

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 926 OF 2015

M/s. GODREJ AGROVET LTD.

VS.

GOBINDA CHANDRA KUNDU & ANR.

For the petitioner: Ms. Shalu Gupta
Md. N. Alam
Ms. Sruti Dey

Last Heard On: 18.03.2025

Judgement On: 26.03.2025

CHAITALI CHATTERJEE DAS, J:-

1. This is an application under Section 483, read with Section 482 of the Code of Criminal Procedure filed by the petitioner company for an appropriate order in connection with a proceeding filed under Section 138 of the Negotiable Instrument Act, 1881 being complaint case number C-244 of 2012 (*M/s Godrej Agrovat limited company vs. Gobinda Chandra Kundu*) before the Learned Court of ACJM Bidhannagar.

2. Facts of the case in a nutshell is that the complainant/petitioner, **M/S Godrej Agrovet limited, having its registered office at Firoz Shah Nagar, Eastern Expressway, Vikhroli East, Mumbai** being represented by Mr. Anupam Chakraborty, the senior legal officer duly empowered and authorized by virtue of power of attorney had filed his revisional application on behalf of the complainant company. The opposite party number 1 being the accused is a distributor of the complainant/petitioner company, who deals with various Agro products of the complainant company. In course of business company and the opposite party number 1, the opposite party number 1 incurred a monetary liability and for discharging the same, the opposite party number 1 issued one Account payee cheque in favour of the petitioner/complaint company, being number 293566 dated July 9, 2012 for ₹7,66,751.30 only, drawn on UCO Bank Mayapur Branch, Arambagh, within the district of Hooghly.
3. The said cheque was deposited for clearance before HDFC bank Ltd. at Eternity building, Salt Lake, Sector -V, Calcutta within its validity period and the cheque was dishonored and returned to the complaint company along with a return memo with remark "fund insufficient".
4. The petitioner/ complainant company thereafter issued a statutory demand notice after receiving the said return memo through the learned advocate Ajit Singh on July 18, 2012 under speed post with acknowledgement due. The said notice was duly received by the opposite party number 1 on July 24, 2012. In spite of receiving the said, notice the opposite party number 1 did not pay the cheque amount to the petitioner or his advocate.

5. Thereafter, the petitioner filed an application under section 138 read with 141 of Negotiable Instrument Act 1881 on July 27, 2012 before the learned Additional Chief Judicial Magistrate at Bidhannagar, which was registered as complaint case number C-244 of 2012. The learned court after taking cognizance and after completion of S/A pursuant to the provision as enumerated under Section 200 of the code of criminal procedure, issued summons against the opposite party number 1 . The petitioner filed the requisites immediately before the learned court.
6. After that the opposite party number 1/accused person entered appearance and prayed for bail.The said case was fixed on December 21, 2012 under section 251 of the Code of Criminal Procedure and the opposite party number on 1/accused person pleaded, “not guilty.” The learned court fixed the date for evidence on 2013, but due to some unforeseen reason, the complainant company filed the affidavit in chief on September 3, 2014.
7. The further case of the petitioner is that the learned court was pleased to return the petition being number C – 244 of 2012 to the petitioner in view of the decision of the Hon’ble Apex court in ***Dasharath Roop Singh Rathore versus state of Maharashtra (2014)9 SCC ,129*** with liberty to file the complaint before the court having jurisdiction on 16.12.14 i:e immediately after the Judgement of Dasharath (supra) Accordingly, the petitioner/complainant company filed the same before the court of learned Additional Chief Judicial Magistrate Arambag , on January 14, 2015,
8. The learned court, vide its order dated January 28, 2015 directed the petitioner/Company to file it before the Court of Learned Court at Bidhannagar and refused to take cognizance of the matter abiding by the mandate of the

Hon'ble Supreme Court and, with a finding that the case not only crossed the post-summoning stage but has entered the stage of Section 145 (2) N.I Act, 1881 and accordingly rejected the prayer of the petitioner to take cognizance. Pursuant to the order as stated above the petitioner/complainant company again filed the case before the court of learned Additional Chief Judicial Magistrate Bidhannagar on February 12, 2015, registered as M.P case no. 6 of 2015. On February 17, 2015, the impugned order was passed whereby the said Misc .case was dropped with a liberty to the complainant to file this case as per law.

9. Being aggrieved, thereby the petitioner has come before this court on the ground, inter alia that the Learned court misconstrued the judgement passed in Dasarath Roop Singh Rathore reported in **SCC 2014, volume 9, page 129** and the Complainant/ Petitioner Company was left with no other course of action but to file this Revisional Application.

10. It is submitted by the learned advocate that because of the said impugned order the petitioner /Complainant has become remedy less for no fault on the part of the complainant company . According to the learned advocate, in view of the judgement of the Hon'ble Apex court, the learned court of Bidhannagar ought to have taken of the matter for hearing as the accused person appeared on receiving summon and pleaded not guilty. Furthermore no such reason was assigned as to why the Learned court arrived at such conclusion that the stage has not come to section 145 (2) of Negotiable Instrument Act, 2013.

11. From the above factual backdrop, it is evident that the parties had a business relation and the accused incurred a monetary liability for which he issued one account payee Cheque in favour of the present petitioner complainant company. The said cheque being dishonored for having insufficient fund the petitioner had to rush to the court with a complaint under section 138 of Negotiable Instrument Act 1881 .On the basis of the complaint The Learned Court of ACJM Bidhannagar, took cognizance and after completion of his S/A issued the summons, under section 204 of CrPc. On receiving the said summons the opposite party No.1 /accused person, entered appearance, and prayed for Bail.

