

24.06.2021
Item No. 11
Crt.No.11
kb/b.r.

**FMA 680 of 2020
with
IA No. CAN 1 of 2019
(Old No. CAN 12790 of 2019)**

**Bidyut Baran Pal
-vs-
The State of West Bengal & Ors.**

(Via video conference)

**Mr. Uttam Kumar Bhattacharyya,
..... For the appellant.**

The appellant is before us on being aggrieved and dissatisfied with the impugned order and judgement passed on 26th August, 2019 in WP No. 14830(W) of 2019 by the learned Single Judge, inter alia, on the grounds that though the appellant writ petitioner was permitted by the impugned order to take appropriate steps with regard to the original case records pending with the Judicial Magistrate, Alipore, but the writ Court has failed to consider that the appellant had prayed for necessary direction upon the respondent no.3 for taking urgent necessary steps to send the original record of filed a under Section 138 of N.I. Act being Case No. C-4392 of 2016 lying in the custody of the learned Judicial Magistrate, 2nd Court, Alipore, South 24 Parganas at Alipore to the office of respondent no. 6, learned CJM, Medinipur.

Brief facts leading to the case of petitioner/appellant herein is that the cheques No.

574470 dated 04.12.2013 for Rs. 7,50,000/- and cheque No. 574471 dated 4.12.2013 for Rs. 2,00,000/- drawn on Punjab National Bank, Ballygunge Branch, Kolkata-700019 issued by the respondent no.7 were placed for clearance in the State Bank of India, Balichak Branch, District Medinipur but the cheques were dishonoured due to fund insufficient, for that, after compliance of legal formality of notice to the respondent no. 7, the petitioner/appellant herein had filed a complaint case under Section 138 N.I. Act which was registered as CR Case No. 91 of 2014 against the respondent no. 7 before the learned Chief Judicial Magistrate, Paschim Medinipur and the case was assigned to the 2nd Judicial Magistrate, 1st Class for inquiry and trial.

Mr. Bhattacharyya, learned counsel for the appellant herein submits that subsequently, by order dated 3rd December, 2016, the case was transferred to the Court of the learned Chief Judicial Magistrate at Alipore in view of the then decision of the Hon'ble Supreme Court with regard to the jurisdiction for entertaining such class of cases under Section 138 of the N.I. Act as the Punjab National Bank, Ballygunge Branch situated within the jurisdiction of CJM, Alipore, South 24 Parganas, wherefrom the cheque was issued in the name of the respondent no. 7. The learned Court of 2nd Judicial Magistrate, Alipore passed an order dated 6th December,

2017 transferring the case to the learned Court of Chief Judicial Magistrate, Paschim Medinipur.

In view of the solemn direction passed in the matter by the Hon'ble Supreme Court of India prevailing at the material time, the record of the CR Case 91 of 2014 was returned to the petitioner by order dated 03.12.2016 in granting liberty to file the same in the appropriate court.

The said case record was filed before the Learned CJM Alipore, South 24 Parganas within time and on transfer the learned 2nd Court of Judicial Magistrate of Alipore was assigned to hear the case record being renumbered as Case No. C-4392 of 2016. The learned Judicial Magistrate 2nd Court, Alipore, put up the hearing on several dates but in terms of the amendment of N.I Act, the Learned 2nd Court Judicial Magistrate passed the order dated 6.12.2017 transferring the said case record by hand to the learned Court of Chief Judicial Magistrate, Medinipur having jurisdiction to proceed with the matter under his Memo No. 056 dated 22.06.2018.

The whereabouts of the case filed ought to have been known in the first place because the petitioner/appellant herein was going to the office of the learned Judicial Magistrate, 2nd Court at Alipore for months together without any proof and proper information about the pendency of the case before the Court. So the appellant was compelled to take out an application under RTI Act, 2005 before S.P. I.O and the

learned Chief Judicial Magistrate at Alipore was requested to supply the information about the location of the original case records, being Case No. C-4392 of 2016 and the RTI was received on 30.12.2018 and reply has also been given to that effect within the statutory period.

It is further submitted that while the impugned order was passed, the facts with regard to the trial of the case under Section 138 of the NI Act was not taken into consideration by the writ Court as the complaint was initially instituted before the learned Chief Judicial Magistrate, Paschim Medinipur on 10th February, 2019 registered as C.R. number 91 of 2014 and on transfer the said case was heard by the learned Judicial Magistrate, Paschim Medinipur and subsequently transferred to the Court of learned Chief Judicial Magistrate, South 24 Parganas, Alipore by the order dated 3rd December, 2016 in view of the observation of the Hon'ble Supreme Court of India with regard to the Check issuing Bank being the Punjab National Bank, Ballygunge Branch within the jurisdiction of the learned Chief Judicial Magistrate, South 24 Parganas, Alipore having the jurisdiction.

