

Supreme Court of India

Ultra Tech Cement Ltd vs Rakesh Kumar Singh & Anr on 24 April, 2015

Author: J.S.Khehar

Bench: Jagdish Singh Khehar, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.717 OF 2015

(Arising out of SLP(CrL.)No.8540 of 2013)

ULTRA TECH CEMENT LTD

.....APPELLANT

VERSUS

RAKESH KUMAR SINGH & ANR

.....RESPONDENTS

J U D G M E N T

J.S.KHEHAR, J.

1. Heard learned counsel for the parties.

2. Leave granted.

3. The question is whether the Metropolitan Magistrate, 11th Court, Calcutta, where the appellant initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, had the jurisdiction to entertain the same.

4. Learned counsel for the rival parties have invited our attention, to the judgment rendered by a three-Judge Bench of this Court in Dashrath Rupsingh Rathod vs. State of Maharashtra and another, (2014) 9 SCC 129, and have drawn our attention to the following observations recorded therein:

22. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence i.e. applicability to complaints that may be filed after this pronouncement. 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 devoid of jurisdiction, this recourse 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 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. 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 respondent-accused 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, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred. (emphasis is ours)

5. On a perusal of the conclusions drawn in paragraph 22, extracted hereinabove, we feel that the proceedings initiated prior to the rendering of the judgment in Dashrath Rupsingh Rathods case (supra) on 01.08.2014, will be preserved at the place they were filed, only when 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. In order to further explain its intent, the judgment clarifies, that merely leading of evidence at the pre-summoning stage, either by way of affidavit or by oral statement will not exclude applicability of the judgment in Dashrath Rupsingh Rathods case (supra). The above judgment, thereby seeks to confirm the position, that only when recording of evidence at the post-summoning stage had commenced, before 01.08.2014 (the date on which the judgment in Dashrath Rupsingh Rathods case was pronounced), such proceedings would not be dislodged, the declaration of law, on the subject of jurisdiction, in Dashrath Rupsingh Rathods case (supra).

6. Having given our thoughtful consideration to the dispute in hand, and having examined the orders placed on the record of this case collectively as Annexure P-5, we are of the view that the appellant recorded its statement at the pre-summoning stage by filing an affidavit on 16.02.2007. Consequent upon the filing of the aforesaid affidavit, the summons were issued to the accused-respondent No.1 for 21.04.2007. On 21.07.2008, the accused was examined under Section 251 of the Code of Criminal Procedure, and the substance of the allegations were read over to him, whereupon, the accused having pleaded not guilty, the matter was adjourned for recording evidence on 31.12.2008. On 22.04.2009, the appellant filed an affidavit to be treated as the statement-in-chief of PW- 1, whereupon, PW-1 was to be cross-examined. The Metropolitan Magistrate, 11th Court, Calcutta, then posted the matter for 22.07.2009 for the cross- examination of PW-1. The date for the cross-examination of PW-1 was first adjourned to 15.12.2009 and thereafter successively to 25.05.2010, 21.09.2010, 25.07.2011 and finally to 09.12.2011.

7. In view of the factual position noticed hereinabove, we are satisfied that evidence had commenced in the present matter, as envisaged by Section 145(2) of the Negotiable Instruments Act, 1881, in terms of the clarification recorded in paragraph 22, in Dashrath Rupsingh Rathods case (supra). That being the factual position, we are of the view, that the instant appeal is liable to be allowed. The same is accordingly allowed. The Metropolitan Magistrate, 11th Court, Calcutta will be deemed to have jurisdiction to entertain the controversy arising out of the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881. The said Court shall accordingly proceed with the matter, in consonance with law.

.....J.

(JAGDISH SINGH KHEHAR)J.

(S.A.BOBDE) NEW DELHI;

APRIL 24, 2015.