

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.506 OF 2018**

Saregama India Limited] Petitioner.

V/s.

- | | | | |
|----|--------------------------------------|---|-------------------|
| 1. | Nomad Films |] | |
| | Having its address at No.5, Shamim |] | |
| | Apartments, Opp. RTO Office, RTO |] | |
| | Lane, Andheri (West), Mumbai-400 053 |] | |
| 2. | Junaid Memon |] | |
| | Having its address at No.5, Shamim |] | |
| | Apartments, Opp. RTO Office, RTO |] | |
| | Lane, Andheri (West), Mumbai-400 053 |] | |
| 3. | The State of Maharashtra |] | Respondents. |

Mr. Yashpal Thakur a/w Mr. Ganesh Ambekar i/b. Dua Associates AOR for the Petitioner.

Smt. Aparajita Chandra i/b. Ms. Amrita Saldanha for the Respondent No.2.

Mr. Amit Palkar, APP for the Respondent No.3-State.

CORAM : A. S. GADKARI, J.

DATE : 9th MARCH, 2021.

PC.:-

By the present Petition, the petitioner/original complainant has impugned Order dated 31st January 2017 passed below Exh.127, by the learned Metropolitan Magistrate, 64th Court at Esplanade, Mumbai in C.C.No.6144/SS/2012, thereby rejecting its Application for return of its complaint.

2. Heard. Mr. Thakur, learned counsel for the petitioner, Smt. Chandra, learned counsel for the respondent No.2 and Mr. Palkar, learned A.P.P. for the respondent-State. Perused the record.

3. Petitioner has instituted the aforestated complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1988 (as amended), (for short, "*N.I.Act*"), on 17th April 2006 against the respondent Nos.1 and 2 for dishonour of cheques totaling Rs.10 lacs. The said cheques dated 16th February 2006 were drawn on Standard Chartered Bank, Fort Mumbai Branch. The petitioner presented those cheques for encashment at Canara Bank, Lokhandwala, Andheri (West). The said cheques were dishonoured on presentation at Canara Bank, Lokhandwala, Andheri (West). After receipt of summons the respondent No.2 appeared before the trial Court. Hearing of the said case was thereafter proceeded and recording of evidence of witnesses of petitioner is concluded. The respondent No.2 is in dock for recording of his evidence.

4. In this background, the petitioner filed Application below Exh.127 for return of the said complaint to the complainant. The Trial Court by its impugned Order dated 31st January 2017 has rejected the said Application on the ground that, in view of the provisions contained in Section 16(3) of the Code of Criminal Procedure, the said Court enjoins the jurisdiction to try the said case. That, more so, it is a specially established Court to deal with Section 138 of N.I. cases.

5. Mr. Thakur, learned counsel for the petitioner submitted that, in view of amended Section 142(2) of N.I.Act, the jurisdiction to entertain and try the said complaint would now vest with the learned Metropolitan Magistrate, Andheri. He submitted that, even if, the respondents consents for conferring jurisdiction to the learned Metropolitan Magistrate, 64th Court at Esplanade, Mumbai, then also, it would be conferring jurisdiction by consent and not as per law. In support of its contention, he relied on a decision of the Hon'ble Supreme Court in the case of *Nitinbhai Saevatilal Shah and Ors. Vs. Manubhai Manjibhai Panchal and Ors.* reported in *MANU/SC/1014/2011 : AIR 2011 SC 3076*. He therefore submitted that, the said complaint may be returned to the petitioner for its filing before the learned Metropolitan Magistrate at Andheri.

6. Smt. Chandra, learned counsel for the respondent No.2 opposed the Petition and submitted that, even after coming into effect of the said amendment in the year 2015, the petitioner continued with prosecuting it and the application for return of the said complaint was filed belatedly on 31st January 2017. She submitted that, therefore the petitioner has acquiesced his right for getting the complaint transferred to the Court at Andheri. She submitted that, the evidence of the complainant had already been recorded and the respondent No.2/accused is in dock for recording of his evidence. She however submitted that, she has no serious objection, if the hearing of complaint is continued with the Court of learned

Metropolitan Magistrate, 64th Court at Esplanade, Mumbai. She therefore prayed that, present Petition may be dismissed.

7. Section 142(2) of N.I.Act after its amendment by the amending Act 26 of 2015 which has come into effect from 15th June 2015, reads as under:-

“142. (1).....

(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.”

8. The Hon’ble Supreme Court in the case of *Nitinbhai Saevatilal Shah and Ors. (supra)*, in para No.15, has held that :

“15. It is well settled that no amount of consent by the parties can confer jurisdiction where there exists none, on a Court of law nor can they divest a Court of jurisdiction which it possesses under the law.”

9. The fact on record of the present case clearly discloses that, the petitioner being holder in due course, had presented the cheques in question with Canara Bank, Lokhandwala, Andheri (West) for its realization. The petitioner was having its account in the said branch and

therefore the jurisdiction to try and entertain the said complaint would vest with the learned Metropolitan Magistrate having territorial jurisdiction over the said branch.

10. Section 16 of Cr.P.C. prescribes for establishment of Courts of Metropolitan Magistrate, as the State Government may specify after consultation with the High Court by a notification. The further establishment of different Courts of Metropolitan Magistrates by conferring territorial jurisdiction is for the administrative convenience of the litigants and other stakeholders therein. Only because the learned Metropolitan Magistrate, 64th Court at Esplanade, Mumbai has been entrusted with the jurisdiction to try and conduct cases under Section 138 read with 141 of N.I. Act, it can not assume jurisdiction of all cases filed under Section 138 of N.I. Act within the Metropolitan Region of Mumbai. If the reasoning given by the learned Magistrate is to be accepted, then it will have a frustrating effect to the intention of legislature to amend sub-section 2 of Section 142 of N.I.Act. The legislature has brought into effect the said amendment with specific object. In view thereof, the reasoning given by the Trial Court while rejecting the Application below Exh.127 can not be accepted.

In the premise, the complaint filed by the petitioner bearing C.C.No.6144/SS/2012 needs to be returned to the petitioner for filing it in the Court of Metropolitan Magistrate, Andheri.

11. As the complaint is of the year 2006 and after a period of about 13 years it has reached the stage of hearing, it will be appropriate to direct the learned Metropolitan Magistrate, 64th Court at Esplanade, Mumbai to transfer the said case from its file to the file of learned Metropolitan Magistrate, Andheri, Mumbai having territorial jurisdiction over Canara Bank, Lokhandwala Complex, Andheri (West), within a period of two weeks from the date of receipt of the present Order.

12. As submitted by the learned counsel for the respective parties, the evidence of the complainant has already been recorded and the evidence of respondent No.2, accused is under the process of recording, it will be advisable that, the learned Metropolitan Magistrate, Andheri, Mumbai shall continue hearing of the said complaint from the stage of its transfer to its file and need not start *de novo* trial of the said complaint. Learned counsel for the respective parties, on instructions from their clients assures to this Court for speedy disposal of the said complaint.

13. Petition is accordingly allowed in the aforesaid terms.

(A.S. GADKARI, J.)