

(2015) 01 DEL CK 0305

In the Delhi High Court

Case No : Criminal M.C. 5027, 5036, 5037 and 5038/2014

Cisco Systems Capital (India) Pvt. Ltd.

APPELLANT

Vs

New Delhi Tele Tech Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 37

Criminal Procedure Code, 1973 (CrPC) — Section 145(2), 251, 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 143, 143, 143, 144

Citation : (2015) 147 DRJ 306

Hon'ble Judges : V.P. Vaish, J.

Bench : Single Bench

Advocate : Punit Kumar Bhalla, Chetna Bhalla and Isha Abrol, for the Appellant; Sunil Choudhary and Raghu Vashisht, Advocates for the Respondent

Judgement

V.P. Vaish, J.—By way of these petitions filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the petitioner assails orders dated 10.10.2014 passed by learned Metropolitan Magistrate (NI) Act-07, Dwarka Courts, New Delhi whereby the complaints of the petitioner were returned to the petitioner/complainant for filing the same in the court having proper jurisdiction.

2. Since all the petitions involve an identical question of law therefore, they are being disposed of by this common order.

3. The factual matrix of the case is that the petitioner filed complaint(s) under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") against respondents for the offence under Section 138 of the Act. CrI. M.C. No. 5027/2014 pertains to cheque No. 548730 dated 01.04.2013 for Rs. 1,06,50,447/- (Rupees One crore six lakhs fifty thousand four hundred and forty seven); CrI. M.C. No. 5036/2014 pertains to cheque No. 548828 dated 01.03.2013 for Rs. 4,67,513/- (Rupees Four lakh sixty seven thousand five hundred and thirteen); CrI. M.C. No. 5037/2014 pertains to cheque No. 548853

dated 01.04.2013 for Rs. 16,68,683/- (Rupees Sixteen lakh sixty eight thousand six hundred and eighty three); and Crl. M.C. 5038/2014 pertains to cheque No. 548905 dated 20.02.2013 for Rs. 1,59,60,906/- (Rupees One crore fifty nine lakh sixty thousand nine hundred and six), all these cheques were drawn on Bank of India, Andheri (West) Branch, Mumbai, Maharashtra.

4. In order to have better understanding of facts of the cases, it would be appropriate to refer to facts of one case. The facts are extracted from Crl. M.C. No. 5027/2014. The petitioner (complainant) herein filed a complaint under Section 138 of the Act on the allegations, inter alia, that the petitioner company is a financial company while respondent company is a Private Limited Company and accused No. 2 to 5 are its Directors. Accused No. 2 is the Chairman and Managing Director of accused No. 1 company (respondent No. 1) and accused No. 2 to 5 are responsible for its affairs and are in-charge of day-to-day conduct of accused No. 1 company. The petitioner granted a loan facility under the Master Lease and Finance Agreement to the accused No. 1 company on the basis of terms and conditions contained in the loan agreement executed on 25.05.2008 for the purpose of financing capital expenditure. Pursuant to the loan facility disbursed to the accused, accused defaulted in its repayment and the complainant was forced to initiate proceedings under Section 138 of the Act and under Order XXXVII of the Code of Civil Procedure. Thereafter, a compromise was given effect to before the Mediation Centre at Tis Hazari Courts, Delhi on 06.09.2011. Consequently, the proceedings under Section 138 of the Act were withdrawn and the suit was disposed of as compromised. In view of the compromise the accused issued a post dated cheque bearing No. 548730 dated 01.04.2013 for Rs. 1,06,50,447/- (Rupees One crore six lakh fifty thousand four hundred and forty seven) drawn on Bank of India, Andheri (West), Mumbai, Maharashtra. On presentation, the said cheque was dishonoured with the returning memo dated 03.04.2013 for the reason "funds insufficient". Despite statutory notice dated 10.04.2013, the respondent failed to make payment of the amount of cheque.

5. Vide order dated 28.05.2013 learned trial court after considering the facts of the Case took cognizance of the offence under Section 138 of the Act and summoned the accused persons. Notice under section 251 Cr.P.C. was served on accused No. 4 on 27.01.2014 and notice was served on accused No. 2 on 22.03.2014. Thereafter, on 22.04.2014 an application under section 145(2) of the Act was filed on behalf of the accused No. 2 and 4 which is pending for consideration before the trial court. However, no notice under section 251 Cr.P.C. has been served on accused No. 1, 3 and 5.

