

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 957 of 2013

1. M/s. Aarti Engineering Company, a Partnership Firm, Gandhibag, Tah. P.S. Road, Nagpur, Distt. Nagpur (Maharashtra)
2. Kanhaiyalal Mandhana, S/o. Shivpratap Mandhana, Aged About 70 Years,
3. Krishna Mandhana, S/o. Kanahaiya Lal Mandhana, Aged About 34 Years
4. Smt. Savita Mandhana, W/o. Vinod Mandhana, Aged About 43 Years
5. Smt. Suman Mandhana, Wo. Benigopala Mandhana, Aged About 44 Years

All Partnership of the Firm Messers Aarti Engineering Company, Gandhibag, Tah. P.S. Road, Nagpur, Distt. Nagpur (Maharashtra)

6. Vinod Mandhana, S/o. Kanhaiyalal Mandhana, Aged About 48 Years

All R/o. Of 228, Krishna Kunj, Wardhaman Nagar (E), Police Station Lakkad Ganj, Nagpur, Distt. Nagpur (Maharashtra)

---- **Petitioners**

Versus

1. State Of Chhattisgarh, Through: District Magistrate, Durg (C.G.)
2. Vijay Dwivedi, S/o. Suryaprasad Dwivedi, Aged About 48 Years, R/o. Qtr. No.12-B, Street No.18, Sector V, Bhilai Nagar, P.S. Sector VI, Kotwali Bhilai, Distt. Durg (C.G.)

---- **Respondents**

For Petitioners	:	Mr. Sachin Tamrakar, Advocate
For Respondent No.1/State	:	Mr. Ramakant Pandey, Panel Lawyer
For Respondent No.2	:	Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

07/10/2015

1. Challenge in this petition is to the order dated 05.08.2013, passed in Criminal Revision No.235/2012, passed by the Sixth Additional District Judge, Durg (C.G.). By such order, the order passed by the Judicial Magistrate First Class, Durg dated 28.09.2012, passed in Case No.1354/2009, was affirmed, whereby the jurisdiction of the Court was decided and was held to be at Durg.

2. Brief facts of the case are that a cheque amounting to Rs.20.00 Lacs was issued in favour of the respondent No.2, by the petitioner No.6, which was drawn at Canara Bank Branch at Itwari, Nagpur. The respondent No.2 presented the said cheque at Bhilai Nagrik Sahkari Bank Maryadit, Bhilai Nagar, on 10.10.2002, which was dishonoured for want of sufficient fund. After dishonour of the cheque, it was informed to the respondent on 03.01.2003. Subsequently, a complaint was filed by the respondent No.2 at Durg, before the Judicial Magistrate First Class, Durg and the summons were issued, wherein the petitioners entered their appearance. Subsequently, an application was filed before the Judicial Magistrate First Class, Durg by the petitioners for dismissal of the complaint for want of jurisdiction. The said application was dismissed, which too was affirmed by the Revisional Court. Therefore, the instant petition.
3. Learned counsel for the petitioners submits that dishonour of the cheque was at Nagpur, therefore, the competent Court of Judicial Magistrate First Class, Nagpur would have the jurisdiction as the dishonour of the cheque gives the cause of action to file the complaint under Section 138 of the Negotiable Instrument Act. Consequently, the Court of Durg would not have the jurisdiction.
4. Per contra, learned counsel appearing on behalf of the respondents opposes the same and would submit that the law of Negotiable Instrument Act has stood amended, which has given the jurisdiction even where the cheque was presented. Consequently, he would submit that since the cause continued at Durg, therefore, the Judicial Magistrate First Class, Durg would have the jurisdiction to continue the case.

5. I have heard the learned counsel for the parties and perused the documents on record.
6. Admittedly in this case, after receipt of dishonour of cheque, the complaint was filed before the Judicial Magistrate First Class, Durg, wherein the parties entered their appearance and as contended by parties the case was at the post summoning stage.
7. Their Lordship in case of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr.*** reported in ***(2014) 9 SCC 129*** at para-22 has held as under :-

“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 were 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.

8. Reading of para-22 of the aforesaid judgment and by application of ratio of principles in this case, as it is contended by the parties that the instant case is of nature of post summoning stage as evidence has commenced as envisaged in Section 145(2) of the Negotiable Instrument Act, 1881, the Court at Durg would continue to have its jurisdiction. Further more the law has already been amended by the ordinance No. 6 of 2015, which has given jurisdiction to the Court, wherein cheque was presented too. The law being procedural in nature would have retrospective effect as it was held by this Court in Cr.M.P. No.620/2015 in case of M/s. A.K.R. Transport Vs. M/s. Kamakshi Shipping.
9. Consequently, the petition has no merit and it is dismissed accordingly at the motion stage itself.

Sd/-
(Goutam Bhaduri)
Judge