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

CRIMINAL APPLICATION NO. 982 OF 2014

Shah Brothers Ispat Pvt. Ltd.,
having registered office at
5B, Trust House, Dr. E. Borges Road,
Opp. Shirodkar High School, Parel (E),
Mumbai 400012, Through Authorised
Representative Mr. Sanjeev Kulkarni
Marketing Manager

... Applicant

VERSUS

1. State of Maharashtra
2. Reynolds Chemequip Pvt. Ltd.
Having registered office at
601, D Definity, Road No. 1,
Jayprakash Nagar, Goregaon (E),
Mumbai 400063.

And

Reynolds Chemequip Pvt. Ltd.
101, 1st Floor, Swamini Building,
Pimpri Pada, Water Tank Road,
Opp. Gen. A. K. Vaidya Marg, Malad (E),
Mumbai 400097

And

Reynolds Chemequip Pvt. Ltd.
KSSIDC Industrial Estate,
Plot No. N-14 & N-17,
Udyambagh, Khanapur road,
Belgaum 590008.
Maharashtra, INDIA.

3. Mr. Ravishankar Honnappa Asundi
Director, Reynolds Chemequip Pvt. Ltd.

601, D Definity, Road No. 1,
Jayprakash Nagar, Goregaon (E),
Mumbai 400063.

And

Mr. Ravishankar Honnappa Asundi
Director, Reynolds Chemequip Pvt. Ltd.
101, 1st Floor, Swamini Building,
Pimpri Pada, Water Tank Road,
Opp. Gen. A. K. Vaidya Marg, Malad (E),
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Mr. Ravishankar Honnappa Asundi
Director, Reynolds Chemequip Pvt. Ltd.
KSSIDC Industrial Estate,
Plot No. N-14 & N-17,
Udyambagh, Khanapur Road,
Belgaum 590008.
Maharashtra, INDIA.

4. Mr. Satish Honnappa Asundi
Director, Reynolds Chemequip Pvt. Ltd.
601, D Definity, Road No. 1,
Jayprakash Nagar, Goregaon (E),
Mumbai 400063.

And

Mr. Satish Honnappa Asundi
Director, Reynolds Chemequip Pvt. Ltd.
101, 1st Floor, Swamini Building,
Pimpri Pada, Water Tank Road,
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Mr. Satish Honnappa Asundi
Director, Reynolds Chemequip Pvt. Ltd.
KSSIDC Industrial Estate, Plot No. N-14 & N-17,
Udyambagh, Khanapur Road, Belgaum 590008.
Maharashtra, INDIA.

... Respondents

...
Ms Bina H. Jariwala i/b Auruma Law, Advocate for applicant
Mr Santosh Kyadiguppi, Advocate for respondents No. 2 to 4
Mr Rajesh More, APP for respondent/State
...

CORAM : V. L. ACHLIYA, J.

RESERVED ON : 22/04/2015.

PRONOUNCED ON : 21/07/2015

JUDGMENT : -

1. Rule. Rule made returnable forthwith. By consent of parties, taken up for final disposal at the stage of admission.
2. Being aggrieved by order dated 12/09/2014 passed by learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, whereby learned Magistrate refused to entertain the complaint presented pursuant to order dated 4/9/2014 passed by Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, the applicant has preferred this application u/s 482 of Cr.P.C., to set aside the said order with further direction to learned Magistrate to entertain the complaint.
3. Heard the submissions advanced by learned Counsel representing the applicant/original complainant and respondents No. 2 to 4 (original accused Nos. 2 to 4) as well as learned APP for the State and further perused the record and proceedings.

4. Few facts leading to the filing of application are as under:-

On account of dishonour of five cheques of total sum of Rs.33,31,385/-, issued by respondent No. 2 - Company, the complainant initiated proceeding u/s 138 r/w Section 141 of N.I. Act as against respondent No. 2 to 4 in the Court of Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. While proceeding was pending before the said Court, on 1/8/2014 the Hon'ble Supreme Court of India, in the matter of *Dashrath Rupsingh Rathod Versus State of Maharashtra & Anr. in Criminal Appeal No. 2287 of 2009*, held that the return of the cheque by the Drawee Bank alone constitutes the commission of the offence u/s 138 of NI Act and indicates the place where the offence is committed. The Apex Court has further directed that all the pending cases except the cases wherein the recording of evidence has commenced, be returned to the complainant for filing in the proper Court. Pursuant to said direction, learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai passed order on 4/9/2014 and directed the complaint be returned to the complainant for its presentation before the proper/competent Court in whose jurisdiction 'the drawee bank is situated'. Accordingly, the complainant presented the complaint with Metropolitan Magistrate, 43rd Court, Borivali, Mumbai as the cheques were payable “**at par in all the branches of Bank of India**”. However, learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai vide

order dated 12/9/2014 passed in the matter refused to entertain the complaint presented by the complainant. Learned Magistrate observed that as the cheques in question being drawn and payable from Bank of India, Angol Road Branch, Belgaum and the presentation of the cheques with Bank of India, Branch at Borivali was in regular course of banking transaction, the Bank of India, Branch at Borivali cannot be treated as a Drawee Bank and, therefore, it will be against the essence of the order of the Hon'ble Supreme Court. Being aggrieved by the said order, the applicant has approached this Court.

5. The order impugned is mainly assailed with contention that the learned Magistrate has wrongly refused to exercise the jurisdiction vested in him by law as well as pursuant to order passed by Apex Court. By referring the printed endorsement on cheques in question, the learned Counsel submitted that though the cheques in question are drawn from account of respondent No. 2 with Bank of India, Branch at Angol Road, Belgaum, Karnataka, the cheques are payable from all the branches of Bank of India within the Country. It is, therefore, contended that as the cheques were presented for realization and encashment to Bank of India, Branch at Borivali, and same were dishonoured for want of sufficient fund in the account of respondents No. 2, the said Branch of Bank of India can very well be

treated as Drawee Bank and the presentation of the complaint was fully justified.

6. In my view, the contention raised by learned Counsel for the applicant to decide the correctness of the order passed by learned Metropolitan Magistrate requires no consideration for the sole reason that, pending disposal of this application, the Government of India has issued the Ordinance on dt. 15/6/2015. By the ordinance issued, the Government of India has amended the provisions of NI Act, 1881 with immediate effect. The relevant provisions of the Negotiable Instruments (Amendment) Ordinance, 2015 read as under : -

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.

7. In view of the above mentioned amendment to Section 142 of NI Act, the order impugned deserves to be quashed and complaint needs to be restored to the file of Metropolitan Magistrate, 43rd Court, Borivali, Mumbai. Accordingly, application is allowed in terms of prayer clause “(b)” of the application. The impugned order dated 12/9/2014 passed by Metropolitan Magistrate, 43rd Court, Borivali, Mumbai in Misc. No. 4300085 of 2014 in C.C. No. 2301575/SS/2014,

is hereby set aside. The learned Magistrate is directed to entertain the complaint filed by the complainant in accordance with law and if necessary, pass such order as deem fit and proper in the light of the amended provisions of Section 142 of NI Act.

8. Rule made absolute in above terms with no order as to costs.

[V. L. ACHLIYA, J.]