

(2017) 04 AHC CK 0149
In the Allahabad High Court
Case No : 10750 of 2017

M/S Allied Machinery & Tools Corporation

APPELLANT

Vs

State Of U.P. And Another

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 220](#), [Section 177](#), [Section 184](#), [Section 220\(1\)](#), [Section 182\(1\)](#) - Saving of inherent powers of High Court - Trial for more than one offence - Ordinary place of Inquiry and trial - Place of trial for offences triable together - Trial for more than one offence - Offence committed by letters, etc

[Negotiable Instruments Act, 1881](#), [Section 145\(2\)](#), [Section 138](#), [Section 9](#), [Section 7](#), [Section 142](#), [Section 142A](#) - Evidence on affidavit - Dishonour of cheque for insufficiency, etc., of funds in the account - Holder in due course - Drawer" "Drawee - Cognizance of offences

Citation : (2017) 04 AHC CK 0149

Hon'ble Judges : Surya Prakash Kesarwani

Bench : Division Bench

Advocate : Rishi Kant Rai, Rakesh Kumar Upadhyay

Judgement

1. Heard learned counsel for the applicant and the learned A.G.A. for the State-respondent.

2. This application under Section 482 Cr.P.C. has been filed praying to quash the order dated 15.06.2015 in Complaint Case No. 1149 of 2014 (M/s. Allied Machinery Vs. Ghanshyam Enterprises), under Section 138 N.I. Act, P.S. Kotwali, District Allahabad passed by the Judicial Magistrate, Court No. 4, Allahabad. By the impugned order the Judicial Magistrate has dismissed the aforesaid complaint case on the ground of lack of jurisdiction in the light of the judgment of Hon'ble Supreme Court in the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra (2014) 9 SCC 129. Facts:-

3. Briefly stated facts of the present case are that in consideration of the goods sold, the applicant has received, from the opposite party no. 2, a cheque bearing number 287322 dated 27.01.2014 for Rs. 1,03,000/- drawn on Central Bank of India, Pushprajgarh, Anupur, Madhya Pradesh. The applicant runs his business at Allahabad. Having received the aforesaid cheque at Allahabad, he presented it for encashment in his Bank on 06.03.2014 at Allahabad which was dishonoured due to insufficiency of fund. The applicant intimated the fact of dishonour of the cheque to the opposite party no. 2 by a notice dated 22.04.2014 sent by registered post which was received by the opposite party no. 2 on 04.05.2014. However, the opposite party no. 2 had not paid the amount of the cheque. Consequently the applicant filed a Complaint Case No. 1149 of 2014 in the court of Judicial Magistrate, Court No. 4, Allahabad which was dismissed by order dated 15.06.2015 on the ground of lack of jurisdiction in view of the judgment in the case of Dashrath Rupsingh Rathod (supra). Aggrieved with the aforesaid order dated 15.06.2015, the applicant has filed the present application. Submissions:-

4. Learned counsel for the applicant submits that the provisions of Section 142 of Negotiable Instruments Act, 1881 (hereinafter to be referred as the "N.I. Act") was amended by Act 26 of 2015 with retrospective effect from 15.06.2015 and in view of the amended provisions there was no lack of jurisdiction. Therefore, dismissal of the complaint case by the impugned order is wholly illegal.

5. Learned A.G.A. submits that in view of the law laid down by Hon"ble Supreme Court in the case of Dashrath Rupsing Rathod (supra) the court below was justified to dismiss the complaint on the ground of lack of territorial jurisdiction. Discussion and Findings:-

6. I have carefully considered the submissions of learned counsel for the applicant and the learned A.G.A.

7. It is undisputed that the applicant runs his business at Allahabad and has received the aforesaid cheque from the opposite party no. 2 in consideration of the goods sold. He presented the aforesaid cheque in his Bank at Allahabad which was dishonoured due to insufficiency of fund. Consequently, he sent a registered notice to the opposite party no. 2 intimating the dishonour of the cheque and requiring him to pay the amount. But it was not paid by the opposite party no. 2. Consequently, the applicant had filed the Complaint Case No. 1149 of 2014 before the Judicial Magistrate, Court No. 4, Allahabad under Section 138 of the N.I. Act which was dismissed on the ground of lack of jurisdiction in the light of the decision of Hon"ble Supreme Court in the case of Dashrath Rupsingh Rathod (supra). For ready reference the relevant paragraphs of the judgment of Hon"ble Supreme Court in the case of Dashrath Rupsingh Rathod (supra) is reproduced below: 22. "We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e. applicability to Complaints

that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other Complaints (obviously 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 our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred.

58. To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Section 184 and 220 thereof."

8. To overcome the legal position declared by the Hon"ble Supreme Court in the case of Dashrath Rupsing Rathod (supra), the Parliament enacted the Act No. 26 of 2015 with retrospective effect from 15.06.2015. By the amending Act, the original section 142 of the N.I. Act was amended and a new Section 142-A was inserted into the N.I. Act, 1881. The amended Section 142 and the newly inserted Section 142-A are being extracted hereunder:- "142: Cognizance of offences. -- [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).--

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(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.

142-A. Validation for transfer of pending cases.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 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 subsection (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 subsection (2) of section 142 or the case has been transferred to that court under sub-section (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."

9. The word "Payee" has been defined in Section 7 of the Act as under: "Payee" : The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

10. The word "Holder in due course" has been defined in Section 9 of the Act as under: 9. "Holder in due course" "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he

derived his title."

11. A perusal of amended Section 142(2) of the Act read with explanation, extracted above, makes it quite clear that for the purposes of an offence under Section 138 of the Act, the place where the cheque is delivered for collection i.e. the branch of the bank of the "Payee" or "Holder in due course", where the drawee maintains the account would be determinative of the place of territorial jurisdiction. This legal position is also absolutely clear from bare reading of validation clause contained in Section 142-A of the N.I. Act.

12. The aforesaid legal position, in view of the amended provisions of Section 142 and 142-A of the Act; has also been settled by Hon"ble Supreme Court in the case of *Bridgestone India Private Limited Vs. Inderpal Singh* (2016) 2 SCC 75 (paras 13 and 15) as under: "13. A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, specially in view of the Explanation thereunder, that with reference to an offence under section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction.

15. We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of Negotiable Instruments Act, inter alia, in the territorial jurisdiction of the court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142-A(1) to the effect, that the judgment rendered by this Court in *Dashrath Rupsing Rathod* case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonour of the cheque in the present case arises." (Emphasis supplied by me)

13. Undisputedly, the applicant is the payee who delivered the cheque to his bank for collection where he maintains account i.e. the Central Bank of India, Allahabad which was dishonoured due to insufficiency of fund. Thus, in view of the amended provisions and the law laid down by Hon"ble Supreme Court in the case of *Bridgestone India Private Limited* (supra), the court below at Allahabad has territorial jurisdiction to inquire into and try the criminal complaint case No. 1149 of 2014, under Section 138 N.I. Act. Under the circumstances, the dismissal of the complaint by the learned Judicial Magistrate on the ground of lack of jurisdiction, is unsustainable and therefore, deserves to be quashed.

14. In view of the aforesaid, the application is allowed. The impugned order dated 15.06.2015 in Complaint Case No. 1149 of 2014 (M/s. Allied Machinery Vs. Ghanshyam Enterprises), under Section 138 N.I. Act, P.S. Kotwali, District

Allahabad passed by the Judicial Magistrate, Court No. 4, Allahabad is hereby quashed. The court below shall now proceed with aforesaid complaint case in accordance with law.