

Yogesh Upadhyay vs Atlanta Limited on 21 February, 2023

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Bench: Sanjay Kumar, Dinesh Maheshwari

REPORTAB

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NOS. 526-527 OF 2022

YOGESH UPADHYAY AND ANR.

.....PETITIONER(S)

VS.

ATLANTA LIMITED

.....RESPONDENT(S)

J U D G M E N T

SANJAY KUMAR, J.

1. By way of these transfer petitions filed under Section 406 Cr.P.C., Yogesh Upadhyay and his proprietary concern, M/s. Shakti Buildcon, seek transfer of SCC Nos.25668/2019 and 26875/2019, both titled 'Atlanta Limited Vs. M/s Shakti Buildcon & Anr.', pending before the learned 22nd Jt. Civil Judge, Senior Division, Nagpur, and the learned 20th Civil Judge, Senior Division, Nagpur, respectively, to the South West District Courts, Dwarka, New Delhi, to be Neetu Khajuria Date: 2023.02.21 17:15:38 IST Reason:

tried along with Complaint Case Nos. 42489/2019, 1464/2020, 7596/2020 and 4094/2020, all titled 'Atlanta Limited Vs. Yogesh Upadhyay'. These six complaint cases were filed against the petitioners by Atlanta Limited, the respondent herein, under Sections 138 and 142 of the Negotiable Instruments Act, 1881 [for short, 'the Act of 1881'].

2. The six cheques, which are the subject-matter of these complaint cases, were issued by the

petitioners in connection with purchase of a NAWA-make crusher plant from the respondent company for a sum of ₹1,88,80,000/-, under Agreement dated 04.06.2019. This sale consideration was to be paid in seven installments by way of cheques. The first cheque issued by the petitioners for a sum of ₹11,80,000/- was duly honoured upon presentation by the respondent company. The remaining six cheques, however, were dishonoured on the strength of 'Stop payment' instructions. The first two cheques that came to be dishonoured were presented by the respondent company through its bank at Nagpur, Maharashtra. The first two complaint cases were accordingly filed before the Courts at Nagpur, Maharashtra. The remaining four cheques were thereafter presented by the respondent company through its bank at New Delhi and in consequence, those complaint cases were filed before the Dwarka Courts, New Delhi.

3. Mr. Rajmangal Kumar, learned counsel, appearing for the petitioners, would contend that as all the cheques relate to the same transaction, it would be proper and appropriate that the cases pertaining to their dishonour are tried and decided together. He would rely on case law to support his contention.

4. On the other hand, Mr. Chirag M. Shroff, learned counsel for the respondent company, would contend that Section 142 of the Act of 1881 would override Section 406 Cr.P.C., in view of the non obstante clause therein, and that the two cases filed at Nagpur, Maharashtra, therefore cannot be transferred. Further, he would assert that Section 142(2) of the Act of 1881 confers exclusive jurisdiction upon the Courts at Nagpur in so far as the first two complaint cases are concerned. He would also place reliance on case law.

5. It is now well settled that the offence under Section 138 of the Act of 1881 is complete upon dishonour of the cheque but prosecution in relation to such offence is postponed, by virtue of the provisos therein, till the failure of the drawer of the cheque to make the payment within 15 days of receiving the demand notice. However, jurisdiction to try this offence remained a troublesome issue for a long time.

6. In *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and another* [(1999) 7 SCC 510], this Court held that an offence under Section 138 of the Act of 1881 has five components: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning of the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and (5) failure of the drawer to make payment within 15 days of the receipt of the notice. It was further held that the Courts having jurisdiction over the territorial limits wherein any of the five acts, that constitute the components of the offence, occurred would have the jurisdiction to deal with the case and if the five acts were done in five different areas, any one of the Courts exercising jurisdiction in those five areas would have jurisdiction and the complainant could choose any one of those Courts.

7. Thereafter, in *Dashrath Rupsingh Rathod Vs. State of Maharashtra and another* [(2014) 9 SCC 129], a 3-Judges Bench of this Court observed that the return of the cheque by the drawee bank would alone constitute commission of the offence under Section 138 of the Act of 1881 and would indicate the place where the offence is committed. It was, therefore, held that the place, situs or

venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located, i.e., where the cheque is dishonoured upon presentation and not where the complainant's bank is situated.

8. In this regard, it may be noted that Section 142 of the Act of 1881, titled 'Cognizance of Offences', provided that, notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court shall take cognizance of an offence punishable under Section 138 except on a complaint in writing made by the payee or, as the case may be, the holder in due course of the cheque; 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; and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under Section 138.

9. Significantly, the aforesaid original Section 142 of the Act of 1881 was renumbered as Section 142(1) when amendments were made in the Act of 1881 by the Negotiable Instruments (Amendment) Act, 2015 (Act 26 of 2015). Further, Section 142(2) was inserted in the statute book along with Section 142-A. The newly inserted Section 142(2), to the extent relevant, states that 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.

