

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 76 OF 2015

WITH

CRIMINAL WRIT PETITION NO. 77 OF 2015

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CRIMINAL WRIT PETITION NO. 78 OF 2015

CRIMINAL WRIT PETITION NO. 76 OF 2015

Pyramid Finance Pvt. Ltd.

A company incorporated under the

Companies Act, 1956, having its

Registered office at Salgaocar House,

Off Francisco Luis Gomes Road,

Vasco da Gama, Goa-403802 and

Corporate Office at Third Floor,

Salgaoncar Centre, Panaji, Goa 403 001,

Represented by its duly constituted

Attorney, Mrs. Lisa Menezes,

R/o Panaji, Goa.

..... Petitioner

V e r s u s

1. M/s. Melrose Trading Proprietary Concern

A Proprietorship Firm, having its registered

office at FF01, 4th floor, Swatantra Path

Vasco da Gama, Goa, 403802.

2. Capt. Vijay Saxena,

Proprietor of M/s. Melrose Trading,

Major Residing at L-11, Rangavi Estate,
Alto Dabolim, Vasco-da-Gama, Goa 403801. Respondents

CRIMINAL WRIT PETITION NO. 77 OF 2015

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Represented by its duly constituted
Attorney, Mrs. Lisa Menezes,
R/o Panaji,Goa. Petitioner

V e r s u s

1. M/s. Melrose Port Operations &
Infrastructure Pvt. Ltd.,
A Company having its registered
office at FF01, 4th floor, Swatantra Path
Vasco da Gama, Goa, 403802.
2. Capt. Vijay Saxena,
Director of M/s. Melrose Trading,
Major Residing at L-11, Rangavi Estate,
Alto Dabolim, Vasco-da-Gama, Goa 403801. Respondents

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V e r s u s

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2. Capt. Vijay Saxena,
Proprietor of M/s. Melrose Trading,
Major Residing at L-11, Rangavi Estate,
Alto Dabolim, Vasco-da-Gama, Goa 403801. Respondents

Shri Nigel Da Costa Frias, Advocate for the Petitioner.

None for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 28TH JULY, 2015.

ORAL ORDER

All these writ petitions are between the same parties and

involve identical question as to the territorial jurisdiction of the Magistrate to take cognizance of a complaint under section 138 of the Negotiable Instruments Act, 1881 (The Act, for short). In this case notice was issued to the respondents on 14/7/2015 with a stipulation that the petition could be finally heard at the stage of admission. None appears for the respondent, though served. In view of the notice, the writ petitions are being disposed of by common order.

2. The brief facts are that the petitioner had advanced loan to the respondents. Towards the repayment of the same, respondent no.2, on behalf of the respondent no.1 had issued three separate cheques which got dishonoured for insufficiency of funds. The subject cheques were drawn on the account of the respondents at HDFC bank Branch at Vasco-da-Gama. The cheques were payable at par at all the branches of HDFC branch. The petitioner had presented the cheques for encashment in his account with the Indian Overseas Bank at Panaji. It appears that the cheques were returned by the Panaji branch of HDFC on account of insufficient funds. In such circumstances, the petitioner filed three separate complaints under section 138 of the N.I. Act in the Court of JMFC at Panaji.

3. In the two complaint cases the learned Magistrate by a common order dated 9/1/2015 had returned the complaint for presentation before the Court having jurisdiction to try the same. In the third complaint, by a similar order dated 19/8/2014, the complaint is returned. Feeling aggrieved, the complainant is before this Court.

4. I have heard Shri Da Costa, the learned counsel for the petitioner.

5. It is submitted that the subject cheques were payable at par at all the branches of the HDFC. It is submitted that it was under the memo issued by the HDFC bank, Panaji branch that the cheques were returned on account of "No debit status". It is submitted that in such circumstances, the Court having jurisdiction over the area where such bank is situated would be competent to entertain the complaint. The learned counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of **Dashrath Rupsingh Rathod Vs. State of Maharashtra and anr.** reported in (2014) 9 SCC 129 and an unreported decision of Learned Single Judge of this Court in **Mr. Ramanbhai Mathurbhai Patel Vs. State of Maharashtra and anr.**(Criminal Writ Petition No.2362/2014) dated 25/8/2014.

