

(2017) 06 RAJ CK 0068
In the Rajasthan High Court
Case No : 3403 of 2016

Kamal Kishore Joshi

APPELLANT

Vs

The State of Rajasthan & Anr.

RESPONDENT

Date of Decision : 29-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Negotiable Instruments Act, 1881](#), [Section 138](#), [Section 142](#)

Citation : (2017) 06 RAJ CK 0068

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Manoj Bohra, Rajesh Bhati, B.R.Gohel

Judgement

1. This bunch of misc. petitions preferred under Section 482 Cr.P.C. by the accused as well as the complainants have emerged on account of a common controversy in relation to similar complaints preferred in the court of learned Addl. Chief Judicial Magistrate, Phalodi under Section 138 of the N.I. Act and is thus, being decided together by this order.

2. Numerous complaints under Section 138 of the N.I. Act came to be filed in the year 2011 by Sarva Shri Kamal Kishore Joshi, Sunil Chhangani and Mangi Lal Purohit (the complainants) against Nirmal Nilesh and Ena Nitin Bhai (the accused). On 16.1.2011, the trial court took cognizance against the respective accused and summoned them to face trial for the offence under Section 138 of the N.I. Act. The accused put in appearance and were enlarged on bail. During pendency of the proceedings, the accused filed separate applications in the respective complaints in light of the pronouncement made by Hon'ble Supreme Court in the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr. reported in 2014 Cr.L.R. (SC) 842, claiming that the court at Phalodi lacked territorial jurisdiction and the complaints should be returned to the complainants. The learned ACJM, Phalodi passed separate orders dated 30.1.2015 in each of

the complaints and directed that the complaints in original be returned to the respective complainant for being prosecuted in the competent court. The complainants thereupon preferred separate misc. petitions under Section 482 Cr.P.C. in this Court being aggrieved of the order dated 30.1.2015 whereby, their complaints were directed to be returned to them. These misc. petitions were tagged together in a bunch and were listed before this Court on 15.12.2015 after service upon the accused party. On that day, learned counsel for the petitioners complainants sought liberty to withdraw the misc. petitions so that the complainants could move applications in the concerned court for revival of the complaints in light of the amendment introduced in the N.I. Act. The counsel representing the accused did not oppose the said prayer. Accordingly, this Court decided the misc. petitions by a common order dated 15.12.2015 in the following terms: "Learned counsel for the petitioners seeks to withdraw the misc. petitions praying that liberty be given to the petitioners to file an application before the concerned Magistrate for revival of their complaints in the said Court in light of the recent amendment brought around in the Negotiable Instruments Act. The prayer so made is justified. The misc. petitions thus stand disposed of as withdrawn with the liberty as prayed for. In case the petitioners move an application before the concerned Magistrate in the above terms, the same shall be decided in light of amendment effected in the Negotiable Instruments Act. The bar of limitation if any shall not operate against the petitioners as they were pursuing their cases before this Court with due diligence. The trial court returned the complaints filed by the petitioners by the impugned order. The original orders passed by the trial court have been filed along with these misc. petitions. Thus for ensuring that the petitioners are able to file the complaints afresh before the trial court as directed above in light of the recent amendment in the Negotiable Instruments Act, it is directed that the original orders passed by the trial court shall be returned back to the petitioner's counsel after retaining a certified copy thereof on the record."

3. While deciding these misc. petitions, this Court gave liberty to the respective complainants to move applications for revival of their complaints while lifting the bar of limitation if any. Pursuant thereto, the complainants filed applications for revival of their complaints and the trial court passed an order dated 22.12.2015, directing re-registration of all the complaints at their original number and resummoned the accused to face trial. The counsel representing the accused appeared in the trial Court on 3.2.2016 and on 14.3.2016 respectively and prayed for exemption of personal presence of the accused. Finally, when despite being aware of the proceedings, the accused failed to put in appearance, the trial Court passed an order dated 27.4.2016 and directed that they be summoned through warrant of arrest. The said order dated 27.4.2016 has been challenged by the respective accused persons by way of misc. petitions Nos.2169/2016, 2174/2016, 2175/2016, 2176/2016, 2177/2016, 2178/2016, 2179/2016, 2180/2016, 2181/2016, 2182/2016, 2183/2016, 2184/2016, 2185/2016, 2186/2016, 2187/2016. The complainants have thereafter moved another set of

