

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

251

CRR 4058 of 2016 (O&M)
Date of Decision: 11.12.2019

Saroj Rani

....Petitioner

VS

Saleem Khan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present : Mr.Pankaj Gupta, Advocate
for the petitioner.

Mr. Sham Lal Bhalla, Advocate
for the respondent.

Amol Rattan Singh, J. (Oral)

The issue in this petition is as to whether the complaint instituted by the petitioner, under the provisions of Negotiable Instruments Act 1881, would be entertainable by a court at Ludhiana or at Sunam, with the contention of learned counsel for the petitioner being that though he had presented the cheque in question at the branch of the State Bank of India, Millerganj, Ludhiana, his account in the said bank is actually maintained in Sunam and therefore, only the Court at Sunam would have jurisdiction to entertain the complaint, in terms of the amended provisions of Section 142 of the aforesaid Act of 1881, specifically Clause (a) of Sub-section (2) of the said provision, read with its explanation.

He has made a specific statement to the effect that the account of the petitioner has been always maintained at the Sunam Branch of the State Bank of India.

Today, Mr. Sham Lal Bhalla, having appeared for the respondent, points to what was directed by the order of this Court (Coordinate Bench) on 13.03.2019, to the following effect:-

*“Learned counsel seeks short adjournment to file certificate from State Bank of India, Miller Ganj branch to the effect that he does not maintain any account in the said branch and did not even have any account there when the cheque in question was dishonoured.
List on 07.05.2019.”*

He submits that the said direction has still not been complied with.

Learned counsel for the petitioner, however, submits that he is not being given a certificate to that effect by the Branch Manager of the State Bank of India at Miller Ganj, as he does not have an account there.

Having considered the matter, it is first to be noticed that Section 142 of the Negotiable Instruments Act, 1881, reads as follows:-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognisance of any crime 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 should be filed 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 Court may take the cognizance of a complaint 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.”

In view of what is contained in Clause (a) of Sub-section (2) read with the explanation thereto, it is very obvious that “an accounts payees cheque”, no matter which branch of any Bank it is presented to, it would be deemed to have been presented in the branch of that bank in which the payee (or the holder of the cheque as the case may be) maintains his account.

The specific contention of learned counsel being that his account is maintained in the State Bank of India, Sunam Branch, and not in the Miller Ganj Branch at Ludhiana, this petition is disposed of with a direction that the petitioner would present a certificate as directed by this Court on 13.03.2019, issued by the Branch Manager of the State Bank of India at Miller Ganj, Ludhiana, as also from the Branch Manager of the State Bank of India, Sunam, stating therein as to whether the petitioner maintains, or has ever maintained an account with either Branch/ or with both Branches.

The said certificate should be presented to the trial Court presently seized of the matter, i.e. the Judicial Magistrate Ist Class, Ludhiana, and if the petitioner states before that court that either of the Branch Managers is not giving him the certificate, that court would summon the Branch Manager concerned who is not issuing such certificate, and direct him to furnish such certificate as per the records of the Branch concerned.

It need not be actually be stated by this Court, but by way of ample clarification, it is directed that if the Branch Manager concerned does not respond to the summons issued by the trial Court, naturally, all necessary means as are necessary to obtain his presence, shall be resorted to by that court.

Upon such certificate being produced before that Court, if it is found that the petitioner never maintained an account with the State Bank of

India at its Miller Ganj Branch in Ludhiana, at the time that the cheque was presented to that Branch, and in fact his account is maintained in State Bank of India at Sunam, the impugned order passed by the trial Court would be deemed to have been set aside, with that court directed to send the complaint for further proceedings to the competent Court at Sunam.

If, however, it is found that the petitioner was actually maintaining an account in the Miller Ganj Branch also/only, naturally, the court at Ludhiana would continue to try the case.

Other than at the time when the certificate itself is presented to the Court, the petitioner's personal presence would not be insisted upon by that Court, unless such presence is considered necessary to establish or disprove a fact. Naturally, if the respondent, i.e. the accused, also makes such an application before that court, that would be considered on the same criterion by that court. (The aforesaid direction would enure till the court establishes as to which court is the competent court)

At this stage, learned counsel for the petitioner submits that it is possible that the Branch of the State Bank of India at Miller Ganj has been merged with some other Branch. If that is so, the concerned Branch Manager will be he/she who is incharge of the Branch into which the Miller Ganj Branch has been merged, as regards issuing a certificate as to whether or not the petitioner was maintaining an account in the Miller Ganj Branch at the time when the cheque was presented.

(AMOL RATTAN SINGH)
JUDGE

11.12.2019

Satyawan

Whether speaking / reasoned	: Yes
Whether reportable	: Yes