Reliance is also placed on the recent amendment to the N.I. Act by an Ordinance No.6 of 2015 dated 15/6/2015 in order to submit that in view of the newly added sub section 2 to Section 142, the complaint would be maintainable before the Panaji Court. It is submitted that the learned Magistrate was in error in returning the complaint on the ground of want of territorial jurisdiction.

6. I have considered the circumstances and the submissions made. It appears from the copy of the cheques produced on record that the cheques are payable at par at all the branches of HDFC bank Ltd. The memo about the return of the cheque is also issued by the HDFC bank branch at Panaji. The petitioner is having his account with the Indian Overseas Bank at Panaji and the cheques were deposited in the account of the petitioner with the Indian Overseas Bank at Panaji. The question is whether in such circumstances the Court of the learned Magistrate at Panaji would have territorial jurisdiction.

7. In the case of **Ramanbhai Patel** (supra) the learned Single Judge of this Court, after placing reliance on the case of **Dashrath Vs. State of Maharashtra** (supra) has held that in a case

where the cheque is payable at par at all the branches of the bank (on which the cheque is drawn), the drawer gives option to the banker of the payee, to get the cheque cleared from the nearest available bank of the drawer. It has been further held that the cheque having been dishonoured within the territorial jurisdiction of the Court in which such branch is situated, would have jurisdiction.

8. In the case of Dashrath Rathod (supra), the Hon'ble Supreme Court has held thus in para 58 of the judgment:

58.1-

58.2-

58.3-

58.4-

58.5-

58.6. Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

58.7. The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within

whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under [Section 138](#) is committed along with other offences in a single transaction within the meaning of [Section 220\(1\)](#) read with [Section 184](#) of the Code of Criminal Procedure or is covered by the provisions of [Section 182\(1\)](#) read with [Sections 184](#) and [220](#) thereof.

(Emphasis supplied)

9. Thus, it has been held by the Hon'ble Supreme Court that once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured as held in para 58.6 of the judgment.

10. There is one more aspect of the matter which turns upon the amendment to Section 142 by the Negotiable Instruments (Amendment) Ordinance, 2015 (No.6 of 2015.) By the said amendment, sub section 2 is added to Section 142 which reads as under:

142 (1) -

(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 purpose 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 in which the payee or holder in due course, as the case may be, maintains the account.

11. The present case would fall under Section 142 (2) (a) of the Act as the cheque is delivered for collection through an account. In that event, the local jurisdiction of the Court would be determined by the location of the branch of the bank where the payee or holder in due course, as the case may be maintains the account.

12. It may be mentioned that Section 142 A which is inserted by the same amendment gives retrospective effect to the said

amendment. Thus all pending complaints would be covered by the said amendment. Thus on either count, namely on interpretation of the law as has been done by the Hon'ble Supreme Court in the case of Dashrath Rathod (supra) as well as on the basis of the amendment by Ordinance No.6/2015, the learned JMFC at Panaji would have territorial jurisdiction to entertain the complaint.

13. It may be mentioned here that the decision of this Court in the case of **Ramansingh** was cited before the learned Magistrate, however at that time it was submitted that the said judgment was subject matter of challenge before the Hon'ble Supreme Court in which there was a stay operating to the said judgment. The learned counsel for the petitioner has referred to a copy of the order dated 28/3/2015 of the Hon'ble Supreme Court in which the Special leave petition is dismissed as withdrawn. In such circumstances, the said ground which has been relied upon by the learned Magistrate would also not survive.

14. In such circumstances, the following order is passed.

ORDER

The petitions are allowed. The impugned order dated

9/1/2015 (In Criminal Writ Petition NO.76/2015 and 77/2015) and the impugned order dated 19/8/2014 (In Criminal Writ Petition No.78/2015) are hereby quashed and set aside. The complaints are restored to the file of the learned Judicial Magistrate First Class, Panaji.

15. The petitions are disposed of in the aforesaid terms. In the circumstances, there shall be no orders as to costs.

C. V. BHADANG, J.

Ap/-