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

% Judgment delivered on: 17.05.2019

+ CRL.REV.P. 60/2015

PEC LTD

..... Petitioner

versus

TRAXPO ENTERPRISES PVT LTD & ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Arvind Chaudhary, Advocate.

For the Respondent : Mr. Kuljeet Rawal with Mr. Rajesh Rawal,
Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 07.11.2014, whereby relying on the judgment of the Supreme Court in *Dashrath Roopsingh Rathod vs. State of Maharashtra*: 2014 (9) SCALE 97, the Trial Court held that it did not have the territorial jurisdiction to try the complaint and thereafter returned the complaint, filed by the petitioner, to be presented in the Court of competent jurisdiction.

2. Petitioner had filed a complaint under Section 138 Negotiable Instrument Act, 1881 (hereinafter referred to as the Act) contending that cheque in the sum of Rs.6 crores, given by the respondent, when presented, had dishonoured.

3. Learned counsel for the petitioner submits that the Trial Court had erred in not appreciating that the judgment of the Supreme Court in *Dashrath Roopsingh Rathod* (supra) was not applicable to the facts of the present case; as recording of the evidence had already commenced and the matter was at the stage of trial, as envisaged under Section 145(2) of Negotiable Instrument Act, 1881 and only those cases which had not reached the said stage were liable to be transferred.

4. Learned counsel for the petitioner further submits that in view of the amendment to the Negotiable Instrument Act, 1881, by Act 26 of 2015, which inserted Section 142A of the Act, the concerned Trial Court has the territorial jurisdiction to entertain the complaint filed by the petitioner.

5. Learned counsel for the petitioner submits that in terms of Section 142 (2) (a) of the Act, the Court within whose territorial jurisdiction the bank of the payee, where the cheque is delivered for collection, is situated would have jurisdiction to try the complaint.

6. Learned counsel for the petitioner submits that the bank of the petitioner/payee is in Connaught Place and, accordingly, the concerned Court at Patiala House Courts, New Delhi would have the territorial jurisdiction to entertain the complaint.

7. Learned counsel appearing for the respondent submits that the stage of section 145(2) of the Act had not been reached and as such there was no error committed by the Trial Court in applying the ratio of the judgment of the Supreme Court in *Dashrath Roopsingh Rathod* (supra). He further submits that since the Trial Court has already passed the impugned order

directing return of the complaint and as such when the amendment of the Act has come into force, the proceedings were not pending and as such cannot now be continued before the same Court and the complaint has to be instituted before the concerned transferee Court.

8. I am unable to accept the contentions raised by the learned counsel for the respondent.

9. Perusal of the order sheets shows that after the petitioner had filed its evidence by way of affidavit, an application was filed by the respondent under Section 145(2) of the Act and the same was allowed by order dated 03.09.2013 and the matter was put up for cross-examination of the complainant witnesses. Thereafter, the matter kept pending for one reason or the other but was adjourned on each date for cross-examination of the complainant witnesses.

10. Section 145(2) of the Act empowers the Court to summon or examine any person giving evidence on affidavit as to the facts contained therein. In the present case, the affidavit by way of evidence had already been filed by the petitioner and the application filed by the respondent under Section 145(2) had been allowed and the matter was repeatedly fixed for cross-examination of the complainant witnesses. Clearly, the stage of 145(2) of the Act had been reached. Since the matter had crossed the stage of Section 145 (2) of the Act, the Trial Court had erred in applying the ratio of the judgment of the Supreme Court in *Dashrath Roopsingh Rathod* (supra), wherein, the Supreme Court has specifically held that those cases where post the summoning, appearance of alleged accused, recording of evidence had commenced, as envisaged under Section 145(2) of the Act,

the proceedings shall continue at that place.

11. Be that as it may. The Act now stands amended with insertion of Section 142A, which lays down that the Court having jurisdiction in terms of amended Section 142(2), would have jurisdiction.

12. Clearly, in terms of the amended provisions of Negotiable Instrument Act, 1881, the Court where the bank of the payee, where a cheque is presented for payment, is situated, would have the territorial jurisdiction to entertain the complaint.

13. As noticed above, the bank of the petitioner/payee is in Connaught Place and as such, the concerned Court at Patiala House Courts, New Delhi would have the territorial jurisdiction to entertain the complaint.

14. Coming to the argument of learned counsel for the respondent that as the impugned order returning the complaint had been passed by the Trial Court on 07.11.2014, prior to the amendment having come into force, said Court would not have jurisdiction and has become *functus officio*.

15. This argument is also liable to be rejected as the petitioner had immediately assailed the said order by filing the present proceedings. The impugned order was passed on 07.11.2014 and petitioner had presented this petition on 15.01.2015 well within the period of limitation. The present proceedings would be deemed to be a continuation of proceedings before the Trial Court. Furthermore, Section 142A begins with a *non obstante* clause “*Notwithstanding anything contained in the Code of Criminal Procedure or any judgment, decree, order or direction of any court*”

16. As noticed above, since the Trial Court has erred in applying the ratio of the judgment of the Supreme Court in *Dashrath Roopsingh Rathod* (supra) and further in view of the amended provisions of the Negotiable Instrument Act, 1881, I am of the view that the impugned order is not sustainable and is accordingly set aside. The complaint is restored to the file of the concerned Court.

17. Parties/authorised representatives shall appear before the Court of Chief Metropolitan Magistrate on 15.07.2019, who shall assign the case to the concerned designated Court. The designated Court, to which the proceedings are assigned, shall expedite the same and endeavour to conclude the same within a period of four months of the assignment.

18. Petition is disposed of in the above terms.

19. Order *Dasti* under the signatures of the Court Master.

MAY 17, 2019
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SANJEEV SACHDEVA, J