IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on: 27.02.2020 | Delivered on: 19.05.2020 |
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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.17937 of 2017
and
Crl.M.P.Nos.10949 and 10950 of 2017

1.M/s.Shankar Selection Private Limited
Rep by its Director Mr.Sachin Gupta
Having registered office at
113, Park Street, Ground Floor
Poddar Point, Kolkata.

2.Sachin Gupta
3.Usha Gupta ... Petitioners

Vs.

M/s.Kotak Mahindra Bank Limited
Having Office at
II Floor, No.39, Ceerous Centre,
Montieth Road, Egmore, Chennai 600 008
Rep by its Associated Vice President
Mr.V.Ragothaman ...Respondent

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in petitioners/accused in C.C.No.1036 of 2017 on the file of the VII Metropolitan Magistrate, George Town at Chennai and quash the proceedings against the petitioners/accused.

For Petitioners: Mr.N.Baaskaran

For Respondent : Mr.V.Raghavachari
for Mr.M.Arunachalam

ORDER

This petition has been filed by the accused Nos.1 to 3 to quash the proceedings against them in C.C.No.1036 of 2017 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

2. The respondent herein has filed a private complaint stating that the petitioners herein have committed an offence punishable under Section 138 of the Negotiable Instruments Act. Based on the said complaint, the learned VII Metropolitan Magistrate, George Town, Chennai has taken the case on file in C.C.No.1036 of 2017 and issued summons to the accused persons. After receipt of the summons, the accused Nos.1 to 3 have filed the present petition under Section 482 of Cr.P.C., to quash the proceedings against them.

3. The learned counsel for the petitioners/accused has submitted that the petitioners are doing a business in Textiles in the name and style of "M/s.Shankar Selection (P) Ltd" in Calcutta, and it was a family business. The petitioners availed cash and credit facility from the respondent bank in the year 2014. At the time of availing the loan, the petitioners have executed various documents and also issued two blank cheques. He further submitted that as there were some problems in the family, the family businesses were partitioned and that the petitioners' brother loan was declared as 'NPA'. Consequent to that the petitioners' loan accounts was also declared as 'NPA' account and their account was frozen in the year 2015.

4. He further submitted that the said cheques were given only for security purpose and there is no liability for the said cheques. The petitioners were shocked to receive a notice under Section 138 of the Negotiable Instruments Act, dated 03.03.2017 from the respondent bank, as if two cheques of Kotak Mahindra Bank, (the respondent bank), were issued to the respondent bank and the same were presented for collection in the frozen account by the respondent bank. He further submitted that the blank cheques which were given at the time of availing the loan in Calcutta were presented in Chennai branch of Kotak Mahindra Bank in the account which was frozen by the respondent bank and notice was issued and the present complaint has been filed by the respondent bank. He further submitted that admittedly, the entire transaction took place only in Calcutta, however, the cheques were presented in the Chennai and legal notice was issued from Chennai and based on that, the respondent has filed the private complaint before the Court at Chennai. He further submitted that the Court at Chennai is not having jurisdiction to try the case and therefore, he prayed to quash the proceedings against the petitioners in C.C.No.1036 of 2017 on the file of the VII Metropolitan Magistrate George Town, Chennai.

5. In support of the aforesaid contentions, he relied upon a decision of the Delhi High Court in Good Luck Traders Vs. State and Others (CRL.MC.Nos.4106 to 4108 of 2014 dated 17.12.2014).

6. Per contra, the learned counsel for the respondent/complainant has submitted that the petitioners have not denied the issuance of the cheques in favour of the respondent bank for discharging the debt. He further submitted that the Hon'ble Supreme Court in Dashrath Rupsingh Rathod V. State of Maharashtra and another, (2014) 9 SCC 129 has held that the general rule stipulated under Section 177 Cr.P.C., applies to cases under Section 138 of the Negotiable Instruments Act. It has further held that the prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

7. The learned counsel for the respondent, further submitted that in order to overcome the legal position declared by the Hon'ble Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra and another (cited supra) an amendment was introduced through the Negotiable Instruments (Amendment) Second Ordinance, 2015 whereby, the Original Section 142 of the Negotiable Instruments Act, 1881, came to be amended and also, Section 142-A was inserted in the Negotiable Instruments Act. He further submitted that subsequently the said Ordinance was replaced by the Negotiable Instruments (Amendment) Act, 2015. He further submitted that the Section 142 (2) (a) of the Negotiable Instruments Act, 1881 amended through the Negotiable Instruments Act, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, in the court, where 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.

8. He further submitted that as per the Explanation to Section 142(2) of the Negotiable Instruments Act, where a cheque is delivered for collection at any branch of the bank of

the payee on 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. He further submitted that the aforesaid Ordinance came up for consideration before the Hon'ble Supreme Court in M/s.Bridgestone India Pvt Ltd., Vs. Inderpal Singh, CDJ 2015 SC 938 wherein it was held that in view of the amendment introduced in Section 142 (2) (a) of the Negotiable Instruments Act, jurisdiction for initiating proceedings for the offence under Section 138 of Negotiable Instruments Act is vested in 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).

9. He further submitted that since the respondent bank is having branches all over the country, the respondent has presented the cheques in the branch situated at Chennai and hence, the courts at Chennai will have jurisdiction to try the aforesaid case and therefore, he prayed to dismiss this petition.

