

(2015) 07 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4009 of 2015

Majid Khan

APPELLANT

Vs

Anita Kalyan

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 145
Negotiable Instruments Act, 1881 (NI) — Section 138, 145

Citation : (2015) 07 MP CK 0022

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : Anand Kumar Gupta, for the Appellant

Final Decision : Dismissed

Judgement

Rohit Arya, J.—By this petition under Article 227 of the Constitution of India, the petitioner has approached this Court challenging the legality, validity and propriety of the confirming order of the revisional Court dated 18/06/2015 in Criminal Revision No. 90/2015. The trial Court has rejected the application filed by the revisionist/accused vide order dated 09/04/2015 for transfer of criminal case No. 448/2010 to the Court of Judicial Magistrate, First Class, Chachoda, District Guna (Shri Girraj Prasad Garg) in the light of the judgment of the Hon'ble Apex Court reported in Dashrath Rupsingh Rathod Vs. State of Maharashtra, (2014) AIRSCW 4798 : (2014) 3 BC 513 : (2014) 9 SCALE 97 : (2014) 9 SCC 129 , Dashrath Rupsingh Rathod Vs. State of Maharashtra and another.

2. Facts necessary for disposal of this petition are to the effect that the respondent/complainant has filed a criminal complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) on 06/07/2010 before the Judicial Magistrate, First Class, Chachoda, District Guna (Shri Girraj Prasad Garg). It appears that the Chief Judicial Magistrate, District

Guna vide administrative order No. Q/11 dated 19/07/2011 had transferred number of cases from the Court of Shri Girraj Prasad Garg, Judicial Magistrate, First Class to the Court of Shri Sanjay Shrivastava, Judicial Magistrate, First Class within Chachoda i.e., within the territorial limits of the District Court itself. The case in hand, i.e., criminal case No. 448/2010 (Smt. Anita Kalyan Vs. Majid Khan) was also one of those cases transferred. After registration of the complaint, the case was posted for evidence of the complainant under section 145 of the NI Act. The complainant has filed her evidence on affidavit under section 145 of NI Act and the said proceedings are at the advanced stage as contemplated under section 145 Cr.P.C.,

3. At this stage, the petitioner/accused has filed an application for transfer of the case to the Court of Shri Girraj Prasad Garg, Judicial Magistrate, First Class, Chachoda as the drawee bank which has dishonoured the cheque, State Bank of Indore, Branch Khumbraj is within the jurisdiction of the said Court. Therefore, in the light of the judgment of the Hon''ble Supreme Court in the case of Dashrath Rupsingh Rathod (supra), no other Court except the Court of Shri Garg is competent to decide it under section 138 of NI Act. In other words, the petitioner/accused challenges the jurisdiction of the Court seizing with the complaint at the advanced stage contemplated under section 145 of NI Act. The trial Court rejected the application with the reasoning that as per Hon''ble Supreme Court's judgment, if the complaint under section 138 NI Act filed before the Court other than the Court which exercises jurisdiction in respect of the territory where the drawee bank, dishonoured the cheque, is situated, shall transfer the case to the Court having jurisdiction in the territory where the bank is situated, if the complaint filed was at the preliminary stage, i.e., service on accused is not complete or remained unserved, etc., and not when the complaint is registered and evidence of the complainant has come on record and the matter is posted under section 145 of NI Act as specifically observed by the Hon''b''le Supreme Court in the aforesaid judgment.

