

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 967/2022

**Reserved on 19.03.2025
Pronounced on 03.04.2025**

Aditya Malhotra Prop. M/s ANN
Infrastructure

.....Appellant(s)/Petitioner(s)

Through: Mr. Vishal Kapoor, Adv.

vs

Dharminder Singh

..... Respondent(s)

Through: Mr. Sunil Sethi, Sr. Adv. with
Mr. Navyug Sethi, Adv.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner through the medium of present petition has challenged the complaint filed by the respondent against him and his proprietary concern alleging commission of offence under section 138 Negotiable Instruments Act read with section 420 RPC. Challenge has also been thrown to order dated 24.07.2021 passed by Judicial Magistrate 1st Class (Special Mobile Magistrate), Jammu(hereinafter to be referred as the Trial Magistrate), whereby cognizance of the offences has been taken and the process has been issued against the petitioner.
2. It appears that a complaint came to be filed by the respondent against the petitioner and M/s ANN Infrastructure before the learned Trial Magistrate alleging therein that a cheque in the amount of Rs. 60 lacs was issued by the petitioner from his account maintained with Axis Bank Limited

Jammu in discharge of his liability towards the respondent. It has been further pleaded in the complaint that when the said cheque was presented by the respondent/complainant for encashment through his banker ICICI Bank Limited in his account No. 003101041811, the same was returned unpaid with the endorsement on the memo "title of account required" vide memo dated 30.09.2020. It was further pleaded by the complainant that a legal notice/demand dated 08.10.2020 was served by the respondent upon the petitioner but in spite of receipt of the same, he failed to repay the cheque amount. Accordingly, the impugned complaint for commission of offence under section 138 Negotiable Instruments Act and section 420 RPC was filed before the learned Trial Magistrate.

3. It appears that the learned Trial Magistrate after going through the preliminary statement of the complainant in the shape of a sworn affidavit and the documents annexed with the complaint, framed a *prima facie* opinion that the offence under section 138 Negotiable Instruments Act is made out against the petitioner and the co-accused. Accordingly vide impugned order dated 24.07.2021 process has been issued against the petitioner and the co-accused.
4. Heard and considered.
5. Learned counsel for the petitioner has primarily assailed impugned order dated 24.07.2021 on two grounds, one that the cheque in question was presented by the respondent in his bank account maintained with ICICI Bank Limited, Branch Sector 128 Noida, Uttar Pradesh and as such, the Trial Magistrate had no territorial jurisdiction to entertain the complaint.

Secondly that it was not open to the learned Trial Magistrate to accept the preliminary evidence of the complainant by way of an affidavit, as according to the learned counsel for the petitioner, the learned Trial Magistrate was obliged to follow the procedure prescribed under section 200 of the Code of Criminal Procedure (Cr.PC) and to record the statement of the complainant on oath before issuing process against the petitioner.

6. Learned Senior Counsel appearing on behalf of the respondent has stated that the complaint has remained pending before the learned Trial Court for more than two years but the petitioner participated in the proceedings before the learned Trial Magistrate without raising any objection with regard to the territorial jurisdiction of the learned Magistrate. He has further contended that even during the pendency of the proceedings negotiations regarding settlement of the case took place and the petitioner even liquidated a substantial portion of the cheque amount during the proceedings held before the learned Trial Magistrate. Thus, according to the learned Senior Counsel, the petitioner has acquiesced to the jurisdiction of the learned Trial Magistrate and he cannot now turn around and challenge the same.
7. Regarding the second contention, the learned Senior Counsel has contended that the provisions contained in section 145 of the Negotiable Instruments Act clearly provide that it is open to the Magistrate to record the evidence of the complainant on affidavits in any inquiry, trial or other proceedings under the Code of Criminal Procedure. Therefore, the learned

Trial Magistrate was well in his jurisdiction to accept the preliminary evidence of the complainant by way of affidavit.

8. If we have a look at the complaint filed by the respondent, it is pleaded therein that the complainant had presented the cheque in question for encashment through his banker ICICI Bank Limited, wherein he was maintaining account No. 003101041811. This means that the complainant/respondent had presented his cheque for encashment through ICICI Bank Limited in his aforesaid account. The name of the branch of the bank is not mentioned in the complaint, however, in the dishonor memo annexed with the complaint, it is clearly indicated that the respondent/complainant was maintaining his aforesaid account with ICICI Bank Limited, Sector 128, Gautam Budh Nagar, Noida, Uttar Pradesh. The question that falls for determination is as to whether the Courts at Jammu have territorial jurisdiction to entertain the impugned complaint.
9. In the above context, it would be apt to refer to the provisions contained in section 142(2) of the Negotiable Instruments Act, which read as under:

“142. Cognizance of offences.— [(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.]”

10. From a perusal of the aforesaid provision, it is clear that a complaint for offence under section 138 Negotiable Instruments Act can be inquired into and tried only by the court within whose local jurisdiction a cheque is delivered for collection i.e. the branch of the bank of the payee or the holder in due course or if the cheque is presented for payment otherwise through an account, the location of the branch of the drawee bank where the drawer maintains the account would be determinative of the territorial jurisdiction.
11. The aforesaid position of law has been reaffirmed by the Supreme Court in the case of **Bridgestone India Pvt. Ltd. v Inderpal Singh, (2016) 2 SCC 75** in which, it has been held that Section 142(2) of the Negotiable Instruments Act amended by the Negotiable Instruments (Amendment) Second Ordinance 2015, leaves no room for any doubt, specially in view of the Explanation thereunder, that with reference to an offence under section 138 of the Negotiable Instruments Act, the place where cheque is delivered for collection i.e. branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction.
12. Recently the Supreme Court in the case of **Sh. Sendhuragro and Oil Industries v Kotak Mahindra Bank Limited, 2025 Livelaw SC 292** has explained the provisions contained in section 142(2) of the Negotiable Instruments Act along with Explanation thereto in the following manner:

“61. It is clear on a reading of [Section 142\(2\)\(a\)](#) and the Explanation thereto that, 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.