10. In Dashrath Rupsingh Rathod V. State of Maharashtra and another, (cited supra) a three Judge Bench of the Hon'ble Supreme Court in para No.58.7 has held as follows:-

> "58.7. The general rule Stipulated under Section 177 Cr.P.C., applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof."

11. In order to overcome the legal position declared by the Hon'ble Supreme Court in the aforesaid decision, an amendment was introduced in the Negotiable Instruments Act vide, the Negotiable Instruments (Amendment) Act, 2015 and whereby, the original Section 142 of the main Act, came to be amended and also Section 142-A was inserted into the main Act.

12. After considering the aforesaid amendments, the Hon'ble Supreme Court in M/s.Bridgestone India Pvt. Ltd., Vs. Inderpal Singh (cited supra) in para Nos.12 and 13 has observed as follows:-

> "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 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.
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> 13. Since cheque No.1950, in the sum of Rs.26,958, drawn on the Union Bank of India Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI
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> Bank, Indore, which intimated its dishonor to the appellant on 04.08.2006, we are of the view that the Judicial Magistrate, Firt Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable Instruments (Amendment) Second Ordinance, 2015. The words "...as if that Sub-Section had been in force at all material times..." used with reference to Section 142(2), in Section 142A(1) gives retrospectivity to the provision."

13. From the aforesaid decision, it is clear 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).



14. In this case, the petitioners are doing business at Calcutta and they are residing only at Calcutta. Further, they availed loan from the respondent bank at Calcutta branch and issued the cheques only to the Calcutta branch. The respondent bank could have presented the said cheques at Calcutta branch itself, but it has presented the said cheques at Chennai branch and for that the respondent bank has not stated any reason.

15. In Good Luck Traders Vs. State and Others (cited supra), the Delhi High Court has observed in paragraph Nos.15 and 17 as follows:-

> "No doubt, a cheque which is made payable at par/multi-city cheque can be presented at any of the branches of the bank, which has been nominated as CBS branch of the drawee bank in terms of the recent guidelines issued by the Reserve Bank of India vide circular dated 10.08.2012. (Annexure P-5 with the petition). However, it is to be noticed that the said guidelines had been issued by Reserve Bank of India altogether with different object. The said object is to facilitate speedy encashment of amount against cheques, more particularly in cases of out-stationed cheques. It is a matter of common knowledge that in the past, there used to be considerable delay in collection of out-stationed cheques which led to number of complaints from customers and members of public at large. The average time consumed in the out-stationed cheque used to be somewhere between seven days to one month. In order to improve the service with regard to collection of out-stationed cheques, facility of cheques which are payable at par/multi-city cheques was introduced in the banking system.....
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> "17. There is another reason to which the contention raised on behalf of petitioner/complainant cannot be sustained. The cheque amount is supposed to be paid from the account of accused/respondents maintained at home branch of drawee bank. It is merely as a result of computerization of all the branches of bank,

> facility has been provided for encashment of cheques payable at par at any branch irrespective of the fact that account holder was not having bank account in the branch where the cheque is presented. Merely because the cheques has been presented at non-home branch of drawee bank, it does not in any manner, become the drawee bank for the obvious reason that before encashing the cheques payable at par, the non-home branch is still required to verify from home branch of the drawee branch as to whether or not there was any impediment in encashment of the cheque drawn at home branch. Even otherwise, in the event of encashment, the amount of cheque would be required to be debited in the account of the accused maintained at home branch as the amount was only payable by the home branch of drawee bank. Therefore, the presentation of cheque at non-home branch of drawee bank being the cheque which is payable at par/multi-city cheque, will not change the character of drawee bank and would not confer territorial jurisdiction on Chennai Courts."

16. As per the aforesaid decision, merely because the cheque has been presented at non-home branch of drawee bank, it does not in any manner become the drawee bank.

17. As per Sub-section (2) of Section 142 of the Negotiable Instruments Act, 1881, amended through the Negotiable Instruments (Amendment) Act, 2015, the offence under Section 138 of the Negotiable Instruments Act shall be inquired into and tried only by a court within whose local jurisdiction the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course maintains the account is situated, except in cases of bearer cheques, which are presented to the branch of the drawee bank and in that case, the local court of that branch would get jurisdiction. Explanation to Sub-section (2) of Section 142 of the Act clarifies that even if the cheque is presented 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 presented to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account. In such cases also, the payee or holder in due course, can file a complaint before the court within whose local jurisdiction the branch of the bank where the payee or holder in due course, as the case may be, maintains the account is situated. In this case, since

payee/complainant bank is having account only at Calcutta, the presentation of cheques at Chennai, shall be deemed to be presented at Calcutta Branch. Hence, the Courts at Calcutta alone will have jurisdiction and not the Courts at Chennai. Therefore, the cognizance taken by the VII Metropolitan Magistrate, George Town, Chennai is liable to be quashed.

18. For the aforesaid reasons, this petition is allowed. The cognizance taken by the VII Metropolitan Magistrate, George Town, Chennai is quashed. The learned VII Metropolitan Magistrate, George Town, Chennai is directed to return the complaint to enable the complainant to present the same before the Court having territorial jurisdiction (Court at Calcutta). Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The VII Metropolitan Magistrate,
George Town at Chennai.

Pre-Delivery Order in
Crl.O.P.No.17937 of 2017
and
Crl.M.P.Nos.10949 and
10950 of 2017

RLD(CO)
CB(13/07/2020)