12. In a decision reported in, **(2014), 5 SCC 590 (Indian Bank, Association. & others versus union of India & others)** the Hon'ble Supreme Court discussed about the uniform practice in dealing with the cases of dishonour of cheque and to achieve objectives of speedy summary trial. Pursuant to such decision, after the amendment act, 2002, in order to give an effect in its letter and spirit, some directions were issued by the Hon'ble Supreme Court and one of such direction was;

“The Metropolitan Magistrate/Judicial Magistrate on the day when the complaint under section 138 N.I Act is presented, shall scrutinise the complaint and if the complaint is accompanied by the affidavit and the documents, if any, found to be in order, take cognizance and direct service of summons.”

13. The further direction was that “the court should direct the accused, when appears, to furnish bonds, to ensure his appearance during trial and ask him to take notice under section 251 CrPc to enable him to enter his plea of

defence and fix the case for defence evidence, only when the application is made by the accused under section 145(2) of the Act for recording a witness for cross examination.”

14. In the instant case, the matter was fixed on December 12, 2012, and the accused person appeared before the court and pleaded “not guilty”

It is pertinent to mention herein that the Hon’ble Supreme Court in **Dasharath Roop Singh Rathore case (supra)** considering the magnitude of the impact of the judgement will have, observed:

“We are quite alive to the magnitude of the impact that the present decision shall have to possibly lack of cases pending in various courts spanning across the country. One approach could be to declare that this judgement will have only prospective pertinence. i.e applicability to complaints that may be filed after this announcement. However, keeping in perspective, the hardship that this will continue to bear on alleged respondent.-accused who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a court of divide of jurisdiction, this records in entirety does not commend itself to us. Consequent on considerable consideration, 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 negotiable instrument 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 check stand dishonoured. To obviate and eradicate any legal

complications, the category of complaint cases where proceedings have gone to the stage of section 145.(2) of NI Act 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 respondent-accused has been properly served) shall be return to the complainant for filing in the comp complaints are filed/refilled within 30 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.”

15. “It was further categorically laid down that in those cases only where post the summoning and appearance of the accused, the recording of evidence has envisaged in Section 145(2) of negotiable instrument act 1881 will continue at that place”.

16. This amply clarify the position that merely leading of evidence at the pre summoning stage will not exclude the applicability of the decision of the Hon’ble Apex Court but only after recording of evidence at the post summoning stage had commenced, when the proceeding will continue .

17. The learned Court of Additional Chief Judicial Magistrate Bidhannagar while passing the order on December 16, 2014 returned the Memorandum only on the basis of the decision of Dasharath (supra) considering the jurisdictional aspect of the case.

18. On 17th February 2015 when again the case was taken up ,he relied upon the specific portion of the decision of the Hon’ble Supreme Court, where it was decided that the judicial enquiry and trial of offence must

logically be restricted to where the drawee bank is located. On perusal of the order It transpires that the learned court specifically averred that the recording of evidence stage did not commence as per section 145 (2) of Negotiable Instrument Act, 1881 till the date of return of the complaint, and thereby nullified the observation of the Learned court of Arambag .

19. After giving an anxious consideration of the matter and having relied upon the statements of the petitioner on affidavit pertaining to the status of the proceeding, this court is of the view that the observation made by the learned court of Additional Chief Judicial Magistrate Bidhannagar was not the correct interpretation of the judgement of the Hon'ble Supreme Court. The accused person appeared on receiving summons and pleaded, "not guilty," and the date was fixed for taking evidence, but due to filing of the affidavit, chief, on behalf of the complainant on September 3, 2014, the evidence could not be completed.

20. In the decision of the Hon'ble apex court in **Indian bank Association and others v union of India and others, (2014) 5 SCC 590** it was observed that Section 145 of the N.I Act is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded, and once the court issued summons and the presence of the accused is secured, an option be given to the accused, whether at that stage he would be willing to pay the amount due along with reasonable interest and if the accused is not willing to pay, the Court may fix up the case at an early date and ensure day-to-day trial. Section 145 of the Negotiable Instrument Act lays down the procedure of giving evidence as such this section is more of a procedural law and not a substantive law. This provision

was introduced in order to expedite the hearing of cases filed under Negotiable Instrument Act. The court dealing with a complaint under section 138 of the said Act has an option to take evidence on the one side of the prosecution as well as the defence witnesses and if any, on affidavit after an application is made by the other party under subsection (2) of section 145. The learned court in order to expedite the matter, specially when the accused entered appearance and pleaded “not guilty” and date was fixed for evidence, ought to have proceeded with the case and or ought to have been more specific about not accepting the reasoning as expressed by the Arambag Court more so when the court of Additional Chief Judicial Magistrate of Arambag was specific about the stage of proceeding. It is pertinent to mention here most interestingly none of the court discussed about the stage of proceeding excepting that the case has crossed or reached at the stage of section 145 (2) of Negotiable Instrument Act. However the petitioner has stated on affidavit that the accused appeared on receiving summons and prayed for bail and also pleaded “not guilty”.

21. Therefore considering the said fact of the Complainant /petitioner this court is of the view that the learned court of Additional Chief Judicial Magistrate, Bidhannagar is the appropriate authority to take up the case.

22. Hence, this criminal revisional application stands allowed.

23. The court of Additional Chief Judicial Magistrate, Bidhannagar will be deemed to have the jurisdiction to entertain the complaint filed by petitioner

under section 138 of N.I Act, 1881. The court is directed to proceed with the case in accordance with law as expeditiously as possible.

[CHAITALI CHATTERJEE (DAS) J.]

