

(1996) 10 GUJ CK 0006

In the Gujarat High Court

Case No : Criminal Revision Application No's. 217, 218 and 219 of 1995 with
Criminal Appeal No. 603 of 1996

Rayalseema Agro Enterprises and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 23-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201, 407, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 94 CompCas 363 : (1997) 3 GLR 2343

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Judgement

S.D. Pandit, J.

Rule.

1. In these three criminal revision applications, the petitioners before me are one and the same and the respondents are also one and the same. Though these three revision applications arise out of three private complaints bearing Nos. 3835 of 1991, 3498 of 1991, and 3497 of 1991, the question involved in these petitions are one and the same and, therefore, they are heard together. I, therefore, proceed to decide all these revision applications by this common judgment.

2. I have given opportunity to both the sides to argue the applications on the merits fully and I have heard them fully and, therefore, I proceed to dispose of these applications finally by this judgment.

3. Respondent No. 2, Deepak Chimanlal Shah, had lodged the above three private complaints for the commission of the alleged offences punishable u/s 138 of the Negotiable Instruments Act. In all these three cases the present petitioners who were accused in those three cases, gave an application. By the said application they have contended that the presentation of the cheques issued

by the present revision applicant as well as the dishonouring of the cheques had not taken place within the jurisdiction of the court of the learned Metropolitan Magistrate, Ahmedabad, and, therefore, the learned Metropolitan Magistrate, Ahmedabad, had no jurisdiction to entertain the said criminal cases. It was contended in the said application that either the court at Ahmedabad or the court at Hyderabad would be having jurisdiction to entertain these complaints. Therefore, in the said application prayers were made that the complaint be dismissed and/or the complaints be returned to the complainant for presentation to the proper court. After hearing both the sides the learned metropolitan magistrate came to the conclusion by the order dated March 6, 1995, that he had no jurisdiction to entertain the said complaint. However, he ordered that the complaint be returned to the complainant for presentation to the proper court. The present revision applications are preferred to challenge the order of the learned magistrate by which he directed the return of the complaint to the complainant for presentation of the same to the proper court.

4. Section 201 of the Criminal Procedure Code, 1973, is relevant for deciding the controversy before me and said section runs as under :

"201. If the complaint is made to a magistrate who is not competent to take cognizance of the offence, he shall, -

(a) if the complaint is in writing return it for presentation to the proper court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper court."

5. If the above provisions of section 201 of the Criminal Procedure Code, 1973, are considered, then it would be quite clear that said provisions are analogous to the provisions of Orders 10 and 10A of the Civil Procedure Code, 1908. Section 201(a) clearly lays down that the complaint has to be returned to the complainant on finding that the learned magistrate is not competent to take cognizance with an endorsement to the effect, viz., that the learned magistrate was not competent to take cognizance of the offence for want of jurisdiction. Thus, if the provisions of section 201 are considered then it would be clear that the order passed by the learned magistrate is quite proper and just and it could not be said to be either illegal or improper. It is vehemently argued by Mr. Nanavati for the revision applicant that the main prayer of the applicant before the learned magistrate was to dismiss the complaint and therefore, he ought to have merely dismissed the complaint and ought not to have returned the complaint for presentation to the proper court. It must be stated here that the revision applicants before me have made prayer for dismissal of the complaint as well as for returning the complaint to the complainant for presentation to the proper court. Not only that prayer was made in the application but that prayer was also pressed into operation at the time of making arguments for deciding the said application filed by the applicant by which he had challenged the jurisdiction of the learned magistrate to take cognizance of the said complaint. When the

learned magistrate has no jurisdiction to entertain the complaint for want of jurisdiction, then it is not open for him to say that the complaint must be dismissed. It is for him to follow the procedure laid down by section 201 of the Criminal Procedure Code, which clearly lays down that the magistrate shall return the complaint to the complainant for presentation of the same to the proper court. No discretion lies with the learned magistrate when he finds that he has no jurisdiction to take cognizance of the said complaint. This view is taken earlier in a decision in *The State Vs. Amrutlal Prabhudas*, .

6. Mr. Nanavati cited before me the judgment of this court (Coram : K. J. Vaidya J.) in Misc. Criminal Applications Nos. 3777, 3778 and 3779 of 1993, delivered on December 17, 1994. It is true that in the said judgment the learned judge had found that the learned Metropolitan Magistrate, Ahmedabad, had no jurisdiction to entertain the complaint which was filed u/s 138 of the Negotiable Instruments Act, 1881, and the jurisdiction was lying with the learned Magistrate at Bangalore, and the learned judge has quashed the proceedings by exercising powers u/s 482 of the Criminal Procedure Code, 1973. In that case, the application was filed by the accused for quashing the criminal proceedings on the ground that the metropolitan magistrate had no jurisdiction. It is pertinent to note that it was nowhere submitted before K. J. Vaidya J. That the provisions of section 201 of the Criminal Procedure Code should be considered and that the complaint should be returned to the complainant for presentation to the proper court. As there was no submission as regards the consideration of section 201 of the Criminal Procedure Code in that case before K. J. Vaidya J. It is not possible to hold that Vaidya J. had considered in that case the provisions of section 201 of the Criminal Procedure Code. The learned advocate for the revision applicant has cited before me the case of *K.M. Mathew Vs. State of Kerala and another*, . If the facts of the said case are considered, then it would be quite clear that in that case there was also no consideration of the provisions of section 201 of the Criminal Procedure Code. In that case, the submission made before their Lordships of the apex court was that in view of the averments made by the complainant in his complaint there was no disclosure of any offence for which cognizance could be taken by the learned magistrate so as to proceed against the accused and that submission has been accepted by their Lordships of the apex court and the prosecution has been quashed. There was no claim that the magistrate had no territorial jurisdiction for taking cognizance of offence. Thus, I hold that in view of the provisions of section 201 of the Criminal Procedure Code, the learned metropolitan magistrate had to return the complaint to the complainant for presenting the same to the proper court and no discretion was lying with him in view of the mandatory word "shall" used in section 201 of the Criminal Procedure Code. Consequently, the order passed by the learned magistrate in returning the complaint to the complainant for presentation to the proper court could not be said to be illegal or improper. Section 201 nowhere lays down that return must be only in case the jurisdiction is lying with any other magistrate within the State. Law expects that when the learned magistrate finds

that he has no jurisdiction he has to record an endorsement to that effect and return the complaint to the complainant for presentation to the proper court. It is not the business of the learned magistrate to hold as to which court has got jurisdiction. He has to consider whether he has got jurisdiction or not. Section 201 of the Criminal Procedure Code nowhere lays down that the complaint is to be returned only in cases where the jurisdiction is lying with the other magistrate with the State.

7. Mr. Nanavati for the revision application also cited before me another decision of this court (Coram : J. M. Panchal J.) in Crl. Misc. Application No. 5443 of 1994, decided on January 17, 1995. In that case, Panchal J. had found that the learned magistrate who had issued process had no jurisdiction but another court within the jurisdiction of the High Court had jurisdiction to entertain the complaint and, therefore, in exercise of the powers u/s 407, the complaint was transferred to another court. Thus, that case also has no bearing on the facts of the cases before me.

8. In the circumstances, the present revision applications will have to be dismissed and they are hereby dismissed. Rule discharged in all the matters.