

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

CRIMINAL WRIT PETITION NO. 2362 OF 2014

Mr.Ramanbhai Mathurbhai Patel ... **Petitioner**
V/s.
State of Maharashtra & Anr. ... **Respondents**

.....
Mr.Raju M. Jain, Advocate for the Petitioner.
Ms.G.P.Mulekar, A.P.P. for the Respondent No.1./State.
Mr.Jatin Shah a/w. Deepak Sharma, Advocate for the Respondent No.2.

....
CORAM : M.L.TAHALIYANI J.
DATED : 25TH AUGUST, 2014

P.C.

01. Admitted.

02. Heard finally.

03. The petitioner is facing trial for the offence punishable u/s. 138 of N.I.Act vide Summary Criminal Case No. 3684 of 2013 in the Court of Metropolitan Magistrate, 59th Court at Kurla. The complaint was originally filed in 61th Court at Kurla and now it has been transferred to 59th Court at Kurla by the Chief Metropolitan Magistrate. The petitioner is aggrieved by the order passed by the learned Metropolitan Magistrate issuing process against the petitioner to answer the charge for the offence punishable u/s 138 of Negotiable Instruments Act. He wants that the complaint be returned to the respondent No. 2 (original complainant) for being presented before the Court having territorial jurisdiction to entertain and try the case.

04. The two cheques in question were admittedly issued by the petitioner in favour of the respondent No.2. The first cheque of Rs. 9,90,000/- was drawn on State Bank of India, Gandhinagar Branch, Ahmedabad, Gujarat. The other cheque was drawn on Bank of Maharashtra, Gandhinagar Branch, Ahmadabad, Gujarat. Both the cheques were payable at par at all branches of the respective banks. The issue raised before me by the learned counsel for the petitioner, during the course of argument, is that both the cheques were dishonoured at Ahmadabad and that, therefore, in view of the judgment of the Honourable Supreme Court in the matter of ***Dashrath v. State of Maharashtra (Criminal Appeal No. 2287 of 2009)***, Mumbai Court will have no jurisdiction to entertain and try the complaint.

05. The learned counsel for the respondent No.2 has submitted that since both the cheques were payable at all branches of respective banks and since both the cheques were dishoured by the Mumbai branches of State Bank of India and Bank of Maharashtra situated within the jurisdiction of Metropolitan Magistrate, Kurla, the respondent No.2 was right in filing the complaint in the court of Metropolitan Magistrate at Kurla.

06. The issue which needs determination is as to whether which Court will have territorial jurisdiction to try the offence punishable u/s 138 of Negotiable Instruments Act, when the cheque payable at all branches of the drawee bank has been dishonoured by one of the branches of the drawee bank. In the present case, the drawer had accounts at Gandhi

Nagar branches of the two banks mentioned herein above and cheques have been dishonoured by the branches of the said two banks situated within the jurisdiction of Metropolitan Magistrate, Kurla. The question which arises for determination is as to whether the payee has to file complaint in the Court of Magistrate having jurisdiction over Gandhi Nagar branches or the branches which have dishonoured cheques. In this regard, one may refer to the judgment of Hon'ble Supreme Court in the matter of ***Dashrath v. State of Maharashtra cited (supra)***. While summing up the judgment, the Hon'ble Supreme Court has said at para 31 as under:

“31. To sum up:

(i)

(ii)

(iii)

(iv)

(v)

(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 Sections 184 and 220 thereof.”

7. One may also refer to para 17 of the said judgment where the Hon'ble supreme Court has said as under:

“17. In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience (emphasis supplied)”.

8. It is thus clear that in the present case by issuing cheques payable at all branches, the drawer of the cheques had given an option to the banker of payee to get the cheques cleared from the nearest available branch of bank of the drawer. It, therefore, follows that the cheques have been dishonoured within the territorial jurisdiction of Court of Metropolitan Magistrate at Kurla. In view of judgment of Hon'ble Supreme Court in the matter of ***Dashrath v. State of Maharashtra cited (supra)***, the learned Metropolitan Magistrate of Kurla Court has jurisdiction to entertain and decide the complaint in question.

9. I do not find any substance in the petition. The petition stands

dismissed.

10. Prayer for stay of this Order for two weeks is rejected.

JUDGE