

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 620 of 2015**

M/s. A.K.R. Transport, Barbhata (Salkhan), Tahsil & Police Station Nawagarh, Civil & Revenue District Janjgir Champa (C.G) Acting through Partner Anjeer Kumar Ratnakar s/o Shri Dau Ram Ratnakar, aged about 29 years, R/o Barbhata (Salkhan) Tahsil & Police Station Nawagarh, Civil & Revenue District Janjgir Champa (C.G).

---- Petitioner

Versus

M/s Kamakshi Shipping, Acting through Managing Partner, M.V. Ramaiya, 25-12-35, Indu Manisons, Flat No.103, 1st Floor Godavari Street, Visakhapatnam-1 (A.P).

---- Respondent

CRMP No. 650 of 2015

M/s. A.K.R. Transport, Barbhata (Salkhan), Tahsil & Police Station Nawagarh, Civil & Revenue District Janjgir Champa (C.G) Acting through Partner Anjeer Kumar Ratnakar s/o Shri Dau Ram Ratnakar, aged about 29 years, R/o Barbhata (Salkhan) Tahsil & Police Station Nawagarh, Civil & Revenue District Janjgir Champa (C.G).

---- Petitioner

Versus

M/s Kamakshi Shipping, Acting through Managing Partner, M.V. Ramaiya, 25-12-35, Indu Manisons, Flat No.103, 1st Floor Godavari Street, Visakhapatnam-1 (A.P).

---- Respondent

Mr. Ashutosh Ghade, Advocate appears as Amicus Curiae to assist the Court.

Mr. K.A. Ansari, Sr. Advocate with Mr. R.L. Bajpayee, counsel for the petitioner.

Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER****21.08.2015**

- Both these petitions arise out of the order dated 20.10.2014 passed in Criminal Revision separately filed against the order dated 18.09.2014

passed by the Court of Judicial Magistrate First Class, Pamgarh, District Janjgir Champa, Chhattisgarh. Since the questions of law and facts involved in both these petitions are similar, they are being disposed of by this common order.

2. Briefly stated facts of the case are that the petitioner M/s. A.K.R. Transport filed two complaint cases under Section 138 of the Negotiable Instruments Act, 1881 (for short N.I. Act) with the averments that respondent M/s. Kamakshi Shipping had handed over two Post Dated Cheques (PDC) - one amounting to Rs.4,90,000/- in Cr.M.P.No.620/2015 and the other amounting to Rs.2,45,000/- in Cr.M.P.No.650/2015 drawn in favour of complainant/ petitioner herein in the month of February, 2014. The cheques were post dated of 10.04.2014. The cheques were drawn on ICICI Bank, Visakhapatnam, who was the banker of M/s. Kamakshi Shipping, the respondent herein. Both the cheques were presented by the petitioner for encashment to his Banker on 10.04.2014 with S.B.I. Branch at Shivrinarayan, Chhattisgarh. The cheques having been sent for collection, it was reported by ICICI bank, Visakhapatnam that the said cheques were dishonoured. Having received the intimation of dishonour of cheques due to instruction of "stop payment" by the respondent, a legal notice was sent on 03.07.2014 but despite receipt of such notice on 09.07.2014, the payment was not made. Consequently on 20th August, 2014, a complaint was filed by the petitioner under Section 138 N.I. Act, 1881 before the Court of JMFC, Pamgarh. The said complaint having been filed, the Court of JMFC, Pamgarh at the time of registration of complaint passed an order dated 18.09.2014 and returned the said complaint with a finding that the cheques which were drawn were dishonoured at Visakhapatnam, consequently, the Court of JMFC, Pamgarh will not have jurisdiction.
3. The Court of JMFC followed the law laid down in ***Dashrath***

Roopsingh Rathod Vs. State of Maharashtra reported in (2013) 9 SCC 129 decided on 01.08.2014. The said order passed by the JMFC was subject of challenge by way of revision before the Sessions Judge, Janjgir Champa, Chhattisgarh. The Sessions Judge by its order dated 20.10.2014 dismissed the revision with an observation that the petitioner contended that while returning the complaint, two months' time should have been provided by the JMFC, Pamgarh, to file compliant before appropriate jurisdictional forum, but the JMFC has not given two months' time. However, the revisions so preferred were dismissed. Therefore, the said orders are subject of challenge before this High Court by way of these petitions.

