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Andhra Pradesh High Court

U. Durga Prasad Rao, J.

Kalakoti Niranjan Reddy v. State of Andhra Pradesh

Criminal Petition No. 7701 of 2013

09.03.2015

Negotiable Instruments Act, 1881 , Section 145(2) – Any evidence led by the complainant in the form of affidavit or oral statement during pre-summoning i.e. pre-cognizance stage cannot be treated as commencement of recording of evidence under Section 145(2) of N.I. Act to retain the case in that Court. So, also the sworn statement given by complainant at pre-cognizance stage admitted as evidence during trial cannot be construed as commencement of recording of evidence under Section 145(2) N.I. Act to retain the case in the same court.

Advocate : Botla Venkateswara Rao,

Judgement

U. Durga Prasad Rao, J.

In this petition filed under Sec.482 Cr.P.C., the petitioner/accused seeks to quash the proceedings in C.C. No. 162 of 2014 pending on the file of Special Judicial First Class Magistrate (Mobile Court), Anantapur (Old C.C. No. 149 of 2013 on the file of Additional Judicial First Class Magistrate, Anantapur).

2. The respondent/complainant filed private complaint under Sec.138 of Negotiable Instruments Act, 1881 (for short N.I. Act) against petitioner/accused with the allegations that the accused has, for his business purpose, took loan of Rs. 30,00,000/- from the complainant and executed a bond dated 04.09.2010 in favour of complainant and subsequently he issued a cheque for Rs. 30,00,000/- drawn on Citi Bank, Hyderabad for due discharge of the loan amount but when the complainant presented the said cheque in Andhra Bank, Anantapur Branch on 19.07.2012, the same was bounced with the endorsement as Account Closed and thereby the statutory notice followed to the accused but in vain. Hence, the complaint under Sec.138 of N.I. Act and also under Sec.420 IPC.

3. The petitioner/accused seeks quashment of the proceedings on the main plank of argument that the cheque was drawn at Hyderabad and the same was dishonoured there itself and no part of cause of action has arisen at Anantapur and therefore, the criminal case is not maintainable in the Court at Anantapur since the Special Judicial First Class

Magistrate (Mobile Court) has no territorial jurisdiction to entertain the criminal case in view of the ruling given by Hon”ble Apex Court in its latest judgment reported in Dashrath Rupsingh Rathod vs. State of Maharashtra and another.

4. Heard.

5. Referring the Dashrath Rupsingh Rathods case (supra), learned counsel for petitioner/accused argued that as per the ratio in that decision, the Court within whose jurisdiction the cheque was dishonoured alone gets the jurisdiction to try the offence but not the Court within whose jurisdiction the complainant chose to deposit the cheque in a bank for collection and in that view, the Court at Hyderabad alone has jurisdiction to try the offence but not the Special Judicial First Class Magistrate (Mobile Court), Anantapur and hence continuation of proceedings in that Court will amount to abuse of process of law.

6. While admitting the above ratio, learned counsel for respondent/complainant however, argued that for applying the above ratio, the stage of the case is important. He would argue that the Apex Court has fixed a thumb-rule for transferring the case lying in a Court having no territorial jurisdiction to the Court having such jurisdiction and according to the said rule, if the summoning and appearance of the accused is completed in the case, then the case has to be continued in the same Court despite its lacking territorial jurisdiction. In this regard, he referred the following observation of the Apex Court in the case of Dashrath Rupsingh Rathod (supra):

Para 22: xx xx xx

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.

He submitted that in the instant case since the accused has already made his appearance before the trial Court consequent to the summoning, the case need not be transferred from Anantapur to Hyderabad.

7. In the light of above rival arguments, the point for determination is: Whether there are merits in this petition to allow?

8. POINT: The admitted facts in this case are that the subject cheque was drawn on Citi Bank, Hyderabad and the complainant presented the said cheque for collection through Andhra Bank, Georgepet Branch, Anantapur and later the cheque was bounced on the ground account closed. In this context, speaking on the jurisdiction of the Court in N.I. Act offences, the Apex Court in Dashrath Rupsingh Rathods case (supra), has observed thus:

Para 21: The interpretation of Section 138 of the NI Act which commends itself to us is that

the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly JMFC at the place where this occurs is ordinarily where the complaint must be filed, entertained and tried. The cognizance of the crime by JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the complaints even though non-compliance therewith will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall decide by this judgment. We clarify that the complainant is statutorily bound to comply with Section 177, etc. of CrPC and therefore the place or situs where the Section 138 complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. (Emphasis supplied)

a) Of course, there is no demur among the parties on the above ruling. The difference of opinion is only regarding the stage of the case at which the dictum in Dashrath Rupsingh Rathods case (supra) is to be applied. For applying the above ruling, the Apex Court has given the following guidelines:

Para 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 respondent-accused 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. (Emphasis supplied) 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 respondent-accused 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.

b) Of the above, the bone of contention is the underlined observation of the Apex Court in para 22.

