

CRIMINAL CASE NO. : 6095 / 2012**-:: 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, shall be deemed to have been filed within the time prescribed by law, unless the initial or proper filing was itself time barred."

2.In the present matter, yet the plea of the accused has not been recorded and the present matter is kept for service of process upon the accused and thus the matter has not reached to the stage of recording of evidence as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881 and from 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 jurisdiction of this Court. As the present complaint is maintainable only at the place where the cheque was dishonoured, therefore, the present complaint is required to be returned to the complainant for its presentation before the competent Court having jurisdiction as per guidelines of Hon'ble Supreme Court in aforesaid judgment and within limitation period as prescribed therein and therefore, I pass following order in the interest of justice.

-:: ORDER ::-

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

2.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 **6th** day of December, 2014 at Rajkot.

Place : Rajkot

Date:- 06/12/2014

(Mahebubhai Fakirmahmad Khatri)

15th Addl. Chief Judicial Magistrate,

Rajkot.

UIC No. : GJ00691