

~: ORDER BELOW EX. 1:~

1. It is the case of the Complainant that the accused has requested to the complainant and her husband to lend money to the accused and therefore the Complainant and her husband has transferred the amount of Rs 8,50,000/- online to the Mobile Number of Accused i.e. 63546 47877 and the Accused has drawn a cheque of Rs 8,50,000/- from his account bearing Date of 9/08/2019 and told the Complainant that she will get her amount back on depositing the said cheque in her account and the Complainant accordingly deposited the cheque in her bank I.e H.D.F.C Bank, Talala Branch for payment which was returned on account of Insufficient Funds and thus the Accused has failed to repay the amount even after the service of demand notice to the Accused dated 20/08/2019. As the opponent failed to make the payment with the statutory time period, the complainant has presented the complaint before this Court.

2. This Court after the verification and scrutinize the document and ordered to issued summons against the accused, on service of summons accused appear before court and recorded his plea on dated 08.01.20, accused refused to plead guilty and wanted to try the case and after case posted to the complainant evidence, during the time the Complainant has been cross examined by the Ld advocate fore the Accused and on closure of Evidence of Complainant, Further Statement of Accused has been recorded on 23/03/2021 and thereafter the evidence of Defence witness vide Ex-23 of Lakhmanbhai Naranbhai Pampaniya has been recorded and the stage of Further Evidence of Defense has been closed vide order dated 22/10/2021 and the matter has been kept for Final Arguments. The Ld Advocate for the Complainant has advanced arguments in support of his case and the Ld Advocate for the Accused have filed Written Arguments vide Ex27 on record and at the stage of arguments the Ld. Advocate for the Accused has taken the plea/ defense of Jurisdiction under the Negotiable Instruments Act and contended that looking to the averment of the present complaint this court has no jurisdiction in terms of section 142 of Negotiable Instruments Act and the present Complaint is liable to be dismissed and on the other option the present compliant is to be returned to the complainant for the purpose of presenting it before the court having proper Jurisdiction.

3. Ld. advocate for Complainant Mr. V.K Dholiya submitted that complainant having its bank account with banker HDFC Bank, Talala Branch and the complainant operate and maintain the same at Talala and the disputed cheque has been issued by accused in favour of the complainant and same was deposited in HDFC Bank, Talala Branch for encashment. But the said cheque was dishonored by the Bank. The detail of Bank is mentioned in Return Memo

which is submitted with list of documents, wherein mentioned that "In case of cheque return under CTS clearing, the return memo is prepared as per the return reason advice received from the drawee bank under CTS platform 2574-TALALA BRANCH" It is further submitted that by mistakes this complaint filed in Veraval under the impression of complainant maintained his/her account in HDFC Bank, Veraval. It is further submitted that the amendment provides that cases of bouncing of cheques can be filed only in a court in whose jurisdiction the bank branch of the payee (person who receives the cheque) lies.

4. It is the stand taken by the Ld Advocate for accused at the stage of argument that as this Hon'ble court has no jurisdiction to try and entertain the above complaint and pray that the above complaint may be returned to complainant for filing the same before the Hon'ble Court having jurisdiction to try it. At this juncture it is necessary to note that Complainant carrying on business or any other detail of transaction is not relevant for the purpose of determining jurisdiction for legal proceedings, more particularly, proceedings under Section 138 of the Negotiable Instruments Act, 1881. The President of India promulgated an Ordinance called, the "Negotiable Instruments (Amendment) Ordinance, 2015", on 15th June 2015, effecting certain amendments in the Negotiable Instruments Act, 1881. The jurisdiction to file complaints of dishonour of cheques has now been changed by virtue of the said Ordinance, superseding the judgment of the Hon'ble Supreme Court in the case of Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129. A complaint for the dishonour of cheque under Section 138 of the Act needs to be now filed in a Court at a place in accordance with the provisions of Section 142(2) of the Act, which has been inserted by the new Ordinance. As per the Ordinance, sub-section (2) of Section 142 of the Negotiable Instruments Act was inserted, which reads as follows:

"(2) 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: or

(b) If the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.--For the purposes of Clause (a), where a cheque is delivered for collection at any branch of the Bank of the payee or holder in due course, then, the cheque shall be deemed to

have been delivered to the branch of the Bank in which the payee or holder in due course, as the case may be, maintains the account ."

