minaj Ahmad @ Meer Minaj Hussain Son of Meer Irfan Ali, Resident of Village-Tirmuhani, P.O. & P.S.- Amdabad, District-Katihar. (accused)

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajeev Upadhyay, Son of Late Ramashankar Upadhyay,C/o-Sri Tej Narayan Mishra, Resident of Village & P.O.-Maheshmunda, P.S.-Kahalgaon, District-Bhagalpur. (Complainant)

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Diwakar Upadhyaya
For the Opposite Party/s : Mr. Sri. Kumar Virendra Narayan

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date: 06-04-2018

The petitioner has challenged the order dated 05.01.2017 passed by the learned A.C.J.M-XIV, Bhagalpur in connection with Complaint Case No. 2227 of 2013 whereby the prayer made on behalf of the petitioner for transferring the case from Bhagalpur to Katihar on the ground of territorial jurisdiction has been rejected.

2. Rajeev Upadhyay/O.P. No. 2 had lodged a complaint vide Complaint Case No. 2227 of 2013 before the learned Chief Judicial Magistrate, Bhagalpur alleging that the petitioner had taken money from him which was paid to him by

cheque for the purposes of expanding the joint business. When the complainant/O.P. No. 2 felt that the business was not improving, he demanded his money back. The petitioner, it has been alleged, tried to return the amount to the complainant/ O.P. No. 2 vide three cheques, the first being a cheque drawn on Punjab National Bank, Daulat Ram Chauk, Katihar for the amount of Rs. 11,00,000/-(eleven lakhs); the second cheque being drawn on Central Bank of India, Katihar for the amount of Rs. 11,00,000/-(eleven lakhs) and the third cheque again of Rs. 11,00,000/-(eleven lakhs) drawn on Bank of Baroda, Katihar Branch.

3. On presentation of the aforesaid cheques in the account of complainant/O.P. No. 2, the cheques could not be honoured because of insufficient funds. Even after notice to the petitioner/accused, no money was forthcoming; hence the instant complaint was lodged.

4. It further appears from the records that complainant/O.P. No. 2 had also filed a Police Case at Katihar vide Katihar (Town) P.S. Case No. 140 of 2010 instituted for the offences under Sections 420, 406, 465, 468, 471, 506, 120(B) of the Indian Penal Code against the petitioner. The aforesaid case also relates to the business dispute between the parties. The aforesaid Police Case is still pending trial at Katihar. It was thus submitted by the accused/petitioner that

deliberately the complaint case has been filed in Bhagalpur in order to mount pressure on him for giving to complainant/O.P. No. 2 the amount which is being claimed by him.

5. Since all the cheques which are stated to have been issued by the petitioner, have been drawn on branches of the banks at Katihar, it was requested by the petitioner that all theses cases be transferred to Katihar Judgeship which would have the jurisdiction to try those cases and it would also be in consonance with the principle of *forum convenience* of the parties as the other Police Case is also being contested at Katihar.

6. The aforesaid prayer has been rejected by the order impugned on the sole ground that the aforesaid cheques issued by the petitioner/accused were deposited/presented for encashment at Bhagalpur which gave the sole jurisdiction to a competent Court at Bhagalpur to try the case.

7. The petitioner has sought to impugn the aforesaid order on the following grounds.

(a) The cause of action has accrued at Katihar where the cheques issued by the petitioner have been dishonoured.

(b) The cheques are not stated to be crossed cheques and therefore, it would be deemed to have been given to the complainant/O.P. No. 2 for presenting it before the drawer bank and

(c) It would be convenient for the parties if the Complaint Case at Bhagalpur and the Police Case at Katihar which have been lodged by the complainant/O.P. No. 2, be tried in the Katihar Judgeship.

8. The aforesaid contentions of the petitioner has been sought to be repelled by the learned counsel appearing for the complainant/O.P. No. 2 on the ground that the amended Section 142 of the Negotiable Instruments Act, 1881 gives the jurisdiction to try the present complaint only at Bhagalpur, where the cheques were delivered for collection through an account as the complainant/O.P. No. 2 maintained an account at Bhagalpur.

