

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on: 28.02.2018

Delivered on: 16.05.2018

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CrI.O.P. (MD) .No.13251 of 2014
and
MP (MD) .No.1 of 2014

Jeyabal

... Petitioner

Vs.

Sathya
Assistant,
Municipality Office,
Dindigul.

...Respondent

PRAYER: Criminal Original Petition filed under Section 407(1) r/w 482 of Cr.P.C., to withdraw C.C.No.338 of 2012 on the file of the learned Judicial Magistrate Court No.II, Kuzhithalai and transfer the same to the Judicial Magistrate Court No.III, Trichy, which is the competent Court to try the case.

For Petitioner : Mr.RM.Sivakumar

For Respondent : Mr.V.Sitharanjandas

ORDER

This petition has been filed by the complainant under Section 407 r/w 482 of Cr.P.C., to transfer the case in C.C.No.338 of 2012 from the file of the Judicial Magistrate No.II, Kulithalai, Karur District to Judicial Magistrate No.III, Tiruchy.

2. Heard, Mr.RM.Sivakumar, learned counsel for the petitioner and Mr.V.Sitharanjandas, learned counsel for the respondent.

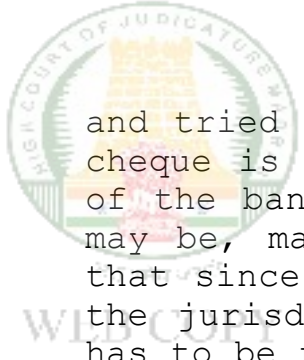
3. The learned counsel for the petitioner has submitted that the respondent herein borrowed a sum of Rs.5,00,000/- from the



petitioner on 04.09.2011 and executed a promissory note in favour of the petitioner and subsequently, with a view to discharge the aforesaid debt, he issued a cheque for Rs.5,00,000/-. He further submitted that the petitioner had presented the said cheque for collection in the Bank of India, Pettavaithalai Branch, Trichy District, and the same was returned on the ground that funds insufficient in the respondent's account. He further submitted that since the petitioner is residing at kuzhithalai, he had issued a statutory notice to the respondent from Kuzhithalai and filed a case before the Judicial Magistrate No.II, kuzhithalai. He further submitted that during trial, the petitioner was examined as PW1 and during cross examination, the respondent herein has taken a plea that the Judicial Magistrate No.II, kuzhithalai, does not have jurisdiction merely because notice was issued from kuzhithalai and other acts were not committed in kuzhithalai. He further submitted that cross-examination of PW1 also stopped and thereafter, both the parties filed a joint memo before the Judicial Magistrate No.II, Kuzhithalai, praying to transfer the case in C.C.No.338 of 2012 to Judicial Magistrate No.III, Tiruchy, but the learned Magistrate kuzhithalai, did not pass any order in the said memo and hence, he prayed to transfer the case in C.C.No.338 of 2012 to the Judicial Magistrate No.III, Trichy for disposal in accordance with law.

4. The learned counsel for the respondent has submitted that Joint Memo was filed on 17.09.2013 to transfer the case in C.C.No.338 of 2012 to the Judicial Magistrate No.III, Tiruchy, but, thereafter, the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another, (2014) 9 SCC 129**, has held that where the recording of evidence has commenced as envisaged under Section 145 (2) of the Negotiable Instruments Act, 1881, proceedings will continue at that place itself. He further submitted that in C.C.No.338 of 2012 already evidence has been recorded and therefore, in view of the aforesaid decision of the Hon'ble Supreme Court, the Judicial Magistrate No.II, kuzhithalai will have jurisdiction and therefore, the said case need not be transferred to Judicial Magistrate No.III, Tiruchy.

5. The learned counsel for the petitioner, by way of reply submitted that to over come the legal position declared by the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another, (2014) 9 SCC 129** an Amendment has been introduced in the Negotiable Instruments Act by the Negotiable Instruments (Amendment) Second Ordinance, 2015, which came into force with effect from 15.06.2015. He further submitted that as per the said Ordinance, Section 142 of the Negotiable Instruments Act, has been amended and sub-Section 2 has been incorporated. He further submitted that a new Section 142 (A) of the Negotiable Instruments Act, was also inserted and in view of the said amendment, the offence under Section 138 shall be inquired into

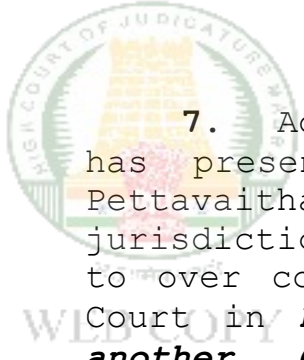


and tried only by a Court within whose local jurisdiction, if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated. He further submitted that since the branch of the bank of the payee is situated within the jurisdiction of Judicial Magistrate No.III, Tiruchy, the case has to be transferred to the said Court.

6. In support of the said contention, he relied upon the decision in **M/s.Bridgestone India Pvt. Ltd., V. Inderpal Singh, 2016 CRI.L.J.553**, wherein, the Hon'ble Supreme Court in Para Nos.12 and 13 has observed as follows:-

"12. We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142A(1) to the effect, that the judgement rendered by this Court in Dashrath Rup Singh Rathod's (AIR 2014 SC 3519) case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonor of the cheque in the present case arises.

13. Since cheque No.1950, in the sum of Rs.26,958/- drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI Bank, Indore, which intimated its dishonor to the appellant on 04.08.2006, we are of the view that the Judicial Magistrate, First Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable Instruments (Amendment) Second Ordinance, 2015. the words "...as if that sub-Section had been in force at all material times..." used with reference to Section 142 (2), in Section 142A(1) gives retrospective to the provision,"



7. Admittedly, in the case on hand, the petitioner herein has presented the cheque for collection in Bank of India, Pettavaithalai Branch, Trichy District, which comes within the jurisdiction of the Judicial Magistrate No.III, Tiruchy. In order to overcome the legal position declared by the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another, (2014) 9 SCC 129**, an amendment has been made in the Negotiable Instruments Act. So, the judgment rendered by the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another, (2014) 9 SCC 129**, would not help the respondent herein.

8. In view of the aforesaid decision of the Hon'ble Supreme Court in **M/s.Bridgestone India Pvt. Ltd., V. Inderpal Singh, 2016 CRI.L.J.553**, (supra), the Judicial Magistrate No.III, Tiruchy, alone will have territorial jurisdiction to try the aforesaid case.

9. For the aforesaid reasons, this Court is inclined to withdraw the case in C.C.No.338 of 2012 from the file of the Judicial Magistrate No.II, Kuzhithalai and transfer to Judicial Magistrate No.III, Trichy.

10. In the result, this petition is allowed. The case in C.C.No.338 of 2012 is ordered to be withdrawn from the file of the Judicial Magistrate No.II, Kuzhithalai, Karur District and transferred to the Judicial Magistrate No.III, Tiruchy, for disposal in accordance with law. Since the case is pending for the past six years, the learned Judicial Magistrate No.III, Tiruchy, is directed to dispose of the said case within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Kuzhithalai.

2.The Judicial Magistrate No.III, Trichy.

+ 1 cc TO Mr.RM.Sivakumar , Advocate in SR No. 65350

dna/vs

AE/KKR/SAR2/04.06.2018/4P/4C

Order in
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