

ULTRA TECH CEMENT LTD

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v.

RAKESH KUMAR SINGH & ANR.

(Criminal Appeal No.717 of 2015)

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APRIL 24, 2015

[JAGDISH SINGH KHEHAR AND S.A. BOBDE, JJ.]

*Negotiable Instruments Act, 1881 – s. 138 – Complaint under – Territorial jurisdiction for lodging – Post the judgment in *Rupsingh Rathod case whereby it was held that jurisdiction to try the complaint would be determined by reference to the place where cheque is dishonoured – Held: *Rupsingh Rathod’s case had clarified that pending proceedings where evidence at the post-summoning stage had commenced before the date of the judgment, would not be dislodged – In the present case, evidence had commenced as envisaged by s.145(2) of the 1881 Act, the complaint would be maintainable before the Court it was lodged – Territorial Jurisdiction.*

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Allowing the appeal, the Court

HELD: 1. In view of the factual position in the present matter, evidence had commenced, as envisaged by Section 145(2) of the Negotiable Instruments Act, 1881, in terms of the clarification recorded in **Dashrath Rupsingh Rathod’s case viz., the proceedings initiated prior to the rendering of the judgment in Dashrath *Rupsingh Rathod’s case i.e. on 01.08.2014, will be preserved at the place they were filed, only when “post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged*

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A in Section 145(2) of the Negotiable Instruments Act, 1881". Therefore, in the present case, the Metropolitan Magistrate before whom the complaint was lodged, will be deemed to have jurisdiction to entertain the controversy arising out of the complaint filed by the
 B appellant u/s. 138 of the Negotiable Instruments Act, 1881. The said Court shall accordingly proceed with the matter, in consonance with law. [Paras 5, 7] [156-E-F; 157-E-G]

C *Dashrath Rupsing Rathod vs. State of Maharashtra and Anr.* (2014) 9 SCC 129 – relied on.

Case Law Reference

(2014) 9 SCC 129 relied on. Para 4

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 717 of 2015

From the Judgment and Order dated 03.06.2013 of the High Court at Calcutta in CRR No. 721 of 2012

E Siddhartha Dave, Abhay Anand Jena, Ranjit Raut, Bina Gupta for the Appellant.

Avijit Bhattacharjee, Upma Shrivastava, Ratan Kumar Choudhari for the Respondents.

F The judgment of the Court was delivered by

J. S. KHEHAR, J. 1. Heard learned counsel for the parties.

G 2. Leave granted.

3. The question is whether the Metropolitan Magistrate, 11th Court, Calcutta, where the appellant initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881,

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had the jurisdiction to entertain the same. A

4. Learned counsel for the rival parties have invited our attention, to the judgment rendered by a three-Judge Bench of this Court in Dashrath Rupsingh Rathod vs. State of Maharashtra and another, (2014) 9 SCC 129, and have drawn our attention to the following observations recorded therein: B

"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. 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 C
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A 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
B 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
C by law, unless the initial or prior filing was itself time-
barred.”

(emphasis is ours)

5. On a perusal of the conclusions drawn in paragraph
D 22, extracted hereinabove, we feel that the proceedings
initiated prior to the rendering of the judgment in Dashrath
Rupsingh Rathod’s case (supra) on 01.08.2014, will be
preserved at the place they were filed, only when “post the
summoning and appearance of the alleged accused, the
E recording of evidence has commenced as envisaged in
Section 145(2) of the Negotiable Instruments Act, 1881”. In
order to further explain its intent, the judgment clarifies, that
merely leading of evidence at the pre-summoning stage, either
F by way of affidavit or by oral statement will not exclude
applicability of the judgment in Dashrath Rupsingh Rathod’s
case (supra). The above judgment, thereby seeks to confirm
the position, that only when recording of evidence at the post-
summoning stage had commenced, before 01.08.2014 (the
G date on which the judgment in Dashrath Rupsingh Rathod’s
case was pronounced), such proceedings would not be
dislodged, the declaration of law, on the subject of jurisdiction,
in Dashrath Rupsingh Rathod’s case (supra).

H 6. Having given our thoughtful consideration to the

dispute in hand, and having examined the orders placed on the record of this case collectively as Annexure P-5, we are of the view that the appellant recorded its statement at the pre-summoning stage by filing an affidavit on 16.02.2007. Consequent upon the filing of the aforesaid affidavit, the summons were issued to the accused-respondent No.1 for 21.04.2007. On 21.07.2008, the accused was examined under Section 251 of the Code of Criminal Procedure, and the substance of the allegations were read over to him, whereupon, the accused having pleaded not guilty, the matter was adjourned for recording evidence on 31.12.2008. On 22.04.2009, the appellant filed an affidavit to be treated as the statement-in-chief of PW-1, whereupon, PW-1 was to be cross-examined. The Metropolitan Magistrate, 11th Court, Calcutta, then posted the matter for 22.07.2009 for the cross-examination of PW-1. The date for the cross-examination of PW-1 was first adjourned to 15.12.2009 and thereafter successively to 25.05.2010, 21.09.2010, 25.07.2011 and finally to 09.12.2011.

7. In view of the factual position noticed hereinabove, we are satisfied that evidence had commenced in the present matter, as envisaged by Section 145(2) of the Negotiable Instruments Act, 1881, in terms of the clarification recorded in paragraph 22, in Dashrath Rupsingh Rathod's case (supra). That being the factual position, we are of the view, that the instant appeal is liable to be allowed. The same is accordingly allowed. The Metropolitan Magistrate, 11th Court, Calcutta will be deemed to have jurisdiction to entertain the controversy arising out of the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881. The said Court shall accordingly proceed with the matter, in consonance with law.