

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 311 OF 2015

M/s. Data Care Corporation .. Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Satyavrat Joshi for the applicant

Mr. Anand S. Patil for the respondent no.2

Mr. J.H. Ramugade, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 19th OCTOBER, 2015.**

P.C.

1. The applicant herein is the original complainant in C.C. No.10417 of 2014 filed before the J.M.F.C., Pune.

2. In view of the principles laid down by the Apex Court in the case of *Dashrath Rathod Vs. State of Maharashtra, All M.R. (Cri.) 333*, the respondent no.2 accused had filed an application before the learned Magistrate to return of the complaint to the complainant for presenting it to the appropriate Court. The learned Magistrate had allowed the said application by order

dated 07.03.2015. Aggrieved by the said order, the complainant preferred this application under Section 482 of the Cr.P.C.

3. Heard the learned Counsel for the applicant and the respondent.

4. It may be mentioned that Section 142 of N.I. Act has been amended by the Ordinance No.6 of 2015 dated 15.6.2015, and by second ordinance No.7 of 2015 dated 22.09.2015, Section 142 of Negotiable Instruments Act reads as follows :-

“142.Cognizance of offences. —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138.....

(c) no Court inferior to that of a Metropolitan Magistrate of a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

“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.

If, on the date of the 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 cheques 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.”

5. In the light of the said amendment, it is evident that the payee or the holder of the cheque can file a case under Section

138 of the Negotiable Instruments Act in a Court at the place where the bank in which the payee has an account, is located. The ordinance further provides that all such cases which are pending as on 15th June, 2015 in different courts in India would stand transferred to the court which has jurisdiction over the place where the bank of the payee is located. If there are multiple cheques bouncing cases pending between the same parties as on 15th June, 2015 then all such multiple cases will be transferred to the court where the first case has jurisdiction.

6. Reverting to the facts of the present case, the averment in paragraph nos.5 and 6 of the complaint reveal that the respondent no.2 had issued a cheque dated 30th March, 2014 for Rs.1,40,150/- in favour of the complainant towards price of the goods supplied. The said cheque was drawn on State Bank of India, Dasara Chowk, Kolhapur and the applicant complainant had deposited the said cheque in HDFC Bank, Deep Bunglow Chowk, Pune. It is stated that the evidence has not yet commenced.

It is also not in dispute that HDFC, Bank is within the local jurisdiction of J.M.F.C., Pune. Hence in the light of the provisions of Section 142, the learned Magistrate, Pune has jurisdiction to try the said case.

7. Under the circumstances, the application is allowed. The impugned order dated 07.03.2015 passed below Exh.10 in SCC No.10417 of 2014 is quashed and set aside. The learned Magistrate, Pune is directed to dispose of the complaint in accordance with law.

8. Both the parties are directed to appear before the learned Magistrate, Pune on 16th November, 2015 at 11.00 a.m.

9. Parties to act on an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)