

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 3286 of 2022

Rahul Kumar

Vs.

M/s Link Telecom Private Limited

For the Petitioner: Mr. Debjit Sinha, Adv.,
Mr. Soumyadeep Mukherjee, Adv.,
Ms. Diottima Roy, Adv.

For the Opposite Party: Mr. Ayan Bhattacharya, Adv.,
Mr. Ashis Kr. Mukherjee, Adv.,
Mr. Saurabh Prasad, Adv.

Heard on: 20 December, 2022.

Judgment on: 20 December, 2022.

BIBEK CHAUDHURI, J. : –

1. Determination of territorial jurisdiction of a complaint under Section 138/141 of the Negotiable Instruments Act is the only issue involved in the instant revision.

2. The petitioner being a partner of M/s Susan Computers is the accused No.2 in a complaint case being CS No.16925 of 2019 under Sections 138/141 of the Negotiable Instruments Act pending before the learned Metropolitan Magistrate, 4th Court at Calcutta. The opposite party is the complainant who filed the above mentioned complaint alleging, inter alia, that in discharge of their existing debt and liability, the accused/petitioner issued one cheque dated 24th January, 2019 for a sum

of Rs.3,53,214/- drawn on Punjab National Bank, Exhibition Road Branch, Patna, Bihar in favour of the complainant. The complainant deposited the said cheque on 25th January, 2019 for encashment to its banker, namely ICICI Bank, Topsia Branch, Kolkata for encashment. However, the said cheque was dishonoured. The complaint was preceded by a statutory notice issued by authorized representative and the Advocate of the complainant in spite of receipt of such notice the accused persons failed to make payment of the said amount involved in the cheque in question within the stipulated period of time hence the complaint.

3. The petitioner has raised the solitary issue that the cheque in question was dishonoured by the ICICI Bank, Topsia Branch which falls within the territorial jurisdiction of the learned Chief Judicial Magistrate at Alipore. The complaint was filed before the learned Chief Metropolitan Magistrate at Calcutta, who has no jurisdiction to take cognizance of the offence and try the case against the accused. Therefore, the petitioner has prayed for quashing of the instant complaint.

4. Mr. Debjit Sinha, learned Advocate for the petitioner takes me to Sub-Section (2) of Section 142 of the Negotiable Instruments Act. 142(2) of the said Act has been inserted by amending act No.26 of 2015 with effect from 15th June, 2015. Section 142(2) runs thus:-

“(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.”

5. Explanation appended to Sub-Section (2) of Section 142 clearly states that for the purpose of Clause (a), where the 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. In the notice under Section 138(b) of the said Act issued on behalf of the complainant it is specifically and unequivocally stated that the complainant deposited the said cheque in ICICI Bank, Topsia Branch, Kolkata on 25th January, 2019 for encashment, but to its utter surprise the said cheque was returned unpaid being dishonoured with the remarks “drawers sign not as per mandate”.

6. The amending provision of Section 142(2) of the said Act states that if a cheque was delivered for collection through an account, the branch of the bank where the payee or the holder in due course maintained the account, attracts territorial jurisdiction. But if a cheque was presented for payment by the payee or holder in due course “otherwise through an account”, the branch of the bank where drawer maintains the account derives such jurisdiction.

7. The complainant maintains his bank account in ICICI Bank, Topsia Branch. The cheque returned memo issued in the name of the complainant stating the fact that the said cheque was dishonoured, was

issued by the ICICI Bank, Topsia Branch. It is not disputed that P.S Topsia is within the jurisdiction of the learned Chief Judicial Magistrate at Alipore, South 24 Parganas.

8. Mr. Ayan Bhattacharya, learned Advocate for the opposite party, on the other hand, submits that the opposite party/complainant maintains his account in ICICI Bank, Hare Street Branch. The cheque in question was deposited in Topsia Branch for encashment through CTS system. Nowadays cheque can be deposited to any branch of holder's bank for encashment. However, cheque return memo informing dishonor of cheque was issued by ICICI Bank, Hare Street Branch where the opposite party maintains his account. Thus, in view of the provision of Section 142(2)(a) of the Negotiable Instruments Act, the complaint was rightly filed in the Court of learned Chief Metropolitan Magistrate, Calcutta and he has territorial jurisdiction to try the case.

9. Though the amending provision of the Section 142 came into force with effect from 15th June, 2015, the issue of territorial jurisdiction of a complaint under Section 138 of the Negotiable Instruments Act came up for considering before the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod vs. State of Maharashtra** reported in **2014 AIR SCW 4798**. The said report was authored separately by the Hon'ble Justice T.S. Thakur for himself and the Hon'ble Justice Vikramjit Sen for himself and on behalf of C. Nagappan. The Hon'ble Judges concurrently held that the rule stipulated under Section 177 of the 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 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. Similar issue came up for consideration before the Hon'ble Supreme Court in **M/s Bridgestone India Pvt. Ltd vs. Inderpal Singh** reported in **2014 AIR SCW 6556** that the Hon'ble Supreme Court was pleased to hold that a perusal of the amended Section 142(2), leaves no room doubt, specially in view of the explanation thereunder, that with reference to an offence under Section 138 of the said Act, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction.

10. In **Dashrath Rupsingh Rathod** (supra) earlier decision of the Hon'ble Supreme Court in **K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr.** reported in **1999 AIR SCW 3809** was overruled.

11. Recently a Coordinate Bench of this Court in **Mahendra Kumar Agarwal vs. State of West Bengal & Anr.** reported in **2021 CRI. L. J. 3889** also held that in respect of a complaint under Section 138, the court under whose jurisdiction the banker of the drawee is situated where

the cheque is delivered for collection as territorial jurisdiction to entertain the complaint.

12. Having heard the learned Advocates for the contesting parties and on careful perusal of the record, it transpires that the cheque in question was dishonoured by ICICI Bank, Hare Street Branch which false within the jurisdiction of the learned Chief Metropolitan Magistrate, Calcutta.

13. For the reasons stated above this Court has no other alternative but to hold that the learned Metropolitan Magistrate, 4th Court at Calcutta has jurisdiction to entertain the complaint filed by the opposite party No.2 under Section 138/141 of the Negotiable Instruments Act against the petitioner.

14. Therefore, the instant revision is dismissed on contest.

15. The proceedings of complaint case No.CS 16925 of 2019 is quashed qua the petitioner.

(Bibek Chaudhuri, J.)