9. Section 142 of the amended Negotiable Instruments Act reads as follows:-

> ***"142. Cognizance of offences****.-[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*
>
> *(a) no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;*
>
> *(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:*

[provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

<u>[(2) The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,-</u>

<u>(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</u>

<u>(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.</u>

<u>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 cueque 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.]"</u>

(emphasis provided)

10. Sub-clause 2 of Section 142 has been added by act 26 of 2015 and it has been made effective with effect from 15.06.2015.

11. Prior to the amendment referred to above, the view which was prevalent with respect to the jurisdiction was that the locality where the bank (which dishonoured the cheque) is situated would not be the only place for suing; rather, it could be either at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, there was difficulty to fix any particular locality as the place of occurrence for the offence under Section 138 of the Negotiable Instruments Act.

12. For the sake of completeness, Section 138 of the Negotiable Instruments Act is being extracted below.

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account***.- *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made*

with the amount arranged to be paid from that account by an agreement made with the bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation-For the purposes of this section, "debt *or other liability" means a legally enforceable debt or other liability."*

13. The pre-requisites for initiating a proceeding under Section 13 of the Negotiable Instruments Act, therefore is: (i) issuance of the cheque; (ii) presentation of the cheque to the bank; (iii) retaining the cheque unpaid to the drawer bank; (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and; (v) failure of the drawer to make payment within fifteen days of the receipt of the notice.

14. The prevalent view as indicated above was that it was not necessary that all the above acts should have taken place at the same locality/place; rather it could have been effected at different locations. Since the combination of all the above requirements/facts was considered to be essential for completion of the offence under Section 138 of the Negotiable Instruments Act, therefore, in tune with the provisions contained in Section 177, 178 and 179 of the Code of Criminal Procedure, which deals with jurisdiction of the criminal Courts in enquiry and trials, the court having jurisdiction in anyone of the five areas where different ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881 may have been committed, could exercise the territorial jurisdiction with respect to anyone of those conditions ingredients.

15. For easy reference Sections 177, 178 and 179 of the Code of Criminal Procedure, 1973 are extracted below.

> ***"177. Ordinary place of inquiry and trial****.-Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.*
>
> ***178. Place of inquiry or trial****.-(a) When it is uncertain in which of several local areas an offence was committed, or*
>
> *(b) where an offence is committed partly in one local area and partly in another, or*
>
> *(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or*
>
> *(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.*
>
> ***179. Offence triable where act is done or consequence ensues****.-When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.*

16. In ***K. Bhaskaran versus Sankaran Vaidhyan***

Balan and Another (1999) 7 SCC 510, the Supreme Court held that a complainant can chose anyone of the Courts having jurisdiction over anyone of the local areas within the territorial limits in which anyone of the five acts may have been committed. It was felt by the Supreme Court that as the amptitude stood so widened and expansive, it would only be an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Negotiable Instruments Act.

17. However, a departure was made by the Supreme Court in its approach in ***Harman Electronics Private Limited and Another versus National Panasonic India Private Limited (2009) 1 SCC 720***. In the aforesaid case, the Supreme Court examined the question of jurisdiction under a situation when the appellant before it was from Chandigarh, who had issued a cheque drawn on a bank at Chandigarh which was dishonoured. Notice of payment of the dishonoured cheque was issued from the Head Office of the complainant at Delhi and on failure of the appellant to pay the money within 15 days of the notice, complaint was filed in Delhi.

18. Ordinarily, the Courts below, in view of the judgment in K Bhaskaran (supra) held that Delhi Court had jurisdiction to try the complaint. However, the drawer/appellant contended that Chandigarh Court only had the jurisdiction to try the case. The Supreme Court, but held that a Court derives

its jurisdiction when a cause of action arises and such jurisdiction cannot be conferred on or for any act of omission on the part of the accused. It further held that the receipt of notice and not issuance of notice will give rise to cause of action. This led the Supreme Court deliver that Delhi Court will not have the jurisdiction to try the case.