4. Shri Ashutosh Ghade, Advocate, was appointed as Amicus Curiae in this matter to assist the Court. The petitioner was represented by Shri K.A. Ansari, Sr. Advocate.
5. Learned counsel Shri Ashutosh Ghade appearing as Amicus Curiae made his submissions on the basis of law laid down in **(2014) 9 SCC 129 - *Dashrath Rupsingh Rathod Vs. State of Maharashtra*** and further to interpret the date of application of amendment by way of ordinance, placed reliance in a case law reported in ***AIR 1970 SC 1636 – Nani Gopal Mitra Vs. State of Bihar*** and ***1994 SC 4602***. He would submit that after pronouncement of judgment of Hon'ble the Supreme Court on 01.08.2014 in *Dashrath Rupsingh Rathod*, the Negotiable Instrument Act was amended by Amendment No.6 of 2015. It is contended that though the amendment was procedural in nature, but the benefit of it cannot be granted to the petitioner in given facts of the case. It is submitted that since on the date of return of complaint under Section 138 of N.I. Act by the JMFC on 18.09.2014 and on that date the order of Supreme Court was in force, which would be a law under Article 141 of the Constitution of India. It is contended that therefore the said order of return of complaint is well

merited. It is also contended that the amendment of Section 142 in N.I. Act being procedural in nature though might have retrospective effect but the benefit of it could not be extended to the petitioner as the complaint having been returned, no proceeding was pending on the date of amendment before the JMFC, Pamgarh.

6. Learned Senior Advocate Shri Ansari would submit that the petitioner herein has prayed to invoke the power under Section 482 of Cr.P.C., it is stated that the scope u/s 482 of Cr.P.C., is vast in nature and it will be a futile exercise to file a complaint time and again after the amendment of ordinance came in force. Therefore, in the interest of justice, the petition be allowed and the order of both the courts below be quashed.
7. I have heard Shri Ashutosh Ghade, Amicus Curiae, at length to adjudicate legal controversy of this lis. Admittedly, the complaint under Section 138 of N.I. Act was filed on 20.08.2014. Hon'ble the Supreme Court in ***Dashrath Rupingh Rathod Vs. State of Maharashtra (supra)*** passed the order on 01.08.2014. Therefore, on the date of filing of complaint by the Magistrate, the order of Supreme Court was in operation which had the binding effect as the N.I. Act was amended in the month of June, 2015. Since the Supreme Court has declared the law by its judgment dated 01.08.2014 which had a binding effect on all Courts under Article 141 of the Constitution of India, the return of complaint for a cheque drawn on ICICI Bank, branch at Visakhapatnam (A.P), the Court at Pamgarh, Chhattisgarh did not have the jurisdiction, as such the learned court of JMFC was justified in doing so.
8. Their Lordships of Supreme Court at para 22 of the decision, on consideration thought 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 N.I.Act, 1881 those proceedings were allowed to be continued at that place where the complaint was filed. Therefore, it would lead to infer that only those cases where the summons have been issued were saved. It did not save the cases wherein the evidence was at pre-summoning stage either by way of affidavit or oral statement. Herein in the instant case, the order of the JMFC, Pamgarh would show that the instant case was in pre-summoning stage, therefore, by application of such case law, it was not saved. At this stage, the relevant para of *2014 (9) SCC 129* is reproduced herein below:

“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 distance in conducting their defence, and also mindful of the legal implications of the 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 processing 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.”

9. As a consequence, concluding the fact, primarily it would be evident that on the date of filing of complaint on 20.08.2014 and the date of return of the complaint on 18.09.2014, the order of the Supreme Court was in force which mandates that the complaint would lie only where the cheque was dishonoured. In the instant case, the cheques having been dishonoured at Visakhapatnam as on that date, the complaint would lie only at Visakhapatnam and any complaint filed before any other Court would have no jurisdiction at all.
10. The second aspect of the matter is about the effect of ordinance dated 15.06.2015 carried out in N.I. Act. For the sake of ready reference, the Negotiable Instruments (Amendment) Ordinance, 2015 which came into being w.e.f. 15.06.2015 is reproduced hereinbelow:

3. In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(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.”.

4. In the principal Act, after section 142, the following section shall be inserted, namely:—

“142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheque is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

11. So on the date of amendment of ordinance, by application of facts, the complaint under Section 138 filed before the JMFC was not pending having been returned on 18.09.2014. Now the question arises for consideration that whether the petitioner can claim restoration of the complaint on the strength of amended Section of 142-A(1)(2) inserted by Negotiable Instrument (Amendment) Ordinance 2015 ?

