IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 589 OF 2015

Ashok Pandurang Pawar ..Petitioner

v/s.

Sujeet Joshi & Anr. ..Respondents

Mr. Ajit Savagave for the Applicant.
Mr.S.H.Ramugade, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : AUGUST 27, 2015.

P.C.

1. Heard. Rule. Rule made returnable forthwith.

2. The petitioner herein was the complainant in C.C.No.1616 of 2012 filed before the 5th Joint Judicial Magistrate, First Class, Satara, against the respondent no.1-accused under Section 138 of the Negotiable Instruments Act. The said case relates to dishonour of cheque issued by Respondent No.1 towards repayment of loan advanced by the petitioner-complainant. The respondent no.1 had put in his appearance and pleaded not guilty. The petitioner-complainant had filed his affidavit of evidence on 5th July, 2014 in

accordance with Section 145(1) of Negotiable Instruments Act.

3. By application dated 7.10.2014, in view of the judgment of the Apex Court in Dashrath Rupsingh Rathod v/s. State of Maharashtra, the respondent no.1 accused prayed for return of complaint for presenting the same to the proper court.

4. The learned Magistrate held that the subject cheque was returned unpaid by ICICI Bank Ltd. Branch Pune. Hence, by order dated 11.10.2014 the learned Magistrate allowed the said application and returned the complaint to be presented before the proper court. Aggrieved by the said order, the petitioner-complainant has filed the present petition.

5. It may be mentioned that subsequent to the judgment of Apex Court in Dashrath Rupsing Rathod (supra), Section 142 of Negotiable Instruments Act came to be amended by Negotiable Instruments Ordinance 2015 as under:-

Amendment of Section 142. 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.”.

Insertion of New Section 142-A. In the principal Act, after section 142, the following section shall be inserted, namely:—

“142A. Validation for transfer of pending cases.
(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."

6. In the instant case the subject cheque was drawn on the bank account maintained at ICICI Bank, Branch-Santacruz (West), Mumbai. The petitioner complainant had presented the cheque for its encashment with his banker viz State Bank of Inda, Branch-Rahimatpur, Koregaon, Satara. The cheque was sent by State Bank of India, Rahimatpur- Satara to the ICICI Branch, Santacruz for its encashment. The same was dishonoured as the respondent accused had stopped the payment. It is thus evident that the petitioner-complainant maintained account at Rahimatpur, Koregaon. Hence in view of the amended provision of Section 142 of Negotiable Instruments Act, by virtue of the ordinance dated 15th June 2015, which is still in force, the complaint before the learned Judicial Magistrate, First Class, Satara is maintainable.

7. In the light of the aforesaid facts, the petition is allowed. The impugned order dated 11th October, 2014 passed by the Judicial Magistrate, First Class, Satara in Summary Criminal Case No.1616 of 2012 is quashed and set aside. Rule is made absolute.

(ANUJA PRABHUDESSAI, J.)

Certificate

Certified to be true and correct as per the original signed order.