

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 6th April, 2018
Decided on: 17th September, 2018

+

W.P. CRL. 2826/2016

ROSHAN LAL LALIT MOHAN & ANR

..... Petitioners

Represented by: Mr.A.Maitri with
Ms.Radhika Chander,
Advocates

versus

STATE & ANR

..... Respondents

Represented by: Mr.Avi Singh with Ms.
Purnima, Advocates for
Respondent No. 1. Mr.A.
Vijay Kumar, Advocate for
Respondent No. 2

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present writ petition is directed against the order dated 15th October, 2015 passed by the learned Metropolitan Magistrate (NI Act) in CC No.8667/2013, titled as '*National Agricultural Co-operative Marketing Federation of India Ltd. v. Roshan Lal Lalit Mohan*', whereby the said case was transferred to Bhubaneswar, Orissa in view of Negotiable Instruments (Amendment) Ordinance, 2015 since the complainant/ Respondent No.2 National Agricultural Co-operative Marketing Federation of India Ltd. had its account at Indian Overseas Bank, Bhubaneswar, Orissa.

2. Briefly stated, complainant/ Respondent No. 2 was engaged in the marketing of agricultural produce and financial activities. Petitioner

No.1, a proprietorship firm, had approached the complainant/ Respondent No. 2 for financial assistance. Petitioner entered into a Memorandum of Understanding with complainant/ Respondent No.2 vide agreement dated 5th July, 2004 for availing financial assistance for various items like dry fruits, oil and cake, kirana items, herbs, food grain, edible oil etc and had taken a total advance of ₹59.72 crores on different dates by cheques from the complainant.

3. Petitioner had purchased kirana items, dry fruits and spices for a total value of ₹41.71 crores and the complainant/ Respondent No. 2 as per the terms of MOU caused issuance of delivery orders from time to time against submission of post dated cheques. Out of the aforesaid PDCs, complainant/ Respondent No. 2 deposited a cheque bearing no.811730 dated 30th March, 2006 for a sum of ₹11,00,00,000 (Rupees eleven crores only) at its bank i.e. State Bank of India, Bikaner & Jaipur, Lawrence Road, New Delhi. Aforesaid cheque got dishonored on 3rd April, 2006. Petitioner requested the complainant/ Respondent No.2 to deposit the cheque afresh with the assurance of clearance.

4. On the above assurance, complainant/ Respondent No.2 again deposited the said cheque. It again got dishonoured on 30th June, 2006 vide intimation on 5th July, 2006 from the bank of complainant/Respondent No. 2 i.e. Overseas Bank, Bhubaneswar, Orissa on the ground of closure of Petitioner's account maintained at Canara Bank, Chandni Chowk, New Delhi.

5. On 3rd August, 2006, complainant/ Respondent No. 2 sent a legal notice to the petitioner for calling upon to make the payment of the cheque amount. Consequently, complainant/ Respondent No. 2 filed the

complaint case bearing No. 8667/2013 before the Court of Sub-Judicial Magistrate, Bhubaneswar.

6. Vide order dated 12th January, 2009 in Transfer Petition (Crl.) 513/2008, Supreme Court of India stayed the proceedings in the aforesaid complaint case pending before the Sub-Divisional Judicial Magistrate, Bhubaneswar, Orissa.

7. Vide order 27th September, 2010 Supreme Court of India allowed the aforesaid Transfer Petition and transferred the complaint case titled as '*National Agricultural Co-operative Marketing Federation of India Ltd. v. Roshan Lal Lalit Mohan*' to the Court of Chief Metropolitan Magistrate, New Delhi which is reproduced as under:

"In this Transfer Petition, notice was issued. Despite service of notice, nobody appears for the petitioner.

In pursuance of the notice, learned counsel appearing for the respondent, on instruction, submits that the respondent has no objection to the prayer of the petition for transfer. Consequently, this Transfer Petition is allowed in terms of the prayer and the Complaint Case No. 2293 of 2006, titled National Agricultural Co-operative Marketing Federation of India Ltd. Vs. M/s. Roshan Lal Lalit Mohan and Anr., pending before the Court of the Sub-Divisional Judicial Magistrate, Bhubaneswar, Orissa is directed to be transferred to the Court of Chief Metropolitan Magistrate, New Delhi."

8. Vide order dated 15th October, 2015, the learned Metropolitan Magistrate again transferred the matter back to Bhubaneswar, Orissa in view of Negotiable Instruments (Amendment) Ordinance, 2015, hence the present petition.

9. The petitioner had also filed an application for recalling of the

order dated 15th October, 2015 which was dismissed by the learned Metropolitan Magistrate (NI Act)- Central -01/THC/Delhi vide order 13th January, 2016 with the following observation:-

"6. Though attractive at first blush, the argument of the complainant falls apart on a closer scrutiny of the Amendment Ordinance of 2015, especially - Section 142A of the New Act, which reads as under :-

"142A (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material items."

A bare reading of the above, clearly discloses the use of a non obstante clause, the necessary implication of which is that the transfer of the case u/s 142 of the New Act, shall take place notwithstanding any judgment to the contrary. This appears to be the clear legislative intent, which would stand defeated if the interpretation advanced by the Ld. Counsel for the complainant is to be acceded to.

