

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR-2997-2011(O&M)

Date of Decision : April 18, 2024

ANIL JAIN

.....Petitioner

VERSUS

SANDEEP SINGH KOCHHAR

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Rajiv Kataria, Advocate
for the petitioner.

Mr. K.S.Nalwa, Advocate
for the respondent.

KULDEEP TIWARI, J.

CRM-65600-2011

1. The present application has been filed seeking condonation of delay of 266 days in filing of the revision petition.
2. Learned counsel for the petitioner has submitted that infact he has filed the instant revision petition on 25.3.2011, whereas, the period of limitation to file the revision petition has expired on 6.3.2011. Thereupon, the Registry of this Court raised some objections on 2-3 occasions, which led to add up the total of 90 days of delay. He further submits that the delay is neither intentional, nor deliberate, but rather because of the some technical reasons, which arose because of non-compliance of filing procedure, of this Court.
3. In view of the above, the instant application is allowed and

the delay of 266 days in filing the revision petition is, hereby, condoned.

Main case

4. The instant revision is preferred against the order dated 6.12.2010, passed by the learned Judicial Magistrate 1st Class, Panchkula, whereby, the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act, was ordered to be held not maintainable before it being lack of territorial jurisdiction and returned the complaint for presenting it to the appropriate Court under Section 201 Cr.P.C.

5. The issue which arises for consideration before this Court is “whether, the Courts at Panchkula had the territorial jurisdiction according to the facts and circumstances mentioned in the complaint?”

6. Before this Court embarks upon the legality of the order passed by the learned trial Court concerned, it is relevant to mention here that the issue of territorial jurisdiction under Section 138 of the Negotiable Instruments Act, is no more res-integra. In **K. Bhaskaran Vs. Sankaran Vadhyan Balan, 1999(4) R.C.R. (Criminal) 309**, the Hon'ble Supreme Court has specified the places where the complaint can be preferred under Section 138 of the Negotiable Instruments Act. The relevant paras read as under:-

“13. The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the courts to try the offence was sought to be determined.

14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the

said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of the drawer to make payment within 15 days of the receipt of the notice.

15. *It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178 (d) of the Code is useful. It is extracted below:*

"Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas."

16. *Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.*

17. *The more important point to be decided in this case is whether the cause of action has arisen at all as the notice sent by the complainant to the caused was*

returned as "unclaimed." The conditions pertaining to the notice to be given to the drawer, have been formulated and Incorporated in clauses (b) and (c) of the proviso to Section 138 (1) of the Act. The said clauses are extracted below:

"(b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of Information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

7. Thereafter, the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod Vs. State of Maharashtra and another, (2014) 9 SCC 129*** passed the judgment on territorial jurisdiction for filing of complaint regarding dishonour of cheque and subsequent thereto the Ministry of Law and Justice issued the Negotiable Instruments (Amendment) Ordinance 2015, which came into force on 15.6.2015 and thereupon the amendment was carried out in Section 142(2) of the Act, which reads as under:-

"3. In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after Sub-section (1) as so numbered, the following Sub-section shall be inserted, namely:-

(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. ”

8. In view of the above mentioned judgments, let us examined the factual aspect of the present matter.

9. The petitioner has filed the present complaint on 27.3.2009, in the Court of the Chief Judicial Magistrate, Panchkula, alleging therein, that the respondent-accused, issued a cheque of Rs.5,20,000/-, in favour of complainant, drawn on HDFC Bank, Sector-8, Chandigarh, in discharge of liability mentioned in the complaint. The cheque was handed over to the petitioner, who lives at Panchkula and maintained his bank account in due course at Panchkula. The Magistrate concerned took the cognizance and issued the summoning order on 6.7.2009. The respondent-accused caused appearance before the learned trial Court concerned, in pursuance of the summoning order and on 6.12.2010 preferred an application under Section 245 Cr.P.C. for discharge. However, the said application was withdrawn by the respondent-accused, but the learned Magistrate vide order dated 6.12.2010, returned the complaint to the present petitioner-complainant for presenting the same before the appropriate Court concerned under Section 201 Cr.P.C. by observing that the learned trial Court at Panchkula had no territorial

jurisdiction and this order is under challenge before this Court.