9. As already stated supra, the contention of learned counsel for respondent/complainant is that if the case has reached to a stage, where post-summoning, the accused made his appearance, then case need not be transferred from the Court which lacks territorial jurisdiction to the Court which possess. I am afraid, this interpretation of the complainant is wrong for the reason that if that were its intention, the Hon”ble Apex Court would have simply mentioned that post-summoning and appearance of the accused, the proceedings will continue at that place and it would not have added the further clause the recording of evidence has commenced as envisaged in Sec.145(2) of N.I. Act. The interpretation of the complainant totally omits the above clause and makes it nugatory. Hence the said interpretation cannot be accepted. So the observation of Apex Court should be understood in the sense that consequent to the summoning and appearance of the accused, if the recording of evidence has commenced as laid down under Sec.145(2) of N.I. Act, then irrespective of the fact that the case was filed and pending in the Court having no territorial jurisdiction, it shall be continued in that Court. On the other hand, if that stage has not reached, the case shall be returned to the complainant for filing in the proper Court. It must be noted that the Apex Court has given the clarification also regarding what amounts to the commencement of recording of evidence as envisaged under Sec.145(2) of N.I. Act. If at the pre-summoning stage i.e., pre-cognizance stage the complainant led evidence either by affidavit or by oral statement, that cannot be treated as commencement of the recording of the evidence as envisaged under Sec.145(2) of N.I. Act. Such sworn statement in the form of oral submission or written affidavit given by the complainant for taking cognizance of the case cannot be treated as evidence in the main case for deciding whether or not to transfer the case. From this clarification of Hon”ble Apex Court, it is manifest that when only sworn statement in the form of written affidavit or oral statement which was reduced to writing was available but no evidence in trial was commenced in terms of Sec.145(2) of N.I. Act, the case is liable to be returned to the complainant for filing in the proper court. This is the obvious intendment of the Apex Court.

a) Going by the above clarification of Apex Court, another situation also can be visualized to return the complaint. Sometimes the complainant submits a vivid sworn statement basing on which the Court takes cognizance of the complaint. After appearance of the accused when the matter comes up for trial, the complainant may request the Court to treat his previous sworn statement as evidence on his behalf as the said statement is vivid enough containing full particulars and the Court may also accepts the same. Now the point is whether such a sworn statement can be treated as commencement of recording of evidence to retain the case in that Court or not. Going by the above ruling of Apex Court, the said sworn statement though admitted to be evidence, cannot be treated as commencement of the evidence to retain the case in that Court.

b) To sum up the above:

In a case where consequent to summons, the accused appeared and recording of evidence has commenced as envisaged under Section 145(2) of N.I. Act, 1881, the said case will

continue in the same court despite lacking territorial jurisdiction by virtue of Apex Courts ruling in Dashrath Rupsingh Rathods case (supra). Any evidence led by the complainant in the form of affidavit or oral statement during pre-summoning i.e. pre-cognizance stage cannot be treated as commencement of recording of evidence under Section 145(2) of N.I. Act to retain the case in that Court. So, also the sworn statement given by complainant at pre-cognizance stage admitted as evidence during trial cannot be construed as commencement of recording of evidence under Section 145(2) N.I. Act to retain the case in the same court.

10. Following the above clarification and applying the same to the stage of the case in C.C. No. 162 of 2014 pending on the file of Special Judicial First Class Magistrate (Mobile Court), Anantapur (Old C.C. No. 149 of 2013 on the file of Additional Judicial First Class Magistrate, Anantapur) by the date of judgment in Dashrath Rupsingh Rathods case (supra) i.e. 01.08.2014, learned Magistrate is directed to pass an appropriate order as to either retaining the case in his court or returning the case to the complainant to present in the proper court.

11. This Criminal Petition is accordingly disposed of.