6. Vide impugned order dated 10.10.2014, learned trial court after considering the judgment in Dashrath Rupsingh Rathod Vs. State of Maharashtra, came to the conclusion that Delhi Courts have no jurisdiction in the matter and returned the complaint to the complainant.

7. Feeling aggrieved by the said order the petitioner has filed the present petition.

8. Learned counsel for the petitioner contended that the cheque was payable at par at all branches of drawer bank in India, since the cheque in question got dishonoured at New Delhi and in terms of the Circular 3089/DHC/GAZ/VI.E.2(a) 2008 dated 22.10.2008 issued by this court the courts at Dwarka would have the jurisdiction to try and entertain the complaint and thus the petitioner had rightly filed the complaint before the learned trial court in Delhi. He also stated that now a days, almost all the branches of the bank are covered under Core Banking Solutions (CBS) and in terms of guidelines issued by Reserve Bank of India vide circular No. RBI/2012-13/163 DPSS.CO.CHD. No. 274/03.01.02/2012-13 dated 10.08.2012 (Annexure-G), all CBS enabled banks have been asked to issue only "payable at par"/"multi-city" CTS 2010 standard cheques to all eligible customers. It has been argued on behalf of the petitioner that one of the essential features of multi-city/cheques payable at par is that the holder of cheque can present the same at any CBS enabled branch of the drawee bank in order to encash the said cheque. That being so, the complainant is well within its right to initiate prosecution for the offence under Section 138 of the Act at the place where the branch in which the cheque in question was presented for its encashment irrespective of the fact that such branch was not the home branch of the drawee bank where the accused was having the bank account.

9. Another submission of learned counsel for the petitioner was that since accused No. 2 and 4 have already filed an application under section 145(2) of the Act, according to him the matters have already reached the stage of Section 145(2) of the Act meaning thereby that Delhi Courts will have the necessary jurisdiction to entertain and try the complaint in view of the law laid down in "Dashrath Rupsingh Rathod"s case (supra).

10. Per contra, learned counsel for respondents urged that territorial jurisdiction to entertain and try cases filed under Section 138 of the Act, would lie with Courts within whose jurisdiction the home branch of the drawee bank in which the accused has a bank account from which cheques in question have been issued, is situated and at no other place. In support of their submission, they have also relied upon the judgment of Dashrath Rupsingh Rathod Vs. State of Maharashtra, . The cheque in question is drawn on Bank of India, Andheri (West) Branch, Mumbai, Maharashtra and Delhi Courts have no jurisdiction to entertain and try the complaint in view of the law laid down in "Dashrath Rupsingh Rathod"s case (supra). According to him the trial had not commenced before learned Metropolitan Magistrate and the trial court was bound to return the complaint for want of jurisdiction as per the renowned judgment passed by Hon"ble Supreme Court of India in "Dashrath Rupsingh Rathod"s case (supra).

11. I have bestowed my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

12. The first contention raised on behalf of petitioner does not hold water. In "M/s. Goyal MG Gases Pvt. Ltd. v. State and Ors.", CrI.M.C. No. 4407/2014 decided

on 16.12.2014, this Court after considering provisions of Section 138 of the Act and judgment of Hon"ble Supreme Court in "Dashrath Rupsingh Rathod"s case (supra) as well as the guidelines issued by Reserve Bank of India vide circular dated 10.08.2012, has observed that where the cheque in question is payable at par and the case has not reached at the stage of Section 145(2) of the Act, Delhi Courts will have no territorial jurisdiction to entertain and try the complaint.

13. As regards the second contention raised by the learned counsel for the petitioner, in order to appreciate this submission, it would be appropriate to discuss in brief the relevant provision of Section 145 of the Act. The said provision reads as under:-

"145. Evidence on affidavit. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.) the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

14. On a careful reading of the aforesaid provision, it is manifestly clear that the legislature has allowed complainant to give his evidence by way of an affidavit during the course of trial in respect of offence punishable under Section 138 of the Act by virtue of sub-section (1) of Section 145 of the Act. Sub-section (2) of Section 145 of the Act provides that the Magistrate may on the application moved by the accused, summon the complainant for his cross-examination as to the effect contained therein.