misc. petitions Nos.3403/2016, 3404/2016, 3405/2016, 3406/2016, 3407/2016, 3408/2016, 3409/2016, 3410/2016, 3411/2016, 3412/2016, 3413/2016, 3414/2016, 3415/2016, 3416/2016 and 3425/2016 praying for clarification in the order dated 15.12.2015 passed by this Court in the earlier round of litigation.

4. Sarva Shri B.R. Gohel and Hemant Parmar learned counsel representing the accused vehemently urged that the court below was totally unjustified in issuing warrant of arrest against the accused persons. They urged that the order taking cognizance against the accused was passed with utter non-application of mind to the facts of the case. It is a non-speaking order and thus, should be quashed and set aside. They further urged that the trial court lacked jurisdiction to revive the original complaints and the respective complainants, if they so desired should have filed fresh complaints with applications for condonation of delay and that the trial court could have proceeded further only if the delay was explained satisfactorily. Relying on the judgment passed by the Hon'ble Supreme Court in the case of Pooja Ravinder Devidasani Vs. State of Maharashtra & Anr. reported in AIR 2015 SC 675 they urged that the orders taking cognizance are grossly illegal and suffer from non-application of mind and thus, the misc. petitions filed on behalf of the accused persons be accepted while setting aside the orders taking cognizance, and the impugned complaints should be dismissed.

5. On the other hand, Shri Manoj Bohra learned counsel representing the complainants vehemently opposed the submissions advanced by Sarva Shri B.R.Gohel and Hemant Parmar and contended that the orders taking cognizance passed by the trial court were never challenged by the accused and thus, the same have attained finality. He contended that during a transient phase, complaints under Section 138 of N.I. Act presented all over the country, were ordered to be returned back on the basis of Hon'ble Supreme Court Judgment in the case of Dashrath Rupsingh Rathod's case (supra). He urged that the ambiguity in the situation was clarified beyond all probable doubts with the amendment brought around in Section 142 of the N.I. Act in the year 2015. The said amendment authorised presentation of the complaints in the same court in whose territorial jurisdiction, the cheques were delivered for collection or presented for payment. In the cases at hand, the complaints were originally filed in the court at Phalodi in whose territorial jurisdiction, the cheques were presented for collection. Owing to the ambiguous situation created by dictum in the case of Dashrath Rupsingh Rathod's case (supra), the complaints were returned for presentation to another court. However, with the introduction of above amendment, the complainants became entitled to resubmit their complaints in the original court in view of the liberty granted to them by this Court in the earlier round of litigation. He further urged that the objection raised by the accused persons that the complainants did not file any formal application for revival of the complaint in light of this Court's decision is of no avail whatsoever for the reason that the complaints in original (which had been returned to the complainants) were resubmitted in the trial court alongwith a copy of this Court's order dated 15.12.2015. Thereupon, the trial Court took the

complaints back on its record and directed their re-registration by order dated 22.12.2015, which has not been challenged till date and thus, has attained finality. It was further contended by Shri Bohra that the accused persons put in appearance in the restored proceedings through their counsel and initially sought exemption from personal appearance. As they failed to put in appearance despite the liberty granted to them, the trial court was perfectly justified in issuing warrant of arrest against the accused persons. He thus, urged that the misc. petitions preferred on behalf of the complainants should be accepted whereas, the ones filed on behalf of the accused be rejected.

6. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

7. The controversy at hand has arisen because of the transient phase brought around in the proceedings under the N.I. Act by the judgment in the case of Dashrath Rupsingh Rathod's case (supra) in which, the Hon'ble Supreme Court went on to lay down certain principles governing the concept of territorial jurisdiction of the Court to entertain the proceedings. However, ratio of the said judgment stands virtually nullified with the express amendment brought around in Section 142 of the N.I. Act in the year 2015 which reads below:- "4. In the principal Act, after section 142, the following section shall be inserted, namely:-

142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under subsection (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed

and is pending, as if that sub-section had been in force at all material times.

5. (1) The Negotiable Instruments (Amendment) Second Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act."

8. The said amendment bears an express savings clause in subsection 5, which provides that anything done or any action taken under the principal Act shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by the Act of 2015. As a direct corollary thereto, pursuant to the above amendment, a complaint which was earlier considered as being without territorial jurisdiction by virtue of Darshrath Rupsingh Rathod's Judgment (*supra*), would have to be considered as being within jurisdiction in view of the amended Section 142(2) & (5). Consequently, the complainants herein would be well justified in claiming that they were entitled to request the trial court to take their complaints back on record and to proceed against the accused as if the complaints had never been returned. In this background, the argument advanced by Shri Manoj Bohra that no illegality was committed by the court below while accepting the resubmitted complaints and reregistering the same on the original number, is palpable. On the contrary, the contention putforth by Sarva Shri Gohel and Parmar that the order taking cognizance is bad in the eye of law and that the complainants would have to satisfy the trial court regarding the complaints being within limitation, is absolutely flimsy and untenable. As a matter of fact, the basic thrust of the argument advanced by the learned counsel representing the accused was that the original order taking cognizance was itself bad in the eye of law. Suffice is to say that the initial order taking cognizance was passed on 16.1.2011 i.e. well before return of the complaints in light of Darshrath Rupsingh Rathod's Judgment (*supra*). The accused persons appeared in the court below and furnished bail bonds but did not raise any objection against the order taking cognizance which has obviously attained finality. The subsequent sequence of events i.e. the return of the complaints and resubmission thereof was simply a transitional phase which lost significance with the introduction of the above-referred amendment in Section 142 of the N.I. Act pursuant where to, the actions taken earlier by the court concerned under the N.I. Act even if lacking jurisdiction on account of judgment rendered by Hon"ble Supreme Court in the case Darshrath Rupsingh Rathod's (*supra*), stood ratified and saved. In the cases at hand, the complainants challenged the orders of return of their complaints by filing the above referred misc. petitions in this Court in the earlier round of litigation. Notices of the misc. petitions were served upon the accused. The court after hearing the learned counsel representing the parties gave explicit permission to the complainants to seek revival of their complaints in the trial court. Pursuant to such direction, the

complainants resubmitted the original complaints with the copy of this Court's order dated 15.12.2015 in the trial court which directed re-registration thereof by separate orders dated 22.12.2015 which have not been challenged and have thus attained finality. Thus, the challenge laid on behalf of the accused persons that the order taking cognizance is bad in the eye of law is per-se without any merit whatsoever and cannot be sustained.

9. The only order which is under challenge in the set of misc. petitions filed on behalf of the accused is the order dated 26.4.2016 by which, the court directed summoning of the accused persons through warrant of arrest because they failed to appear in the court despite assurance given on their behalf. Though, prima facie, this Court finds no illegality in the said order but in order to secure the ends of justice, the accused persons deserve to be given one opportunity to appear before the trial Court and furnish bail bonds upon which, they shall be released on bail.

10. As a consequence of the above discussion, the misc. petitions filed on behalf of the complainants are allowed; the trial Court is directed to proceed further with the complaints submitted by the respective complainants and to try the accused as per law.

11. The misc. petitions filed on behalf of the accused are dismissed as being devoid of merit while giving them liberty to appear before the trial Court within a period of 30 days from today and furnish bail bonds upon which they shall be released on bail. Failure to do so, would entitle the court below to secure their attendance by adopting coercive methods.

12. The trial Court is further directed to expedite the trials and to try and complete the same within a period of one year from the date of submission of copy of this order. A copy of this order be placed in each file.