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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgement reserved on: 04.03.2022
Judgement pronounced on: 15.03.2022

+ TR.P.(CRL.) 9/2022

RAMESH KUMAR UPPAL Petitioner
Through: Mr. Abdullah Tanveer, Adv.

versus

M/S MATRA CHAYYA EXPORTS & ORS. Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioner has filed this present petition under Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to 'Cr. P.C.') seeking transfer of complaint case bearing CC no. 433/2021 titled as '*Ramesh Kumar Uppal vs. Matra Chayya Exports & Ors*' under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to 'NI Act'). The transfer of the said complaint case has been sought from the Court of Sh. Devanshu Sajlan, learned Metropolitan Magistrate (MM), West District, Tis Hazari Court, Delhi to the

Court of competent jurisdiction in North District, Rohini Court Complex, New Delhi.

2. The background of the case is that the respondent availed friendly loan of Rs.50.00 lacs from petitioner in the year 2017 and as a part discharge of his liability he had issued a cheque bearing no.717566 drawn on Yes Bank, Paschim Encalve, Peeragarhi Chowk, New Delhi-110087 amounting to Rs.27,92,650/-. The petitioner deposited the said cheque in his bank account maintained with the Corporation Bank, Model Town, New Delhi for encashment. This cheque was returned dishonoured vide return memo dated 15.09.2020. A legal notice was issued to the respondent on 30.09.2020, to which a false and frivolous reply was sent on 07.10.2020 with a view to avoid the liability by the respondent.

3. The petitioner filed a complaint case bearing no. 433/2021 on 09.11.2020 in West District at Tis Hazari Courts, Delhi. On 27.11.2021 at the pre-cognizance stage, it was observed by the trial court that it did not have the jurisdiction to try the complaint case as the 'payee bank' was situated in North District, hence the accused could not be summoned. In these circumstances, it has been prayed as under:

“(a) Allow the present Application & direct the transfer of Complaint Case No. 433/2021 titled as “Ramesh Kumar Uppal vs. Matra Chayya Exports & Ors. filed by the Petitioner under Section 138 of Negotiable Instrument Act, from the court of Sh. Devanshu Sajlan, Learned Metropolitan Magistrate, West District, Tis Hazari Court, New Delhi to the competent court of Learned Chief Metropolitan Magistrate North District Rohini Court, New Delhi”;

4. The respondents are yet to be summoned, there is no need to issue notice to them.

5. I have heard learned counsel for the petitioner. The relevant provision in this regard is Section 142 (2) (a) of N I Act, which is reproduced hereunder:.

“(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.” (Emphasis supplied)

6. It is evident that the present complaint ought to have been filed in the Court under whose jurisdiction the bank of the payee, i.e., petitioner is situated. The bank of the payee is situated at Model Town-III, Delhi, which falls in the North District and the courts of the said district are situated at Rohini Courts Complex, New Delhi.

7. Apparently, the Court of the learned Metropolitan Magistrate in West District does not have the jurisdiction to try the complaint in question, which was filed due to bona fide belief in a District Court, which has no jurisdiction.

8. In view of the above, it is hereby ordered that criminal complaint bearing CC No. 433/2021 tilted ‘*Ramesh Kumar Uppal vs. Matra Chayya Exports &*

Ors' under Section 138 N I Act pending in the court of Sh. Devanshu Sajlan, learned Metropolitan Magistrate (MM), West District, Tis Hazari Court, Delhi is ordered to be transferred to the Court of learned Chief Metropolitan Magistrate, District Rohini, North, Rohini Courts Complex, New Delhi along with all the original and complete records. Learned Chief Metropolitan Magistrate, North District may keep the complaint in his own Court or he may transfer it to the competent Magistrate for further action.

9. The petition is disposed of with this direction.

10. A copy of this order be sent to the concerned court of Sh. Devanshu Sajlan, learned Metropolitan Magistrate (MM), West District, Tis Hazari Court, Delhi, through proper channel as well as to the Chief Metropolitan Magistrate, District North, Rohini Courts Complex, New Delhi for information and compliance.

11. The petitioner shall appear before the Chief Metropolitan Magistrate, District North, Rohini Courts Complex, New Delhi on 1st April, 2022.

TALWANT SINGH, J

MARCH 15, 2022/nk

Click here to check corrigendum, if any