

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

CRIMINAL WRIT PETITION NO. 1692 OF 2015

Mr. Anant K. Samant

.. Petitioner

v/s.

Mr. Shiv S. Malhotra & Anr.

..Respondent/s

Mr.N.B.Sawant for the Petitioner

Mr.R.M.Upadhyay for the Respondent No.1.

Mrs. R.V.Newton APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 24th AUGUST, 2015**

P.C. :

1. By this petition the petitioner has sought transfer of the complaint CC.No 1774/SS/2014 pending on the file of the Metropolitan Magistrate's 58th Court, Bandra, Mumbai to J.M.F.C. Chalisgaon, District Jalgaon and to arrange to return the complaint to the complainant for filing before the Court having appropriate jurisdiction.
2. Learned Counsel for the petitioner submits that in view of the judgment of the Apex Court in Dashrath Rupsing Rathod vs. State of

Maharashtra in Criminal Appeal 2287 of 2009, the case should be transferred to the appropriate court at Chalisgaon. It is pertinent to note that subsequent to the judgment, by ordinance dated 15th June, 2015 sub section 142 and 142A have been inserted which read as under :

3. 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.”.

4. 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.”

3. In view of the amended provisions inserted in Negotiable Instruments Act, which is still in force, the Metropolitan Magistrate, 58th Court, Bandra, Mumbai has jurisdiction to inquire into and try the case no. 1774/SS/2014.
4. In the light of the above, the petition has not merit and is accordingly dismissed.

[ANUJA PRABHUDESSAI, J.]