For the foregoing reason, no cause for recalling of the order is made out. Let the order of transfer dated 15.10.2015 be compiled with. Since the date originally

fixed for hearing before the Court of Bhubaneswar stands elapsed by efflux of time. Let the case be transferred to be taken up at the court of Ld. CJM, Bhubaneswar, Orissa on 28.03.2016 at 2:00 P.M."

10. Constitution bench of the Supreme Court in the decision reported as (2016) 8 SCC 509 Anita Kushwaha v. Pushap Sudan noted as under:

41. That brings us to the second facet of the question referred to us, namely, whether Article 32 of the Constitution of India read with Article 142 empowers the Supreme Court to direct transfer in a situation where neither the Central Code of Civil Procedure or the Central Code of Criminal Procedure empowers such transfer to/from the State of Jammu and Kashmir. The need for transfer of cases from one court to the other often arises in several situations which are suitably addressed by the courts competent to direct transfers in exercise of powers available to them under the Code of Civil Procedure (CPC) or the Code of Criminal Procedure (CrPC). Convenience of parties and witnesses often figures as the main reason for the courts to direct such transfers. What is significant is that while in the rest of the country the courts deal with applications for transfer of civil/criminal cases under the provisions of CPC and CrPC the fact that there is no such enabling provision for transfer from or to the State of Jammu and Kashmir does not detract from the power of a superior court to direct such transfer, if it is of the opinion that such a direction is essential to subserve the interest of justice. In other words, even if the provision empowering courts to direct transfer from one court to other were to stand deleted from the statute, the superior courts would still be competent to direct such transfer in appropriate cases so long as such courts are satisfied that denial of such a transfer would result in violation

of the right to access to justice to a litigant in a given fact situation.

42. Now if access to justice is a facet of the right to life guaranteed under Article 21 of the Constitution, a violation, actual or threatened, of that right would justify the invocation of this Court's powers under Article 32 of the Constitution. Exercise of the power vested in the Court under that Article could take the form of a direction for transfer of a case from one court to the other to meet situations where the statutory provisions do not provide for such transfers. Any such exercise would be legitimate, as it would prevent the violation of the fundamental right of the citizens guaranteed under Article 21 of the Constitution.

43. That apart from Article 32 even Article 142 of the Constitution can be invoked to direct transfer of a case from one court to the other, is also settled by a Constitution Bench decision of this Court in Union Carbide Corpn. v. Union of India[Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] . One of the questions that fell for consideration in that case was whether this Court could in exercise of its powers under Articles 136 and 142 withdraw a case pending in the lower court and dispose of the same finally even when Article 139-A does not empower the Court to do so. Answering the question in the affirmative, this Court held that the power to transfer cases is not exhausted under Article 139-A of the Constitution. This Court observed that Article 139-A enables the litigant to seek transfer of proceedings, if the conditions in the Article are satisfied. The said Article was not intended to nor does it operate to affect the wide powers available to this Court under Articles 136 and 142 of the Constitution. The

following two passages from the judgments are apposite in this regard: (SCC p. 627, para 61)

“61. To the extent power of withdrawal and transfer of cases to the Apex Court is, in the opinion of the Court, necessary for the purpose of effectuating the high purpose of Articles 136 and 142(1), the power under Article 139-A must be held not to exhaust the power of withdrawal and transfer. Article 139-A, it is relevant to mention here, was introduced as part of the scheme of the Constitution Forty-second Amendment. That amendment proposed to invest the Supreme Court with exclusive jurisdiction to determine the constitutional validity of Central laws by inserting Articles 131-A, 139-A and 144-A. But Articles 131-A and 144-A were omitted by the Forty-third Amendment Act, 1977, leaving Article 139-A intact. That Article enables the litigants to approach the Apex Court for transfer of proceedings if the conditions envisaged in that Article are satisfied. Article 139-A was not intended, nor does it operate, to whittle down the existing wide powers under Articles 136 and 142 of the Constitution.”

44. Dealing with the question whether a provision contained in an ordinary statute would affect the exercise of powers under Article 142 of the Constitution, this Court held that the constitutional power under Article 142 was at a different level altogether and that an ordinary statute could not control the exercise of that power. Speaking for the majority, Venkatachaliah, J., as his Lordship then was, observed: (Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , SCC p. 635, para 83)

“83. ... The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or

limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers—limited in some appropriate way—is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. ... But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of “complete justice” of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not “complete justice” of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.”

11. In the present case, even though the place where the cheque was presented for encashment by complainant/Respondent No.2 is

Bhubaneswar, Orissa and in view of Negotiable Instruments (Amendment) Second Ordinance, 2015, the territorial jurisdiction would be within the local jurisdiction of the branch of the bank where the payee maintains the account which in the present case is Overseas Bank, Bhubaneswar, Orissa, however, the power of the Supreme Court to transfer cases is on an entirely different level. When a case is transferred by the Supreme Court under Articles 139A, 136 and 142 of the Constitution of India to meet the needs of complete justice as is evident from the order dated 27th September, 2010 passed by the Hon'ble Supreme Court, the learned Metropolitan Magistrate could interpreting the Amendment Ordinance of 2015, re-transfer the complaint. The order of the Hon'ble Supreme Court dated 27th September, 2010 transferring the case to the Court of Chief Metropolitan Magistrate, New Delhi would prevail in view of *Anita Kushwaha (Supra)* over the Negotiable Instruments (Amendment) Second Ordinance, 2015.

12. Impugned orders dated 15th October, 2015 and 13th January, 2016 are set aside.

13. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 17, 2018
'rk'