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CRM-M-55116-2022 and another connected case

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision:- 27.08.2024

(1)

CRM-M-55116-2022

M/s SS Diamonds Tools and Another Petitioners

Vs.

Capital First Limited Respondent

(2)

CRM-M-55162-2022

M/s SS Diamonds Tools and Another Petitioners

Vs.

Capital First Limited Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Ms. Seema Pasricha, Advocate
for the petitioners, in both cases.

None for the respondent.

AMARJOT BHATTI, J.

Petitioners M/s SS Diamonds Tools and Anuj Goel have filed separate petitions under Section 482 Cr.P.C. for quashing impugned order(s) dated 15.10.2022 (Annexure P-10) passed in Criminal Complaints No. NACT/12055/2017 and NACT/12057/2017 respectively, titled as “Capital First Ltd. Versus S.S. Diamonds Tools”, under Section 138 of Negotiable Instruments Act, 1881, pending before learned Judicial

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Magistrate Ist Class, Chandigarh, whereby aforesaid complaints were ordered to be transferred by learned Magistrate, Chandigarh to learned Chief Metropolitan Magistrate, Ballard, Mumbai for 29.11.2022. Both these petitions are taken up together for disposal, having been arisen out of impugned order(s) dated 15.10.2022 (Annexure P-10) passed on the same grounds in both the complaints.

2. Brief facts of case are Capital First Limited through its Authorized Representative filed complaint under Section 138 of Negotiable Instruments Act, 1881 against M/s SS Diamonds Tools through its partner Anuj Goel as respondent/accused No. 1 and Anuj Goel being partner of said concern as respondent/accused No. 2. Said separate complaints were filed by complainant regarding dishonour of cheque No. 154047 dated 14.07.2017 for a sum of ₹97,50,000/-, drawn on Vijaya Bank as part payment towards loan account and another complaint was regarding cheque No. 498391 dated 14.07.2017 for a sum of ₹90,00,000/-, drawn on Vijaya Bank as part payment towards loan account. Aforesaid cheques were dishonoured on account of insufficient funds vide separate memos dated 27.09.2017 and thereafter, on service of legal notice, separate complaints are filed, which are Annexure P-2 in aforesaid cases. In both complaints, accused were ordered to be summoned under Section 138 of Negotiable Instruments Act, 1881 vide summoning order dated 08.12.2017, which are Annexure P-4 in both petitions. Service of accused was procured and during the pendency of aforesaid complaints, applications dated 21.09.2022 were filed for transfer/return of complaints, which are Annexure P-8 in both petitions. Reply to these applications were filed by

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present petitioners/accused, which are Annexure P-9 in both petitions. After hearing arguments, applications in both complaints were disposed of by passing separate impugned order dated 15.10.2022 on the same lines vide which complaints were ordered to be transferred to learned Chief Metropolitan Magistrate, Ballard, Mumbai through proper channel for 29.11.2022 and parties were directed to appear in the said Court.

Feeling aggrieved of this order, petitioners/accused have filed present petitions for quashing of aforesaid impugned order(s) dated 15.10.2022, Annexure P-10, in both petitions.

3. Learned counsel for petitioners challenged impugned order(s) alleging that learned Judicial Magistrate 1st Class, Chandigarh has erred in law by allowing of applications for transfer of complaints inter state at post-summoning stage, which was not within the jurisdiction of Judicial Magistrate, in view of Section 322 of Code of Criminal Procedure, 1973. Learned Magistrate failed to appreciate that power to transfer inter state is reserved to Hon'ble Supreme Court under Section 406 of IPC. Therefore, impugned order(s) dated 15.10.2022 passed by learned Magistrate in both complaint cases are liable to be set aside. In support of her arguments, learned counsel for petitioners has put reliance on the judgment of Hon'ble Supreme Court of India in Transfer Petition (Criminal) Nos. 526-527 of 2022, decided on 21.02.2023, case titled "Yogesh Upadhyay and Anr. Versus Atlanta Limited". Relevant para No. 13 runs as under :-

"13. Therefore, institution of the first two complaint cases before the Courts at Nagpur is in keeping with the legal position obtaining now. However, the contention that the non obstante clause in Section 142(1) of the Act of 1881 would override

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Section 406 Cr.P.C., 1973 and that it would not be permissible for this Court to transfer the said complaint cases, in exercise of power thereunder, cannot be countenanced. It may be noted that the non obstante clause was there in the original Section 142 itself and was not introduced by way of the amendments in the year 2015, along with Section 142(2). The said clause merely has reference to the manner in which cognizance is to be taken in offences under Section 138 of the Act of 1881, as a departure has to be made from the usual procedure inasmuch as prosecution for the said offence stands postponed despite commission of the offence being complete upon dishonour of the cheque and it must necessarily be in terms of the procedure prescribed. The clause, therefore, has to be read and understood in the context and for the purpose it is used and it does not lend itself to the interpretation that Section 406 Cr.P.C., 1973 would stand excluded vis-a-vis offences under Section 138 of the Act of 1881. The power of this Court to transfer pending criminal proceedings under Section 406 Cr.P.C., 1973 does not stand abrogated thereby in respect of offences under Section 138 of the Act of 1881. It may be noted that this Court exercised power under Section 406 Cr.P.C., 1973 in relation to offences under Section 138 of the Act of 1881 even during the time the original Section 142 held the field.....”

Therefore, impugned order(s) dated 15.10.2022 passed in both complaints are not sustainable in the eyes of law and same be quashed by accepting present petitions.

4. Notice was issued to respondent and Sh. Aditya Grover, Advocate appeared for respondent but thereafter, he stopped appearing.

5. I have considered the arguments advanced before me and have gone through the record carefully. Learned counsel for petitioners has

referred to relevant provisions in Code of Criminal Procedure, 1973,



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dealing with transfer of case. Section 201 of Cr.P.C. explains the procedure that when Magistrate is not competent to take cognizance of the case, he can return the complaint to the complainant to be presented before the appropriate Court having jurisdiction. This procedure could be followed at the initial stage. In the case in hand, learned Magistrate had already taken cognizance of matter in controversy. Summoning order was passed and after procuring the presence of accused, proceedings were going on in complaint under Section 138 of Negotiable Instruments Act, 1881 when application was filed by respondent No. 2 for transfer/return of complaint. Complainant in said applications, Annexure P-8 in both petitions, confirmed that in view of Section 142 of Negotiable Instruments Act, 1881, the Court in which complaint was filed was not having jurisdiction to try and decide the complaint as jurisdiction lied with the Courts at Mumbai. Learned Magistrate could not transfer the complaint even under the provisions of Section 322 of Cr.P.C. since the complaint was required to be transferred in another State. Learned counsel for petitioners rightly pointed out that as per Section 406 of Cr.P.C. power lies with Hon'ble Supreme Court to transfer cases and appeals from one State to the other. Judgment passed by Hon'ble Supreme Court of India titled **Yogesh Upadhyay and Anr. Versus Atlanta Limited (supra)** is applicable to the facts of present case. Therefore, I find merits in the petitions filed by petitioners referred above and impugned order(s) dated 15.10.2022, Annexure P-10 passed in both complaints under Section 138 of Negotiable Instruments Act, 1881 are accordingly set aside, by accepting both petitions. Matter is remanded back to learned Judicial Magistrate 1st Class, Chandigarh for reconsideration and

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disposal of applications as per law.

6. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

27.08.2024
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(AMARJOT BHATTI)
JUDGE

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