

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

**CRM-M-9372-2018(O&M)
Date of decision:-13.2.2020**

M/s Green Electric and another

...Petitioners

Versus

M/s Hero Exports

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Atul Goel, Advocate
for the petitioners.

Mr.Dheeraj Jain, Advocate
for the respondent.

H.S. MADAAN, J.

By way of filing the present petition under Section 482 Cr.P.C., petitioner M/s Green Electric and its Proprietor Kunta Sai Kumar, a resident of Hyderabad (Andhra Pradesh) seek quashing of complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881(hereinafter referred to as the Act) pending in the Court of Judicial Magistrate Ist Class, Ludhiana as well as order dated 19.9.2015 vide which the petitioners have been summoned to face trial and other consequential proceedings arising therefrom.

According to the petitioners, the complainant M/s Hero

Exports, New Delhi which is respondent in this petition had filed a complaint under Section 138 of the Act against the present petitioners, which was pending before Addl. Chief Metropolitan Magistrate at New Delhi. While the case was at the stage of service of accused, the said Magistrate returned the complaint to be filed before the Court of competent jurisdiction in view of judgment rendered by the Apex Court in **Dashrath Rupsingh Rathod Versus State of Maharashtra and Anr.** As a matter of fact the entire dealing between the parties had taken place at New Delhi. The cheques issued by the petitioner were from the banks situated at Hyderabad, which were presented by the respondent with ICICI Bank at Delhi on 6.9.2011. The trial Court at Delhi had earlier rightly returned the complaint in view of the judgment delivered in **Dashrath Rupsingh's** case (supra) since the complaint was to be presented at Hyderabad as cause of action had arisen there because banker of the accused has address of that place and cheques were dishonoured there. However, instead of presenting the complaint afresh at Hyderabad, it was presented at Ludhiana, that too, after a gap of nine months. Learned Judicial Magistrate Ist Class, Ludhiana, while relying upon the Negotiable Instruments (Amendment) Ordinance, 2015 accepted the complaint and vide impugned order dated 19.9.2015 proceeded to summon the petitioner. The Bill relating to Negotiable Instruments (Amendment) Ordinance, 2015 was eventually accepted as Negotiable Instruments (Amendment) Act, 2015 w.e.f. 26.12.2015. According to the Ordinance as well as the Amendment Act, Sub-Section (2) was inserted in Section 142 of the Principal Act, which reads as under:-

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

(a) 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; 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, the Court at Ludhiana does not have jurisdiction. Therefore, the petition be accepted.

On getting notice, the respondent/complainant appeared and filed written reply contesting the petition raising preliminary objections that the petition is not maintainable because the petitioners/accused had an alternative remedy of filing an application under Section 177 Cr.P.C. before the trial Court to agitate the allegations of lack of territorial jurisdiction; that the petitioner have not disclosed that they had filed an application under Section 205 Cr.P.C. for exemption from personal appearance on 5.9.2017 before the trial Court to which the complainant had filed reply and it was pending for adjudication, when order was passed by this Court granting exemption from personal appearance to

the petitioner/accused. On merits, the material assertions in the petition are controverted contending that criminal complaint was rightly filed before Judicial Magistrate Ist Class, Ludhiana since that Court has territorial jurisdiction; the original complaint and documents were returned to the complainant by the Court of Metropolitan Magistrate, Delhi on 8.9.2015 only and the same were submitted to Judicial Magistrate Ist Class, Ludhiana on 15.9.2015 i.e. within a week of their return and not after a period of nine months as alleged by the petitioners. According to the respondent-complainant, it maintains bank account with ICICI Bank Branch situated in Nehru Sidant Kender, Trust Building, Feroze Gandhi Market, Ludhiana, therefore the jurisdiction in this case would be only in the Courts situated at Ludhiana, which is clear from explanation to Section 142(2) of the Act. Refuting the remaining assertions made in the petition, the respondent prayed for dismissal of the petition.

I have heard learned counsel for the parties besides going through the record and I find little merit in the present petition.

As the things stand, the action of complainant in filing the complaint in the Court of Judicial Magistrate, Ludhiana does not appear to be wrong or erroneous. It does not come out that such Court lacks territorial jurisdiction to entertain and try the complaint in question.

The petitioners have rushed to this Court instead of availing of appropriate remedy in the Courts below. The petitioners should have agitated the matter with regard to lack of jurisdiction before the trial Magistrate at Ludhiana and could have brought the alleged delay of nine months in submitting the complaint there but for the reasons best known

to the petitioner, he did not chose to avail of that remedy.

The petition being without merit stands dismissed accordingly.

13.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No