10. This being the statutory scheme, stress is laid by Mr. Chirag M. Shroff, learned counsel, upon the words: 'shall be inquired into and tried only by a Court within whose local jurisdiction.....' in Section 142(2) to contend that the Courts at Nagpur would have exclusive jurisdiction in relation to the dishonoured cheques presented by the respondent company through its bank at Nagpur.

11. Perusal of the Statement of Objects and Reasons in Amendment Act 26 of 2015 makes it amply clear that insertion of Sections 142(2) and 142-A in the Act of 1881 was a direct consequence of the judgment of this Court in Dashrath Rup Singh Rathod (supra). Therefore, the use of the phrase: 'shall be inquired into and tried only by a Court within whose local jurisdiction.....' in Section 142(2) of the Act 1881 is contextual to the ratio laid down in Dashrath Rup Singh Rathod (supra) to the contrary, whereby territorial jurisdiction to try an offence under Section 138 of the Act of 1881 vested in the Court having jurisdiction over the drawee bank and not the complainant's bank where he had presented the cheque. Section 142(2) now makes it clear that the jurisdiction to try such an offence would vest only in the Court within whose jurisdiction the branch of the Bank where the cheque was delivered for collection, through the account of the payee or holder in due course, is situated. The newly inserted Section 142-A further clarifies this position by validating the transfer of pending cases to the Courts conferred with such jurisdiction after the amendment.

12. The later decision of this Court in Bridgestone India Private Limited Vs. Inderpal Singh [(2016) 2 SCC 75] affirmed the legal position obtaining after the amendment of the Act of 1881 and endorsed that Section 142(2)(a) of the Act of 1881 vests jurisdiction for initiating proceedings for an offence under Section 138 in the Court where the cheque is delivered for collection, i.e., through an account in the branch of the bank where the payee or holder in due course maintains an account. This Court also affirmed that Dashrath Rup Singh Rathod (supra) would not non-suit the company in so far as

territorial jurisdiction for initiating proceedings under Section 138 of the Act of 1881 was concerned.

13. Therefore, institution of the first two complaint cases before the Courts at Nagpur is in keeping with the legal position obtaining now. However, the contention that the non obstante clause in Section 142(1) of the Act of 1881 would override Section 406 Cr.P.C. and that it would not be permissible for this Court to transfer the said complaint cases, in exercise of power thereunder, cannot be countenanced. It may be noted that the non obstante clause was there in the original Section 142 itself and was not introduced by way of the amendments in the year 2015, along with Section 142(2). The said clause merely has reference to the manner in which cognizance is to be taken in offences under Section 138 of the Act of 1881, as a departure has to be made from the usual procedure inasmuch as prosecution for the said offence stands postponed despite commission of the offence being complete upon dishonour of the cheque and it must necessarily be in terms of the procedure prescribed. The clause, therefore, has to be read and understood in the context and for the purpose it is used and it does not lend itself to the interpretation that Section 406 Cr.P.C. would stand excluded vis-à-vis offences under Section 138 of the Act of 1881. The power of this Court to transfer pending criminal proceedings under Section 406 Cr.P.C. does not stand abrogated thereby in respect of offences under Section 138 of the Act of 1881. It may be noted that this Court exercised power under Section 406 Cr.P.C. in relation to offences under Section 138 of the Act of 1881 even during the time the original Section 142 held the field. In A.E. Premanand Vs. Escorts Finance Ltd. & Others [(2004) 13 SCC 527], this Court took note of the fact that the offences therein, under Section 138 of the Act of 1881, had arisen out of one single transaction and found it appropriate and in the interest of justice that all such cases should be tried in one Court. We, therefore, hold that, notwithstanding the non obstante clause in Section 142(1) of the Act of 1881, the power of this Court to transfer criminal cases under Section 406 Cr.P.C. remains intact in relation to offences under Section 138 of the Act of 1881, if it is found expedient for the ends of justice.

14. In the case on hand, as the six complaint cases pertain to the same transaction, it would be advisable to have a common adjudication to obviate the possibility of contradictory findings being rendered in connection therewith by different Courts. As four of the six cases have been filed by the respondent company before the Dwarka Courts at New Delhi and only two such cases are pending before the Courts at Nagpur, Maharashtra, it would be convenient and in the interest of all concerned, including the parties and their witnesses, that the cases be transferred to the Dwarka Courts at New Delhi.

15. The transfer petitions are accordingly allowed and SCC Nos.25668/2019 and 26875/2019, both titled 'Atlanta Limited Vs. M/s Shakti Buildcon & Anr.', pending on the files of the learned 22nd Jt. Civil Judge, Senior Division, Nagpur; and the learned 20th Civil Judge, Senior Division, Nagpur, respectively, are transferred to the South West District Courts, Dwarka, New Delhi, to be tried along with Complaint Case Nos. 42489/2019, 1464/2020, 7596/2020 and 4094/2020.

.....J [DINESH MAHESHWARI]J [SANJAY KUMAR] NEW DELHI;

FEBRUARY 21, 2023.