

ORDER BELOW EX. 1

1.The Hon'ble Supreme Court has held in case of ***"Dashrath Rupsinh Rathod V/s. State of Maharashtra & Ors.***-Criminal Application No.2287/2009 decided on 01-08-2014" as reported in 2014 STPL(Web) 499 and observed and directed 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." and further Hon'ble Supreme Court has also held that ".....**All other Complaints (obviously including those where the accused/respondent 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."

2.In the present case on hand the copy of cheque produced on record which is alleged to be dishonoured has been drawn by the accused of a bank which is situated outside the jurisdiction of this Court. Admittedly the examination -in-chief on affidavit has been adduced by the complainant, but cross examination of the complainant has not begun in the present case on hand. As per the judgment of Hon'ble Gujarat High Court in the case of Mukeshkumar Ishwarbhai V/s. State of Gujarat, wherein, it is held that "When the Supreme Court says that the recording of evidence has commenced as envisaged in Section 145 Sub-Clause II of the N.I. Act, 1881 "only means the cross-examination has actually begun" if the complainant is yet to step in the box for the purpose of cross-examination by the accused then those cases according to me are covered by the judgement of Hon'ble S.C. In the case of ***Dashrath Rupsinh Rathod V/s. State of Maharashtra & Ors.*** to put in other words, such type of cases should be transferred. Admittedly, though the examination -in-chief on affidavit has been adduced on record . But the cross-examination of the complainant has not begun in the present case on hand and complainant is yet to step in the witness-box for the purpose of cross-examination by the accused. Therefore, considering the ratio laid down in the case of Mukeshkumar (Supra) as well as Dashrath Rupsinh (Supra) the present complaint is required to be returned to the complainant for its presentation before the Competent Court having jurisdiction. Hence, I pass the following order.

ORDER

The present complaint is ordered to be returned to the complainant with original documents produced (if any) for its filing before Competent Court having jurisdiction.

The complainant is required to follow procedure as provided in Chapter 21, Para 367(1) of Criminal Manual r/w Para 474 of the Civil Manual for return of the complaint and documents (if any) as per above order and shall produce certified copies of documents as required under the rules.

Signed and pronounced in the open court today on this 7th day of April, 2015 at Rajkot.

Rajkot
Date: 07/04/2015.

[Avinash Kamal Bhatt]
16th Addl. Sr. Civil Judge
Rajkot
UIC No. GJ00862