10. In the asked for relief, the learned counsel for the petitioner submits that infact the Court at Panchkula, had jurisdiction and the learned trial Court concerned, had erred in law by passing the impugned order. He has categorically submitted that the accused in order to discharge his liability, issued the cheque bearing No. 631294, dated 15.12.2008, drawn on HDFC Bank Ltd. Sector-8C, Chandigarh, in favour of the petitioner-complainant and thereupon he presented the cheque through his banker i.e. Bank of Baroda, Sector-8, Panchkula and the same was dishonoured for want of “sufficient funds”. Thereafter, the legal notice was sent to the accused, but he failed to make the payment. He further submits that since the complainant's Bank is situated at Panchkula and the cheque was dishonoured at Panchkula and even the statutory notice was served to the respondent-accused from Panchkula, therefore, for all the intents and purposes, the learned trial Court at Panchkula, had the territorial jurisdiction. He further submits that the trial Court has not appreciated the verdict passed by the Hon'ble Supreme Court in **K. Bhaskaran's** case (supra) and ***M/s Harman Electronics (P) Ltd. and another Vs. M/s National Panasonic India Ltd. reported as 2009(1) RCR (Criminal) 458.*** He further submits that prior to the amendment which was carried out in the year 2015, in the Negotiable Instruments Act, the jurisdiction of the Court was also at Panchkula, as the complainant lives and hold and maintained his bank account at Panchkula, the trial Court shall decide the *lis* having territorial

jurisdiction. Even after the amendment, the territorial jurisdiction is only with the learned trial Court at Panchkula. Finally, the learned counsel for the petitioner has submitted that infact he has filed the instant revision petition on 25.3.2011, whereas, the period of limitation to file the revision petition has expired on 6.3.2011. Thereupon, the Registry of this Court raised some objections on 2-3 occasions, which led to add up the total of 90 days of delay. He further submits that the delay is neither intentional, nor deliberate but rather because of the some technical reasons, which arose because of non-compliance of filing procedure of this Court. He further submits that the prejudice has been caused to the complainant due to the illegal order, whereas, even prior to the amendment and post amendment in both the scenario, the territorial jurisdiction is only with the learned trial Court at Panchkula.

11. Learned counsel for the respondent has principally agreed that the learned trial Court at Panchkula, has jurisdiction to entertain the instant complaint, but has vociferously opposed the submissions made by the learned counsel for the petitioner and submits that the amendment which was carried out after the directions passed in **Dashrath Rupsingh Rathod's** case (supra) does not come to the rescue of the petitioner, as he chose to remain silent after passing of the impugned order dated 6.12.2010 and preferred the instant revision petition after a delay of 230 days and in order to buttress his arguments, he relied upon the judgment passed by the Hon'ble Supreme Court in ***Sunil Mantri Vs. Maharashtra Saviungs and another, SLP (Crl.) No.15076 of 2023***, wherein, in a

similar situation, the original complaint was returned to the complainant by the Magistrate for it to be re-filled before the Court of competent jurisdiction in the light of the judgment of the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod's** case (supra), wherein, the Hon'ble Supreme Court has directed that all the complaints pending before the wrong Court are to be returned to the complainant so that those could be re-filled before the competent Court within 30 days of the return. The Hon'ble Supreme Court further has observed that the complainant never took back the complaint in original or re-filled it and, therefore, it was not a case where the amendment incorporated in Section 142(2) and Section 142-A under the Negotiable Instruments Act, 1881, would apply. It was further observed that the complaint was not re-filled on the relevant date of promulgation of ordinance i.e. 15.6.2015, therefore, the Hon'ble Supreme Court while issuing notice, stayed the further proceedings before the trial Court.

12. This Court has examined the submissions made by both the learned counsel for the parties concerned and is of the view that the impugned order is required to be set-aside, as the learned trial Court concerned has erred in concluding that it has no territorial jurisdiction. In the instant case, the cheque which was handed over by the accused to the present petitioner, and the same was presented to his banker i.e. Bank of Baroda, Sector-8, Panchkula and the same was dishonoured for want of “sufficient funds” and the legal notice was also sent from Panchkula. Since the complainant's bank is situated at Panchkula and the cheque was

dishonoured at Panchkula, therefore, the Court at Panchkula has the territorial jurisdiction. So far as the argument of the learned counsel for the respondent regarding delay is concerned, this also does not create any legal impediment in maintaining the instant revision petition, as the explanation with regard to the delay has been made and has already been considered in para No.10 of the earlier part of the judgment.

13. In view of the above discussion, the instant revision petition is **allowed** and the impugned order is set-aside. The complaint No.317/2, date of institution 27.3.2009 is ordered to be restored to its original number and the trial Court concerned is directed to proceed further from the stage from where the complaint was returned to the complainant i.e. present petitioner.

14. All the pending applications, if any, stand disposed of.

(KULDEEP TIWARI)
JUDGE

April 18, 2024
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No