



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C. (MD) No.75 of 2013

and

M.P. (MD) No.1 of 2013

A.Ganesh Kumar

..Revision Petitioner/ Complainant

Vs.

P.Stanly Robert

.. Respondent/ Revision Petitioner

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the order in Crl.R.C.No.32 of 2012 in C.C.No.84 of 2012 on the file of the Principal Sessions and District Court, Tuticorin District dated 12.12.2012 and set aside the same.

For Petitioner : Mr.T.Lajapathi Roy

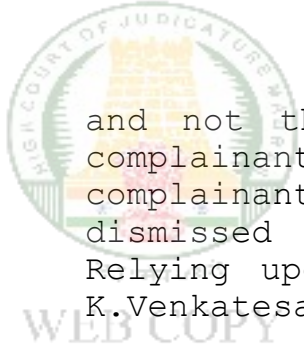
For Respondent : Mr.P.Pethu Rajesh

ORDER

Heard the learned counsel for the revision petitioner and learned counsel appearing for the respondent.

2. The revision petitioner herein is the complainant, who filed his complaint in C.C.No.84 of 2012 under Section 138 Negotiable Instruments Act, wherein the respondent is the accused. During business transaction, while the accused was carrying on his business at Tirupur, he has given a cheque on behalf of the partnership firm Sofia Exports to the complainant company M/s.Source Shipping India Private Limited to represent their power agent Mr.A.Ganesh Kumar. The said cheque was presented at Karur Vysya Bank, Thoothukudi for collection on 28.05.2011 which was sent for collection to the drawer Bank at Tiruppur, but the same has returned for insufficiency of funds and after serving the statutory notice, a complaint has been filed before the Judicial Magistrate -II, Tuticorin.

3. Since the presentation of the cheque for collection is within jurisdiction of the said Court, the accused filed a petition to reject the complaint rising jurisdictional issue. According to the accused, the learned Judicial Magistrate, Thoothukudi has no jurisdiction to decide the case. Since the subject cheque was issued at Tiruppur, notice to the accused was also served at Tiruppur and the accused Bank is at Tiruppur. Therefore, the proper Court which has jurisdiction is only the learned Judicial Magistrate, Tiruppur



and not the learned Judicial Magistrate, Thoothukudi, where the complainant's bank located. The said petition was contested by the complainant and the learned Judicial Magistrate, Thoothukudi dismissed the objections of the accused regarding jurisdiction. Relying upon the judgment of Madras High Court in A.S.Malan Vs., K.Venkatesan reported in 2012 (2) MWM (CR) (DCC) 22 Madras.

4. Aggrieved by that, the accused preferred the revision before the Principal Session District Judge, Thoothukudi. Learned District Judge allowed the revision petition relying upon the judgment of the Hon'ble Supreme Court passed in Harman Electronics Private Limited vs., National Panasonic India Private Limited reported in 2009 (1) SCC 720.

5. Wherein Court in respect of Dishonour of cheque cases under Section 138 of Negotiable Instruments Act has mentioned the following three places having jurisdiction:-

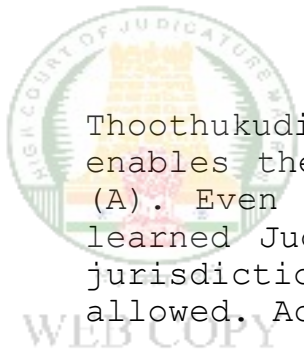
- (a) where the cheque has been issued;
- (b) where the cheque was returned by the drawee Bank;
- (c) where the statutory notice was served or received by accused or served on accused.

6. The learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Thoothukudi has allowed Cr.P.No.33 of 2012 in C.C.No.84 of 2012 directing to return the complaint which was taken on file in C.C.No.84 of 2011 dated 11.10.2012 to the complainant for presentation before proper Court having jurisdiction at Tiruppur. Aggrieved by the said order, the present revision petition is preferred.

7. It is brought to the notice of this Court by the learned counsel appearing for the revision petitioner that pending revision, this Court has granted stay of the impugned order. It is also brought to the notice of this Court that the uncertainty regarding the jurisdiction, where the complaint under Section 138 of the Negotiable Instruments Act can be preferred is now set at rest by inserting Section 142(A) of Negotiable Instruments Act by virtue of the Act 26 2015 w.e.f. from 15.06.2015.

8. Since the Appellate Court has wrongly applied the dictum laid down in Harman Electronics Private Limited vs., National Panasonic India Private Limited reported in 2009 (1) SCC 720, the judgment of the learned Principal Sessions Judge is liable to be set aside. The amendment introduced thereafter which has made the legal position clear without any ambiguity, warrants interference of the order passed by the learned Judicial Magistrate, Fast Track Court, Thoothukudi.

9. Learned counsel appearing for the respondents has no say in this matter in view of the amendment of the Negotiable Instruments Act and insertion of Section 142(A). The facts of this case indicate that the cheque was presented at Karur Vysya Bank,



Thoothukudi Branch which is one place of cause of action, which enables the complainant to file the complaint as per Section 142 (A). Even otherwise, the complaint which was taken on file by the learned Judicial Magistrate, Thoothukudi does not lack territorial jurisdiction. Therefore, this revision petition is bound to be allowed. Accordingly, Criminal Revision Petition is allowed.

10. In view of the long pendency of this matter for nearly six years due to confusion in ascertaining the judgment, it is essential to direct the trial Court to dispose of the matter as expeditious within a period of two months from the date of receipt of a copy of this order. Registry is directed to return the records to the trial Court forthwith, along with the order passed by this Court. Consequently, connected M.P.(MD) No.1 of 2013 is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1) The Principal District and Sessions Judge,
Thoothukudi.

2) The Judicial Magistrate,
Fast Track Court, (Magisterial Level), Thoothukudi.

3) The Judicial Magistrate, Tiruppur.

4) The Judicial Magistrate, Thoothukudi.

Copy To:

1. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

2. The Section Officer, ER/VR Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

+1CC to Mr. T. Lajapathi Roy, Advocate, SR.No. 90026

+1CC to Mr. P. Pethu Rajesh, Advocate, SR.No. 89741

Cr1.R.C. (MD) No.75 of 2013 and
M.P. (MD) No.1 of 2013
10.10.2018

STS

ES/SKN/RSK/SAR 2/03.12.2018/3P/11C