

CC/57825/2013

ORDER

IN THE CIVIL COURT AT SURAT

CRIMINAL CASE NO. 57825 OF 2013.

CC/57825/2013

Complainant :

1. HITESHKUMAR GANESHLAL SHAH, OWNER OF THE
MEDIA FASHION KULMUKHTYAR
Z-1187,88, SURAT TEXTTILES MARKET
RING ROAD, SURAT.
SURAT
GUJARAT

VERSUS

Accused :

1. KURUBHASH FASHION EXPORTS PVT. LTD.
AKSHAY MITTAL, A-5/114, MITTAL IND. ESTATE
ANDHERI KURLA ROAD, MAROL NAKA
MUMBAI
MAHARASHTRA
2. SHREE MAHESH GAUDA, DIRECCTOR OF KURUBHASH
FASHION EXPORTS PVT. LTD.
AKSHAY MITTAL, A-5/114, MITTAL IND. ESTATE
ANDHERI KURLA ROAD, MAROL NAKA
MUMBAI
MAHARASHTRA

Appearance:

M.D.JHAVERI For Complainant 1

No Advocate For Accused

Order below Ex.1:-

Read the complaint. Present complaint is filed under section 138

of N. I. Act. And it is pending for issuance of summons / warrant to the accused. The Hon'ble Supreme Court has held in the case of **Dashrath Rupsingh Rathod V/S State of Maharashtra & Ans. - Criminal Appeal no..2287 of 2009** decided on 1 st August 2014 and observed and directed that the

We clarify that the Complainant is statutorily bound to comply with Section 177 etc. of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.

It is further held that;

"we think it expedient to direct 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 dishonored. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. 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".

In light of above directions of Hon'ble Supreme Court, perusing the record of present complaint, The present complaint is pending for issuance of warrant to the accused. In the present matter still the evidence of the complainant is not produced hence the stage of section 145(2) has not commenced in the present matter. The disputed cheque drawn by the accused

Bank is situated out of territorial jurisdiction of this court, hence as per the guidelines issued by Hon'ble Supreme Court in the above judgment present complaint will be maintainable only at the place where the cheque dishonored. Therefore the present complainant is required to be returned to for the further proceedings. Therefore following order is passed .

ORDER

- It is hereby ordered to returned the complaint and documents (If any) to the complainant after production of compared copies according to Criminal Manual para 347(3)(4), for filing before the proper Court having the territorial jurisdiction as per the guideline of Hon'ble Supreme Court in above judgment .

Pronounced in the open Court on 25th February, 2015.

Date : 25 / 02 /2015
Surat

(**Ms. Hetal M. Pavar**)
12th Addl.Sr.Civil Judge,Surat
UID:GJ00673