62. A conjoint reading of [Section 142\(2\)\(a\)](#) along with the explanation thereof, makes the position emphatically clear that, when a cheque is delivered or issued to a person with liberty to present the cheque for collection at any branch of the bank where the payee or holder in due course, as the case may be, maintains the account then, the cheque shall be deemed to have been delivered or issued to the branch of the bank, in which, the payee or holder in due course, as the case may be, maintains the account, and the court of the place where such cheque was presented for collection, will have the jurisdiction to entertain the complaint alleging the commission of offence punishable under [Section 138](#) of the N.I. Act. In that view of the position of law, the word ‘delivered’ used in [Section 142\(2\)\(a\)](#) of the N.I. Act has no significance. What is of significance is the expression ‘for collection through an account’. That is to say, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the payee or holder in due course, and the said place is decisive to determine the question of jurisdiction.”

13. From the foregoing analysis of law on the subject, it is clear that inquiry trial or other proceedings in respect of a case under section 138 Negotiable Instruments Act can be held only by a court within whose local jurisdiction the cheque is delivered for collection i.e. the branch of the bank of the payee where the payee or the holder in due course, as the case may be, maintains the account.
14. The provisions contained in section 177 of the Cr.P.C. do not apply to cases under Negotiable Instruments Act while determining the territorial jurisdiction of a court because Section 142 of the Negotiable Instruments Act begins with a non obstinate clause and Section 142 (2) uses the expression “only” meaning thereby only those courts which are mentioned in the said sub section will have jurisdiction to entertain the complaint notwithstanding anything contrary provided under the Cr.P.C.
15. Adverting to the facts of the present case, it is clear that the respondent/complainant had presented the cheque in his bank account

maintained at ICICI, Sector 128 Noida (UP) which is beyond the local territorial jurisdiction of the learned Trial Magistrate. It is not a case where the respondent/complainant had presented the cheque for payment otherwise through an account, in that case even the location of the branch of drawee bank where the drawer maintains the account would have been determinative of the territorial jurisdiction. Thus, it is clear that the learned Trial Magistrate did not have territorial jurisdiction to entertain the complaint which is subject matter of the present petition.

16. Learned Senior Counsel appearing for the respondent has contended that the petitioner by participating in the proceedings before the learned Trial Magistrate and even negotiating the settlement with the complainant has acquiesced to the jurisdiction of the Trial Magistrate and he cannot be permitted to challenge the jurisdiction of the learned Trial Magistrate at this stage. In this regard, the learned Senior Counsel has relied upon the judgments of the Supreme Court in the case of **Kedar Shashikant Deshpande and others v Bhor Municipal Council and others, (2011) 2 SCC 654, M/s Neelkantan and Bros. Construction v Superintending Engineer, National Highways, Salem and others, (1988) 4 SCC 462, Prasun Roy v Calcutta Metropolitan Development Authority and another, (1987) 4 SCC 217, Madhya Pradesh Administration v Tribhuban, (2007) 9 SCC 748, Sohan Singh and others v General Manager, Ordnance Factory, Khamaria, Jabalpur and others, 1984(Supp) SCC 661, Municipal Commisisoner, Calcutta and others v**

Salil Kumar Banerjee and others, (2000) 4 SCC 108 and Rukmani Devi and others v Narendra Lal Gupta, (1985) 1 SCC 144.

17. The aforesaid judgments relied upon by learned Senior Counsel for the respondent are of no help to the case of the respondent because in all these cases, the proceedings pertained to either arbitration matters or to proceedings under certain special statutes. Besides this, in all these cases, the jurisdiction of the authorities was challenged after the authorities had already decided the matter against the party challenging the jurisdiction. In the present case, the proceedings before the learned Trial Magistrate are still at its inception and only evidence by way of affidavits has been filed by the complainant. The witnesses of the complainant are yet to be cross examined. Therefore, it cannot be stated that the petitioner has by his conduct acquiesced to the jurisdiction of the learned Trial Magistrate. Even otherwise a Court which lacks inherent jurisdiction to entertain a case cannot be vested with jurisdiction by consent of the parties. The contention of the learned Senior Counsel is, therefore, without any merit.
18. Having held that the learned Trial Magistrate had no jurisdiction to entertain the complaint filed by the respondent against the petitioner and the co-accused, and consequently he had no jurisdiction to issue process against the petitioner and the co-accused, it is not necessary to go to the second ground of challenge urged by the learned counsel for the petitioner.
19. For the foregoing reasons, the petition is allowed and the impugned order passed by the learned Trial Magistrate on 24.07.2021 is set aside on the

ground of lack of territorial jurisdiction. The learned Trial Magistrate shall return the complaint to the respondent/complainant along with original documents for its presentation before the competent Magistrate having jurisdiction. It shall be open to the respondent/complainant to seek condonation of delay in filing the complaint before the Magistrate having jurisdiction.

(SANJAY DHAR)
JUDGE

Jammu
03.04.2025
Rakesh PS

Whether the order is speaking: Yes
Whether the order is reportable: Yes