5. By the said Ordinance, Section 142A was inserted in the Principal Act.

Section 142A reads as follows:

"142A.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or directions of any Court, all cases arising out of Section 138 which were pending in any Court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the Court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

6. The Negotiable Instruments (Amendment) Ordinance, 2015 (Ordinance 6 of 2015) came to be replaced with the Negotiable Instruments (Amendment) Bill, 2015. The Negotiable Instruments (Amendment) Bill, 2015, inter alia, provides for the following, namely :

(i) cases relating to dishonor of cheques under section 138 of the said Act to be inquired and tried only by a court within whose local jurisdiction the branch of the bank, where the payee or the holder in due course maintains the account, is situated;

7. The (Amendment) Act, 2015, provides as under :

"5. (1) The Negotiable Instruments (Amendment) Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act."

8. In view of the amendment, a complaint for dishonour of cheque under Section 138 of the Act can be now filed only in the Court situated at the place where the bank, in which the payee has account, is located .

9. It is not in dispute that the accused is a resident of Dist. Gir Somnath of Gujarat state. The cheque in question was issued at Gir Somnath. It appears that the complainant deposited the cheque with the HDFC Bank Limited, Talala Branch, Dist. Gir Somnath, Gujarat. It was dishonoured with the intimation "Funds Insufficient".

10. A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, especially in view of the explanation thereunder, that with reference to an offence under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinant of the place of territorial jurisdiction. Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). The words "...as if that sub-section had been in force at all material times..." used with reference to Section 142(2), in Section 142A(1) gives retrospectively to the provision.

11. Hon'ble Gujarat High Court in the case of Brijendra Enterprise C/o Shail Enterprise Versus State Of Gujarat 2016 (0) AIJ-GJ 234963 clear the position of territorial jurisdiction u/s. 138 of N.I. Act. In this case by giving examples in para - 20 Hon'ble High court much clarify that which court has territorial jurisdiction in case u/s. 138 of N. I. Act. The decision of the Hon'ble Supreme Court and Hon'ble Gujarat High Court makes it clear that the offence under Section 138 of the Act can be inquired into and tried only by a Court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated. At this stage, it is important to look into the explanation in Section 142(2). The explanation provides that for the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or the holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or the holder in due course, as the case may be, maintains the account.

12. As discussed earlier the complainant having Bank account at HDFC Bank Ltd., Talala branch, as per sec.142 (2) cases relating to dishonor of cheques under section 138 of the N.I. Act to be inquired and tried only by a court within whose local jurisdiction the branch of the bank, where the payee or the holder in due course maintains the account, is situated. Considering the same, this court is of opinion that this court has no jurisdiction to try the present case as the alleged cheque has been presented for payment before HDFC Bank, Talala Branch.

13. Thus, after considering the arguments advanced by both the sides this court is of opinion that when this court has no jurisdiction to try the case no decision can be arrived at by the present court. Therefore, considering all the aspect and point of jurisdiction, Followin order is being passed in the interest of justice.

~:: O R D E R ::~

1. As this Court has no territorial jurisdiction to try the case, Ex.1 along with all the original documents are ordered to be returned to the Complainant with instruction to produce a certified copies of the same.
2. This complaint is hereby to returned to the complainant for the purpose of filling the same before the court having jurisdiction as per the provisions of Negotiable Instrument Act 1881.
3. Complainant is directed to present the above complaint in the proper jurisdiction within 30 days from the date of order.

Signed and Pronounced in the open Court on this 26th day of September, 2024.

Date : 26-09-2024

(Manthankumar Bhalchandra Purohit)
Judicial Magistrate F.C., Veraval
Code no.GJ01411