

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2906 OF 2021

Rohit Lohia

Petitioner

versus

Siyaram Packaging Pvt.Ltd. And others

Respondents

Mr.Manoj M.Badgujar, Advocate for petitioner.

Mr.A.R.Patil, APP, for State.

Mr.Navid Memon, Advocate for respondent no.1.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st June 2022

PC :

1. The short question involved in this petition is whether the complaint under Section 138 under Negotiable Instruments Act could have presented before the Court of Judicial Magistrate First Class at Silvassa.

2. The submission of learned counsel for petitioner is that format annexed to the complaint indicate that name of bank where the complainant maintains bank account is Bank of Maharashtra, Goregaon (W) Branch, Mumbai. The blank cheque was annexed to the complaint to highlight as to in which bank account is maintained by complainant, which also refers to the fact that complainant is maintaining account with Bank of Maharashtra, Goregaon (W), Mumbai.

3. Learned counsel for petitioner drew my attention to subsection (2) of Section 142 of Negotiable Instruments Act, which reads as follows :

“142. Cognizance of offences.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfied the Court that he had sufficient cause for not making a complaint within such period;

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(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.”

4. It is submitted that in view of the aforesaid provision, the complaint could have been presented in the Court having jurisdiction where the bank account is maintained by the complainant.

5. Learned counsel for respondent-complainant submits that the complaint which is presented by the complainant in the Court at Silvassa may be transferred to the Court having jurisdiction at Mumbai with direction to entertain the complaint of respondent.

6. In the light of Section 142(2) of Negotiable Instruments Act, 1881, the complaint was required to be presented in the Court at Mumbai. The bank of complainant where the account is maintained is Bank of Maharashtra, Goregaon (W) Branch, Mumbai. The complaint, therefore, would lie in the appropriate Court of Metropolitan Magistrate situated at Borivali. Hence, the Trial Court where the complaint is pending is directed to transfer the case to appropriate Court at Borivali, Mumbai. The concerned Court at Mumbai shall take the complaint on record and proceed with it in accordance with law. The order dated 3rd February 2021 passed by Sessions Judge, Dadra and Nagar Haveli, Silvassa in Criminal Revision No.13 of 2020 is set aside. Writ Petition is disposed off.

(PRAKASH D. NAIK, J.)

MST