The fact ought to have been appreciated that the learned Chief Judicial Magistrate had returned the original case record of Case no. C-4392 of 2016 under the speed post No. EW114104082IN and the learned Judicial Magistrate, 2nd Court Alipore was assigned with the case

records for holding trial through the learned Chief Judicial Magistrate, Alipore.

We have heard learned counsel for the appellant herein and gone through the judgement impugned and we are of the view that the order substantially has been passed in favour of the petitioner/appellant to take appropriate steps with regard to the case records pending with the learned Judicial Magistrate, Alipore as it appears that the case records is pending for inquiry and trial before the learned Judicial Magistrate, 2nd Court at Alipore.

In order to dispel the misgiving arising in the mind of the writ petitioner/appellant, the co-ordinate Bench of this Hon'ble Court by order dated 12th March, 2020 was pleased to direct the Registrar (Inspection-1) to present the status and whereabouts of the records pertaining to the said complaint case no. C-4392 of 2016 from the learned Chief Judicial Magistrate, Alipore.

The report of the learned Chief Judicial Magistrate was communicated to the registry through District Judge, South 24 Parganas which reflects that the case record is pending for disposal before the learned Judicial Magistrate, 2nd Court at Alipore and is physically lying at the said Court. But the petitioner has not appeared before the learned Judicial Magistrate, 2nd Court at Alipore, although, substantially the order directing the

petitioner/appellant herein was to take proper steps in the case before the Court concerned.

Although, we do not find any ground to interfere with the order impugned, nevertheless, we do find that there ought to have been certain observation in the body of the impugned order in respect of the factual aspect of the case which led the petitioner/appellant herein to invoke the writ jurisdiction of the Hon'ble Court.

Be that as it may, we are of the considered view that a complaint case under Section 138 of the NI Act pending before the Magistrate ought to have been disposed of speedily in a summary manner in the letter and spirit of provision under Section 143 NI Act which provides for Power of Court to try cases summarily but the case could not be disposed of due to the transfer and retransfer of the case from the Court of CJM, Medinipur to the Court of CJM, Alipore due to solemn direction passed by the Hon'ble Supreme Court.

We are alive to the proposition of law held by the Hon'ble Supreme Court in this regard that the Court within whose jurisdiction the offence is committed is the Court having jurisdiction where the drawer had issued the cheque and the cheque so issued was dishonoured.

With regard to the jurisdiction of Court of Judicial Magistrate of 1st Class, the Hon'ble Supreme Court in case of K. Bhaskaran vs Shankaran (1999) 7 SCC 510

had held that any of the following places have the jurisdiction to initiate the prosecution-

1. Where cheque is drawn.
2. Where payment had to be made.
3. Where cheque is presented for payment.
4. Where cheque is dishonored.
5. Where notice is served up to drawer.

But, in case of *Dashrath Rupsingh Rathod vs State of Maharashtra* (2014) 9 SCC 129, the 3 judge bench of the Supreme Court held that the territorial jurisdiction under section 138 should be exclusively be determined and considered by place of the offence. The return of the cheque by the drawer bank only constitutes the commission of offence under section 138.

It is settled proposition of law regarding territorial jurisdiction of the Courts in case of dishonor of cheque which has completely been changed with the new amendments by the Negotiable Instrument (Amendment) Act, 2015 which retrospectively came into force on and from 15th July, 2015. Now, subsection (2) has been added in section 142 which provisioned for the local jurisdiction of the court where the offence under Section 138 of NI Act shall be inquired into and tried and new Section 142A is inserted in the Act which provisioned validation for transfer of pending cases.

The Hon'ble Supreme Court has also directed that the offences alleged under Section 138 NI Act in the

matter of complaint being lodged by the drawee/payee has to be decided in summary manner and speedily. Ergo, while deciding this appeal, we direct the learned trial Court being the Judicial Magistrate, 2nd Court at Alipore to take steps for disposal of the complaint case No. C-4392 of 2016 as expeditiously as possible preferably with six months from the date of communication of this order.

With the aforesaid direction, the appeal being, FMA 680 of 2020 (MAT 1513/2019) along with CAN 1 of 2019 (Old No. CAN 12790 of 2019) are decided and disposed of.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Saugata Bhattacharyya, J.) (Shivakant Prasad, J.)