19. In view of the different strand of thinking in the two cases referred to above, viz. K. Bhaskaran (Supra) and Harman Electronics Private Limited (supra), the Supreme Court, in ***Dashrath Rupsingh Rathod versus State of Maharashtra and Another (2014) 9 SCC 129*** held that giving such an expansive interpretation to the provision of jurisdiction for trying cases under Section 138 of the Negotiable Instruments Act, 1881 would only result in rampant abuse and misuse of the law, to the detriment and adversity of the drawer of a cheque with relative ease. An unbridled/unrestricted power lay in the hands of a payee to confer single-handedly jurisdiction to a Court at a place of his convenience.

20. After going through various provisions of law and earlier cases in that regard, the supreme Court in Dashrath Rupsingh Rathod (Supra) held that the territorial jurisdiction for trying the case under Section 138 of the Negotiable Instruments Act, 1881 would be exclusively determined by the place/location of the offence. The return of the cheque by the

drawer bank would only constitute offence of the act under Section 138 of the Negotiable Instruments Act, 1881. Hence, the Courts within which drawer bank is located will only have the jurisdiction to try the case.

21. However, with the aforesaid judgment, some difficulty arose with the modern banking system. Traditionally, the cheques travelled from the bank where they were presented to the drawer bank branch. In the modern day banking, the cheques do not travel to drawer bank. It was also felt that from the equity point of view, the jurisdictional issue needed a clarification.

22. Hence, the amendment under Section 142(2) of the Negotiable Instruments Act was brought about.

23. The amendment in the act virtually supersedes the decision of the Supreme Court in Dashrath Rupsingh Rathod (Supra). Now, with the amendment of Section 142 of the Negotiable Instruments Act, the Court having jurisdiction over the place where the payee bank is situated and where the cheque is delivered for collection through an account, shall have the jurisdiction to try a case under Section 138 of the Negotiable Instruments Act, 1881. However, if the cheque is presented by the payee, otherwise through an account, i.e. over the counter, the jurisdiction would be of the Court where the drawer bank is situated.

24. The explanation added to Section 142(2) of the N.I. Act further clarifies the issue.

25. Thus, with the amendment in the act referred to above, since the cheques in question in the case in hand were presented at Bhagalpur in the bank account of O.P. No. 2, only the Court at Bhagalpur shall have the jurisdiction to try the instant complaint.

26. In ***Bridgestone India Private Limited versus Inderpal Singh (2016) 2 SCC 75***, the appellant before the Supreme Court (payee or holder in due course) had lodged a case at Indore for dishonour of the cheque issued by the accused at Chandigarh, drawn an a bank in Chandigarh. The Supreme Court, in view of Section 142(2) of the Negotiable Instruments Act held that the Court at Indore only had the jurisdiction and not at Chandigarh which was the situs of the drawer bank.

27. So far generally with respect to jurisdiction.

28. Now over to the other ground raised by the petitioner that since the cheques were not crossed, it would be expected that they would be presented for encashment over the counter which could only be done at the drawer bank, the jurisdiction in that case would lie to a Court at Katihar.

29. Chapter XIV of the Negotiable Instruments Act 1881 deals with crossed cheques.

30. A cheque is said to be crossed generally if it bears across its face, an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines, or of two parallel transverse lines shall be either with or without the words "not negotiable". If the name of the banker is added, the cheque is said to be specially crossed.

31. According to Section 125 of the Act, the holder of the cheque may cross it generally or specially. In that event, even if a cheque is un-crossed, if it is presented in the drawee bank (payee bank), it is aimed at getting encashed through the account only.

32. In that event, there is no option for the complainant or the accused to seek or confer jurisdiction on any other Court except the Court within whose territorial jurisdiction, the payee bank where the cheque has been presented, is located.

33. It may also be added here that the present petition has been filed under Section 407 of the Code of Criminal Procedure, thus necessitating a discussion on the issue of *forum convenience*. The criminal case/police case lodged by the complainant/O.P. No. 2 may be against the petitioner only but that case operates in a different field, for a different offence or set of offences. The O.P. No. 2 has deliberately chosen to file a complaint at Bhagalpur where he maintains an account in

which the cheques were presented and seeks to oppose the present petition as well.

34. In that view of the matter, it would only be *forum non-convenience* for the parties for this Court to interfere.

35. Finding no merit in this application, it is dismissed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
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