

GAHC010144372022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./387/2022

NADRESS TU

S/O- UNNIMOINKUTTY, R/O- VILL.- THALATHIL, CHAKKUNGAL, P.O. AND
P.S. TIRUVAMBADY, DIST. KOZHIKODE, KERELA.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P., ASSAM

2:ABDUL RASAK K.C.
S/O- MOIDU HAJI
R/O- CHEMBRAKUNNATHU HOUSE
P.O. PARAPANPOIL
P.S. THAMARASSERY
DIST. CALICUT
KERELA

Advocate for the Petitioner : MR A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

29.07.2022

Legality, propriety and correctness of the order dated 22.06.2022, passed by the learned SDJM, Hojai in N.I. Case No. 03 of 2022, under section 138 N.I. Act, is challenged in this revision petition, under section 397/401 read with section 482 of the Code of Criminal Procedure, by the petitioner - Shri Nadress TU. Be it mentioned here that vide impugned order, the learned court below had dismissed the case for want of territorial jurisdiction.

Heard Mr. S. Nawas, learned counsel for the petitioner and also heard Mr. P. Borthakur, learned Addl. P.P. for the state respondent.

Mr. Nawas, learned counsel for the petitioner, submits that the learned court below had dismissed the complaint on the ground that under section 142(2) of the N.I. Act it had no jurisdiction as the cheque in question is a bearer cheque, which according to Mr. Nawas is an outcome of misreading of the relevant provision. Mr. Nawas further submits that there is no classification of cheque, be it cross cheque or bearer cheque, for filing a case under the N.I. Act and as such dismissing the complaint for being the cheque in question is a bearer cheque, is nothing but a misconception. It is further submitted that the petitioner has one account in the State Bank of India, Hojai Branch and he being the holder of the cheque had presented the same in his Bank at Hojai and in view of Section 143(2)(a) of the N.I. Act the learned court below has the jurisdiction to try the same and as such the impugned order suffers from

manifest illegality, and therefore, it is contended to set aside the same.

Mr. P. Borthakur, the learned Addl. P.P. for the respondent No. 1 also, in his usual fairness, conceded to the submission of learned counsel for the petitioner and submits that in view of the express provision of section 142(2)(a) of the N.I. Act, the learned court below has jurisdiction to try the offence under section 138 of the N.I. Act.

As only a pure question of law is involved in this petition, and as agreed by the learned counsels, it is proposed to dispose of this petition at this motion stage itself.

Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated **22.06.2022**, and I find sufficient force in the submission so advanced at the Bar.

It appears that the petitioner and the respondent No.2- Mr. Abdul Resak K.C. were business partners. In discharge of a debt, the respondent No.2 had issued a cheque, No. 237847, dated 08.11.2021, drawn in Canara Bank, Thamarassery Branch, for a sum of Rs. 9,00,000/-. The petitioner had deposited the same for collection in his account maintained at State Bank of India, Hojai Branch, on 25.11.2021. But, the same returned dishonored with an endorsement that 'account closed.' The petitioner then issued demand notice. But, the respondent refused to receive the same. The petitioner then filed a complaint under section 138 N.I. Act. But, the learned court below had dismissed the same on the ground of lack of territorial jurisdiction.

While dismissing the complaint the learned court below held that from section 142(2) of N.I. Act it is clear that in case of a cross cheque or account

payee cheque, the court within whose jurisdiction the complainant has an account has the jurisdiction and in case of bearer cheque the court where the accused has an account will have the jurisdiction and since cheque of the petitioner is a bearer cheque, issued in the name of the petitioner, the court within whose jurisdiction the accused has an account has the jurisdiction, and therefore dismissed the complaint.

In this context, a brief reference to the relevant provision will be helpful to decide the controversy with greater precision.

Section 142(2) of the N.I. Act read as under:-

(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.”

A cursory perusal of the provision makes it abundantly clear that no classification of cheque, as bearer or cross cheque/account payee cheque is made in the N.I. Act, for the purpose of jurisdiction. And as such no classification of cheque can be made for the purpose of jurisdiction, being not

provided in the Act. Moreover, from the word 'any cheque', used in section 138, it can be well inferred that it may be an account payee cheque or a bearer cheque, dishonor of which on account of insufficiency of fund or exceed the amount would amount to an offence and would attract the penalty.

From the **Annexure-1** and **Annexure-2**, of the petition, it appears that the petitioner has account, maintained in the State Bank of India, Hojai Branch. Being the holder of the cheque, and having his account maintained at State Bank of India, Hojai Branch, the petitioner had presented the cheque there for collection. He received the intimation about dishonor of the cheque in question through the State Bank of India, Hojai Branch. Thus, in view of the provision of section 142(2)(a) of the N.I. Act, the Court at Hojai which has jurisdiction to try the same. There is no quarrel at the Bar in this regard, that in view of section 142(2) (a) of the said Act, the learned court below has the jurisdiction to try the offence. Of course, the position would have been quite different if the petitioner had no account at Hojai.

In the case of **M/S Bridgestone India Pvt. Ltd. vs. Inderpal Singh**, Criminal Appeal No.1557 of 2015 (arising out of slp(crl.) No.7850 of 2011), Hon'ble Supreme Court also, while dealing with similar issue, held as under:-

"12. We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that 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).....”

This being the factual as well as legal position, this court is of the considered opinion that the impugned order, so passed by the learned court below has failed to withstand the test of legality, propriety and correctness and the same require interference of this court. Accordingly, the impugned order stands set aside.

The matter is remanded to the learned court below, with a direction to proceed with the same in accordance with law. The parties have to bear their own cost.

JUDGE

Comparing Assistant