The answer would be certainly in negative. The reasons would be -

(i) the complaint was returned by JMFC Pamgarh in the light of decision of Supreme Court in *Dashrath Rupsingh Rathod* which at the relevant time was holding the field and has authority of law under Article 141 of Constitution of India and therefore the said judgment has a binding effect on all the Courts uptill the Ordinance, 2015 came into being.

(ii) Further reading of newly inserted section 142(2) shows that the same effect does not extend to the complaints already returned as it contains the words "The offence under section 138 shall be enquired into and tried only by court within whose local jurisdiction". So, if the complaint has already been returned and was not filed before the appropriate forum as per applicable law in force at the prevailing time no complaint would be presumed to be pending at that time. Therefore, there was no question of enquiring into and trying the offence in absence of a complaint.

12. The last question falls for consideration as to whether the amendment carried out in N.I. Act, 1881 on 15.06.2015 would have a retrospective operation or would be prospective in nature. AND whether if such amendment has a retrospective effect whether the complaint filed by the petitioner could have been saved ? In order to find out the answer, the respective amendment was read in between

the lines. Reading of amendment would show that it is an amendment of procedural law and not substantive law. The Supreme Court way back in a case law reported in ***AIR 1970 SC 1636 – Nani Gopal Mitra Vs. State of Bihar 1636***, while interpreting the amendment in procedural law, held thus at para 5:

“5. It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force (See *In re a Debtor*, 1936 Ch 237 and *in re Vernazza*, 1960 AC 965). The same principle is embodied in S.6 of the General Clauses Act which is to the following effect:

xx xx xx xx

Thereafter at Para 6 it has been held thus

“The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas, when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhal Parganas, long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas, has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under S.5(3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the

appellant on this aspect of the case.”

13. Likewise in **(1994) 4 SCC 602 – Hitendra Vishnu Thakur and others Vs. State of Maharashtra** the Supreme Court had occasion to deal with an amendment in substantive law and the procedural law wherein the Court has held in Para 26 as under:

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) xxx xxx xxx

14. Similar view has been reiterated in case law reported in **(2008) 9 SCC 306 – T. Kaliamurthi and others Vs. Five Gori Thaikkal Wakf and others** wherein the Supreme Court held that it is well settled that no statute shall be construed to have retrospective operation until its language is such that would require such conclusion. The Exception

to this rule is enactments dealing with procedure. Therefore, by application of the aforesaid principle, in the opinion of this Court, the amendment carried out by Ordinance of 2015 (No.6 of 2015) on 15.06.2015 will have a retrospective effect dealing with procedure.

15. Consequently, on careful consideration of all the facts and for the reasons stated in the foregoing paragraphs, I do not find any illegality in the order of JMFC as also the revisional Court warranting interference by this Court and thus impugned orders cannot be set aside. In the result, both the petitions fail and are dismissed.
16. Now turning to the argument advanced by the learned Senior Advocate to restore the complaint, the said argument cannot be allowed to sustain. This Court in exercise of its inherent power u/s 482 Cr.P.C., cannot pass any order to continue the proceedings since on the date of promulgation of ordinance no complaint was pending before the Court of JMFC. If it is done, it would amount to legislation. The petitioner(s), therefore, if so advised may file a fresh complaint before Court having jurisdiction. However, it has to satisfy the reasons for the delay in filing the complaint, which may be adjudicated on its merits by the competent Court.
17. With such observation, the petition stands disposed of.
18. Before parting with the case, this Court highly appreciates the valuable assistance rendered by the Amicus Curiae.

**Sd/-
GOUTAM BHADURI
JUDGE**