4. Being aggrieved thereby, the accused/petitioner filed a revision petition before the Court of Additional District Judge, Chachoda, District Guna. The Additional District Judge has opined that as a matter of fact, the complainant had filed the case before the Court of Shri Girraj Prasad Garg, Judicial Magistrate, First Class, Chachoda, the Court to which transfer is sought on the strength of the judgment of the Hon''ble Supreme Court, Dashrath Rupsingh Rathod (supra). But, by an administrative order of the Chief Judicial Magistrate, District Guna vide order No. Q/11 dated 19/07/2011, on administrative side, bunch of cases alongwith the instant case were transferred to the Court of another Judicial Magistrate, First Class within Chachoda (Shri Sanjay Shrivastava), in the course of allotment of cases (Court business) in routine manner and, therefore, no illegality can be found in the matter of pendency of the proceedings in the said Court. Under such circumstances, it is held that it is incorrect to say that the aforesaid Court lacks territorial jurisdiction to hear and decide the instant complaint filed under section 138 of NI Act. Accordingly, dismissed the revision petition.

5. Being aggrieved by the orders passed by the Courts below, the petitioner has approached this Court under Article 227 of the Constitution of India. The sole contention advanced by the petitioner is in the context of judgment of the Hon''ble Supreme Court Dashrath Rupsingh Rathod (supra).

6. The Hon''ble Supreme Court in the said case has dealt with the question of jurisdiction of the Court in the matter of entertaining and deciding the complaint filed under section 138 of NI Act as there was conflict judicial opinion as regards the territorial jurisdiction of the Court empowered to take cognizance of such complaint and decide it. The judicial opinion on the one hand was to the effect that such Courts of JMFC having jurisdiction over the place where the cheque was presented (in the Bank) but the amount was not credited for the reason that the cheque was dishonoured and on the other hand, the judicial opinion was to the effect that such Courts of JMFC shall have territorial jurisdiction within whose jurisdiction the drawee bank is situated which has dishonoured the cheque. The Hon''ble Supreme Court with the reasoning that the offence under section 138 of NI Act is committed/complete only after dishonour of the cheque, therefore, the JMFC where the drawee bank is situated shall have the jurisdiction. However, to obviate and eradicate any legal complications, the Hon''ble Supreme Court further ordered that the category of complaint cases where proceedings are at the stage of section 145 of NI Act or beyond shall be deemed to have been transferred by the Hon''ble Supreme Court itself from the Court ordinarily possessing territorial jurisdiction to the Court where it is presently pending. All other complaints including those where the accused/respondent has not been properly served shall be returned to the complainant for filing in the proper Court, in consonance with the law laid down by the Hon''ble Supreme Court and thereafter time limit was also prescribed for the said purpose.

7. Now, turning to the facts in hand, the complaint case was filed by the respondent/complainant in the Court of Shri Girraj Prasad Garg, Judicial Magistrate, First Class, Chachoda, the Court according to petitioner/accused has jurisdiction and, hence, no fault can be found with the institution of the case before the said Court. The Chief Judicial Magistrate, District Guna vide the administrative order No. Q/11 dated 19/07/2011 has allotted bunch of cases including the instant case to the Court of Shri Sanjay Shrivastava, Judicial Magistrate, First Class within Chachoda. Needless to say that both the Courts of JMFC are in the same premise at Chachoda under the administrative control of the District Judge, Guna. Transfer of cases from one Court to another Court by the Chief Judicial Magistrate is under his administrative powers. Hence, no fault can be found in the matter of exercise of power by the Chief Judicial Magistrate, District Guna, as the same has been exercised in the course of Court business. Hence, in the light of the distinct facts, the ratio of the judgment of the Hon''ble Apex Court in the case of Dashrath Rupsingh Rathod (supra), in the opinion of this Court cannot be pressed into service to contend that the Court of Shri Sanjay Shrivastava, Judicial Magistrate, First Class within Chachoda has no jurisdiction to hear and decide the instant case. That apart, the proceedings are

at the advanced stage after submission of evidence on affidavit by the complainant under section 148 of NI Act in the Court of Shri Sanjay Shrivastava, Judicial Magistrate, First Class, Chachoda. As such, no illegality has been committed by both the Courts below rejecting the application filed by the petitioner/accused.

8. The writ petition is devoid of merit and is accordingly dismissed.