

2023:PHHC:126667

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-23069 of 2023
Date of Decision: 06.09.2023

Gurdas Singh ...Petitioner

Vs.

Gurpreet Singh Sandhu ...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. C.R. Vashishth, Advocate
for the petitioner.

Mr. A.P.S. Rehan, Advocate
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 407 read with Section 482 Cr.P.C. with a prayer to transfer the case No. NACT/546/2022 instituted on 07.10.2022 titled as “**Gurdass Singh Vs. Gurpreet Singh Sandhu**” from the Court of JMIC, Fazilka to the competent Court having jurisdiction at SAS Nagar (Mohali).

2. Learned counsel for the petitioner submitted that the petitioner is resident of Kharar, SAS Nagar (Mohali), Punjab and is facing the prosecution in a complaint under Section 138 of the Negotiable Instrument Act 1881 (hereinafter to be referred as '**the Act**') in the Court of Judicial Magistrate 1st Class, Fazilka. He further contended that even the petitioner is working as an event manager at SAS Nagar and is running his business from Plot No. 266, Industrial

Area, Phase-8, SAS Nagar, Mohali, which is also apparent from the copy of the GST registration of his firm Annexure P-2. Learned counsel further contended that even the respondent/complainant is resident of District SAS Nagar (Mohali), which is also apparent from the case draft and legal notice. He further contended that the firm of the petitioner is maintaining a bank account at SAS Nagar (Mohali). Learned counsel further contended that since both the parties belong to SAS Nagar (Mohali), it would be appropriate to transfer the proceedings from the Court of Judicial Magistrate 1st Class, Fazilka to a competent Court at SAS Nagar (Mohali), Punjab.

3. Reply filed on behalf of the respondent is taken on record. Learned counsel appearing on behalf of the respondent has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that the respondent is permanent resident of village Tahli Wala Bodla, Tehsil and District Fazilka and he is practising as an Advocate at District Court, Fazilka as well as in this Court. Learned counsel further submitted that the respondent has been maintaining his bank account bearing No. 1607104000017408 in IDBI Bank Ltd. Branch at Fazilka (Branch IFSC Code: IBKL0001607) even prior to the year 2014. He further contended that cheque in question issued by the petitioner was presented by the respondent in his above mentioned account in IDBI Bank Ltd., Fazilka Branch, but the same was returned by the said bank with a memo "Funds Insufficient". While referring to the provisions

incorporated under Section 142(2) of the Act, learned counsel stated that the complaint under Section 138 of the Act can be filed where payee or drawer of the cheque in due course, as the case may be, maintains his account. Learned counsel further submitted that even the petitioner has already appeared in the Courts at Fazilka and on his transfer application filed before the Court of CJM, Fazilka, four complaint cases under Section 138 of the Act have been ordered to be transferred to the Court of Mr. Parveen Singh, JMIC, Fazilka.

4. I have heard the learned counsel for the parties and perused the record.

5. Section 142 of the Act provides for the cognizance of the offences and the Courts, which are competent to inquire into and try the offence under the Act and the same has been reproduced below for the facility of reference:-

“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 satisfies 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.

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.

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.]

6. In the present case, the respondent is permanent resident of village Tahli Wala Bodla, Tehsil and District Fazilka and has been maintaining his bank account bearing No. 1607104000017408 in IDBI Bank Ltd. Branch at Fazilka (Branch IFSC Code: IBKL0001607) even prior to year 2014. Even, the petitioner could not show any evidence to rebut the same. Even, the respondent had presented the cheque in the same account in IDBI Bank Limited,

Fazilka Branch, which was returned by the bank with a memo “funds insufficient”. Even otherwise, in view of the provisions contained in Section 142(2) of the Act, the offence under Section 138 of the Act can be inquired into and tried only by a Court, where the branch of the bank, in which, the payee or holder in due course, as the case may, maintains the account, is situated. In the present case, the respondent was maintaining an account in the IDBI Bank, Fazilka, for the last 09 years and only Courts at Fazilka had territorial jurisdiction to try the present case.

7. In view of the above discussion, the present petition is ordered to be dismissed.

06.09.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No