HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Transfer Criminal Petition No.278 of 2017

ORDER:

In this petition filed under Section 407 Cr.P.C, the petitioner/ accused seeks to transfer C.C.No.274 of 2017 from the Court of I Additional Chief Metropolitan Magistrate, Hyderabad to the Court of Judicial First Class Magistrate, Nellore.

2 a) The case of the petitioner is that he is the Managing Partner of M/s.Sri Lakshmi Vasavi Venkata Satya Sai Industry and obtained loan under the product of SCC OD from 2nd respondent/complainant bank by securing the schedule property but could not repay the amount and the account was classified as NPA. The 2nd respondent bank initiated proceedings under SARFAESI Act and issued notices under Section 13(2) and 13(4) of the Act, which were duly served on the borrower and all concerned and later the bank offered the property for sale in auction, which did not fructify and whereas an amount of Rs.19,99,77,953/- is due and outstanding to the bank from the petitioner firm as on 31.01.2017. Thereafter, the petitioner approached the bank and requested to sell the scheduled property by way of private treaty, permitted under SARFAESI Act, for which the purchaser i.e, third party came forward to purchase the same and all the parties entered into a tripartite agreement, wherein the 3rd and 4th party have mutually agreed to pay a sum of Rs.1,30,00,000/- towards sale consideration for the

schedule property to the bank within 90 days on or before 30.11.2017 and the 2nd respondent sold the property of the petitioner firm to third parties under SARFAESI Act for a valuable consideration of Rs.83,00,000/-. Thereafter, the 2nd respondent bank issued legal notice to the petitioner stating that the petitioner failed to keep up the commitment and a sum of Rs.20,45,33,285/- was outstanding as on 05.07.2016 and asked the petitioner to pay the cheque amount of Rs.9,59,00,000/- within 15 days from the date of receipt of notice. The petitioner submitted his reply on 22.10.2016 stating that the calculations arrived is incorrect and denied the outstanding amount due. The petitioner further submitted that the 2nd respondent bank had obtained cheque on 31.01.2014 and PDC declaration from the petitioner while sanctioning loan.

b) It is further submitted that the total transaction between the petitioner and 2nd respondent bank took place at ICICI Bank, Nellore Branch and the Account No.631051000279 of the petitioner firm is also with ICICI Bank, Nellore Branch but the 2nd respondent filed a complaint under NI Act at Hyderabad with an intention to harass the petitioner. Thus the petitioner prays to transfer the CC No.274/2017 from the file of I Additional Chief Metropolitan Magistrate at Hyderabad to the Court of Judicial First Class Magistrate, at Nellore.

3) Heard arguments of Sri P.R.K.Amarendra Kumar, learned counsel for petitioner and Sri G.Kalyan Chakravarthy, learned counsel for 2nd respondent.

4) Seeking transfer of C.C.No.274 of 2017 from the Court of I Additional Chief Metropolitan Magistrate, Hyderabad to the Court of Judicial First Class Magistrate, Nellore, learned counsel for petitioner would submit that all the transactions between the petitioner and the 2nd respondent/complainant bank took place at ICICI Bank, Nellore Branch and petitioner's firm Account No.631051000279 is maintained with ICICI Bank, Nellore branch and further all the properties of the petitioner were surrendered to complainant's bank at Nellore under whose surveillance, the symbolic possession lies with the complainant's bank and in view of all these facts, the complainant ought to have filed the C.C.No.274 of 2017 at Nellore instead of Hyderabad. The case was filed on a lame pretext that the complainant bank presented the cheque with its bank i.e, M/s.ICICI Bank, Khairthabad Branch, Hyderabad and there the cheque was returned with an endorsement "kindly contact Drawer/Drawee bank and present again". Learned counsel would submit that the case was filed at Hyderabad only to harass the petitioner. The petitioner is aged about 70 years and suffering with age old ailments. It is further submitted that the distance between Nellore to Hyderabad is 500 kms. He thus prayed that considering all these aspects the case may be transferred from Hyderabad to Nellore.

5) Learned counsel for 2nd respondent/complainant strongly opposed the transfer application on the submission that M/s.Sri Lakshmi Vasavi Venkata Satya Sai Industry, took huge loan from the ICICI Bank, at Nellore and the petitioner is the Principal Borrower and when he failed

to pay the amount, the ICICI bank, Nellore had to take up the proceedings under SARFAESI Act and at that stage, the petitioner issued cheque for Rs.9,59,00,000/- and when the said cheque was presented by the ICICI Bank, Nellore at its headquarters i.e, M/s. ICICI Bank, Khairthabad, where they maintain account and the cheque was rebounced and therefore, the Court at Hyderabad has jurisdiction. The petitioner is rich and well educated and there is no difficulty for him to attend the Court to defend the case at Hyderabad. He thus prayed to dismiss the transfer application.

6) The point for determination in this petition is:

"Whether there are merits in the petition to allow?"

7) **POINT**: From the facts it would appear that the petitioner is the Managing Director of M/s. Sri Lakshmi Vasavi Venkata Satya Sai Industry and he borrowed loan from the 2nd respondent/complainant i.e, ICICI Bank Ltd, Nellore. It would also appear that when the petitioner failed to pay the loan amount, proceedings under SARFAESI Act were initiated. Be that it may, the contention of the complainant is that the petitioner issued a cheque No.036721 for Rs.9,59,00,000/- drawn on M/s.Indian Bank, Nellore Branch and the same was presented by the complainant with its bank i.e, M/s.ICICI Bank Ltd, Khairthabad Branch, Hyderabad and the same was returned with an endorsement "kindly contact Drawer/Drawee bank and present again". Hence the complainant filed C.C.No.274/2017 on the file of I Additional Chief

Metropolitan Magistrate, Hyderabad. According to the 2nd respondent/complainant bank since the cheque was returned at the bank within the jurisdiction of Court at Hyderabad, the Trial Court has jurisdiction. There is force in the contention of learned counsel for 2nd respondent/complainant in view of Section 142 of Negotiable Instruments(Amendment) Act, 2015 w.e.f. 26.12.2015. The said Section reads thus:

***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.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) <u>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</u>; (emphasis supplied) *or*

(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.

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 cheque 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."

Thus Section 142(2) (a) clearly depicts that 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. Since the complainant maintains the account in M/s.ICICI Bank, Khairthabad Branch, the case is maintainable at Hyderabad. The effect of Negotiable Instruments (Amendment) Act, 2015 was discussed by the Apex Court in ***Bridgstone Indian Pvt. Ltd. v. Inderpal Singh***[1], as follows:

*"**Para 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 judgment rendered by this Court in **Dashrath Rupsingh Rathod's***

[1] (2016) 2 SCC 75

> *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."*

Thus there can be no demur about the jurisdiction vested in the Trial Court. Ofcourse from the submission of learned counsel for petitioner, it would appear that the petitioner is not questioning about the territorial jurisdiction of the Trial Court. However, the petitioner seeks for transfer of the case on the ground of convenience. When the case is maintainable before the Trial court, mere convenience of the petitioner/accused alone cannot be taken into consideration. It is a cheque bounce case and the petitioner allegedly given the cheque in question in the capacity of a borrower. In the backdrop of these facts, it would not appear that the petitioner needs to parade a large number of witnesses by bringing them all the way from Nellore. Therefore, this Court is not convinced with the request of the petitioner.

8) Accordingly, this Transfer Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.04.2018
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