15. Section 145 of the Act, which seeks to attend a constructive purpose, should be read rationally. The Statement of objects and reasons of the Act are for the purpose of a fast and expeditious trial which is even otherwise a requisite condition for a criminal trial. It is needless to mention here that the Negotiable Instruments Act is a special legislation and the provisions contained in a special statute have overriding effect over the provisions contained in a general statute. This makes it possible for the evidence of the complainant to be taken without presence of an accused being an essential prerequisite condition. Sections 143 to 147 were introduced in the Act by virtue of Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which came into force w.e.f. 06.02.2003. According to Section 143, the offence under Section 138 of the Act is to be tried summarily which envisages fast and expeditious conclusion of a trial by the trial court. It is important to consider here that the nature of examination in each case is a different matter which has to be considered differently by the court in different circumstances. However, such a consideration has to be made keeping the provision of Section 145(1) and having regard to the object and purpose of the entire scheme of Sections 143 to 146 of the Act.

16. In Indian Bank Association and Others Vs. Union of India (UOI) and

Another, , Hon''ble Supreme Court has laid down the procedure to be followed by subordinate courts dealing with the cases under sections 138 of the Act. The said directions are contained in para 23 of the judgment which reads as under:-

Directions

"23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:-

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4 The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling witness for cross-examination.

23.5 The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses, instead of examining them in court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the court."

17. In view of the aforesaid directions in Indian Bank Association's case (supra), there is no scope of doubt that after serving notice in terms of Section 251 of Cr.P.C. upon an accused, the Magistrate shall fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of the Act for recalling a witness for cross-examination. At the same time, it has been further directed that the concerned Magistrate must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted

within three months of assigning the case.

18. There may be three situations when notice in terms of Section 251 of Cr.P.C. is served upon an accused;

(i) After framing of notice in terms of Section 251 of Cr.P.C. the matter is fixed for DE as no application as envisaged in Section 145(2) of the Act is moved by the accused;

(ii) After framing of notice in terms of Section 251 of Cr.P.C., an application under Section 145(2) of the Act is moved by an accused but it is yet to be allowed by a Magistrate; and

(iii) After serving notice under Section 251 Cr.P.C., the application moved under Section 145(2) of the Act by an accused for cross-examination of the complainant, has been allowed by the Magistrate.

19. The question arises as to whether trial would be said to have commenced in all the aforesaid three situations or not. The answer has to be in negative in first two situations. It is only in the third situation when the application under Section 145(2) of the Act has been allowed by the Magistrate only then trial would be said to have commenced within the meaning of Section 145(2) of the Act.

20. The Apex Court in "Dashrath Rupsingh Rathod"s case (supra) observed in para 22 that the category of complaint cases where proceedings have gone to the stage of Section 145(2) of the Act or beyond shall be deemed to have been transferred from the Court ordinarily possessing territorial jurisdiction, as clarified therein, to the Court where it is presently pending. Thus, it is only when the stage of proceedings in cases filed under Section 138 of the Act has reached the stage of Section 145(2) of the Act or beyond thereof, such case shall continue to be dealt with by the Court where it is pending trial.

21. In the instant case, request of the accused to cross-examine the complainant in terms of Section 145(2) of Cr.P.C. has not been allowed. Even the notice under Section 251 of Cr.P.C. has not been served on accused No. 1, 3 and 5. Thus, it cannot be said that the complaint has reached at the stage of Section 145(2) of the Act or beyond thereof. There is no illegality or infirmity in the impugned order passed by the learned trial court.

22. In the light of the aforesaid discussion, all the petitions deserve to be dismissed and the same are hereby dismissed. Consequently, the impugned orders passed in Complaint Case No. 3382/2014 in CrI. M.C. 5027/2014; Complaint Case No. 3343/2014 in CrI.M.C. 5036/2014; Complaint Case No. 3383/2014 in CrI.M.C. 5037/2014 and Complaint Case No. 3342/2014 in CrI.M.C. 5038/2014 all dated 10.10.2014 passed by learned Metropolitan Magistrate (NI) Act-07, Dwarka Courts, New Delhi are maintained.

23. The complaint(s) alongwith original documents be returned to the petitioner/ complainant for filing the same in appropriate Court(s) having territorial

jurisdiction to entertain and try the same within a period of 30 days.

24. The trial court records be sent back forthwith.

Crl. M.A. No. 17207/2014 in Crl. M.C. No. 5027/2014 Crl. M.A. No. 17241/2014
in Crl. M.C. No. 5036/2014 Crl. MA No. 17243/2014 in Crl. M.C. No. 5037/2014
Crl. M.A. No. 17245/2014 in Crl. M.C. No. 5038/2014

The applications are dismissed as infructuous.