

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No.2 of 2015

1. Indian Solvent Industries (A Unit Of ABIS Exports (India) Pvt. Ltd.) Having Its Registered Office At Village Indamara, Post Pendri Tahsil & District Rajnandgaon C.G. Through Its Field Manager Sheikh Navabuddin S/o Sheikh Babuddin Age 34 Years R/o Mamta Nagar Gali No. 7, Ward No. 17, P.S. Kotwali PO Rajnandgaon, Civil & Revenue District Rajanandgaon C.G.

---- Petitioner

Versus

1. Harinam Singh Ranjan S/o Hanuman Prasad Aged About 45 Years Proprietor M/s Manorama Associates Near Veterinary Hospital Dakshin Darwaja, P.S. Kotwali Basti Basti Dist. Basti UP

---- Respondent

And

WPCR No. 7 Of 2015

1. ABIS Exports (India) Pvt. Ltd. Corporate Office Village Indamara, Post Pendri, Tahsil & District Rajnandgaon, CG, Through Its Field Manager Sheikh Navabuddin, S/o Sheikh Babuddin, Aged About 34 Years, R/o Mamta Nagar, Gali No. 7, Ward No. 17, Ps Kotwali, Tahsil And District Rajnandgaon, CG Pin Code- 491441, Civil & Revenue Distt Rajnandgaon, CG

---- Petitioner

Vs

1. Chouhan Sales Corporation Proprietor Manish Singh Chouhan, S/o Vikram Singh Chouhan, Office 76/1, Halse Road, Near Kuli Bazar, Kanpur, U.P. - 208001
2. Manish Singh Chouhan S/o Vikram Singh Chouhan R/o Flat No. G-2, Agrawal Apartments, Shayam Nagar, Kanpur, U.P. 208013

---- Respondent

And

WPCR No. 8 Of 2015

1. ABIS Exports (India) Pvt. Ltd. Corporate Office Village Indamara Post Pendri Tahsil & District Rajnandgaon C.G. Throug Its Field Manager Sheikh Navabuddin S/o Sheikh Baduddin Age 34 Years R/o Mamta Nagar Gali No. 7, Ward No. 17, Tehsil And District Rajanadgaon, Pin Code 491441, Civil & Revenue District Rajnandgaon C.G.

---- Petitioner

Vs

1. Chouhan Medical Stores Through Manish Singh Chouhan S/o Vikram Singh Chouhan Office 76/1, Halse Road, Near Kuli Bazar Kanpur U.P. 208013
2. Manish Singh Chouhan S/o Shri Vikram Singh Chouhan R/o Flat No. G-2, Agrawal Apartments Shyam Nagar, Kanpur U.P. 208013
3. Amrita Singh W/o Manish Singh Chouhan R/o Flat No. G 2, Agrawal Apartments Shyam Nagar, Kanpur U.P. 208013

---- Respondent

And

WPCR No. 22 Of 2015

1. Smt. Namrata Toppo W/o Shri Daniel Thompson Aged About 32 Years R/o Opposite Harishanker Apartment, Nehru Nagar, Police Station Civil Line, Tehsil And District Bilaspur, C.G.

---- Petitioner

Vs

1. Himanshu S. Sagar S/o Shri Vichhit Singh Sagar Aged About 34 Years R/o - B - 105, Prerna Apartment, Sector 10, Plot No. 13, Dwarka, Thana Dwarka, New Delhi

---- Respondent

For respective
petitioners

Shri Amrito Das & Shri Malay Shrivastava
Advocates

For Respondents

None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/12/2015

1) In these petitions under Article 226 of the Constitution of India, the petitioners have assailed the legality and validity of the orders passed by the trial Magistrates returning the complaints under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act, 1881') to the petitioners on the ground that in view of the law laid down by the Supreme Court in **Dashrath Rupsingh Rathod v. State of Maharashtra and Another**, (2014) 9 SCC 129, the Courts at Rajnandgaon (in respect of WPCR Nos.2, 7 & 8 of 2015) and Bilaspur (in respect of WPCR No.22 of 2015) have no jurisdiction to entertain the complaints.

2) It is not in dispute that during pendency of these petitions, the Government of India has issued the Negotiable Instruments (Amendment) Second Ordinance, 2015 amending Section 142 of the Act, 1881 to introduce sub-section (2) in the following manner :

(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.”

3) The Ordinance also introduces a new provision in Section 142A for validation of transfer of pending cases. Sub-section (1) of Section 142A provides as under :

“142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Ordinance, as if that sub-section had been in force at all material times.

4) Combined reading of the provisions contained in Sections 142 (2) and 142A (1) would have the effect as if the provision contained in Section 142 (2) was in force at all material times including the date on which the present complaints were presented before the Courts at Rajnandgaon & Bilaspur or the date on which the

impugned orders have been passed. Since by virtue of the newly inserted sub-section (2) of Section 142, the Courts at Rajnandgaon & Bilaspur being the places where the cheques were presented for payment by the petitioners i.e. the payee or holder in due course, the Courts at Rajnandgaon & Bilaspur have jurisdiction over the matter.

5) Recently, in **M/s Bridge Stone India Pvt. Ltd. v. Inderpal Singh**, Criminal Appeal No.1557 of 2015 (decided on 24-11-2015) the Supreme Court held thus :

12.....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). We are also satisfied, based on Section 142A(1) to the effect, that the judgment rendered by this Court in Dashrath Rupsingh Rathod's case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonor of the cheque in the present case arises.

13. Since cheque No.1950, in the sum of Rs.26,958/-, drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI Bank, Indore, which intimated its dishonor to the appellant on 04.08.2006, we are of the view that the Judicial Magistrate, First Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable

Instruments (Amendment) Second Ordinance, 2015. The words "...as if that sub-section had been in force at all material times..." used with reference to Section 142(2), in Section 142A(1) gives retrospectivity to the provision.

6) In view of the newly inserted provisions under Sections 142 (2) and 142A (1) by way of Negotiable Instruments (Amendment) Second Ordinance, 2015 and the law laid down by the Supreme Court in **M/s Bridge Stone India Pvt. Ltd.** (supra), the earlier judgment of the Supreme Court in **Dashrath Rupsingh Rathod** (supra) would not stand in the way of the petitioners/complainants to maintain complaints at the place 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).

7) Thus, the Courts at Rajnandgaon (in respect of WPCR Nos.2, 7 & 8 of 2015) and Bilaspur (in respect of WPCR No.22 of 2015) would have jurisdiction to try the complaints. Accordingly, the respective trial Magistrates are directed to proceed with the complaints filed by the petitioners, in accordance with law.

8) In the result, all the writ petitions are allowed to the extent indicated above.

Sd/-

Judge

Prashant Kumar Mishra

Gowri