

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

CRIMINAL WRIT PETITION NO. 3972 OF 2015

M/s. Refex Energy Ltd.

.. Petitioner

v/s.

API Engineers & Equipment Pvt. Ltd. & Ors. ..Respondents

Mr. Santosh Kyadiguppi for the petitioner

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

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 14th OCTOBER, 2015.**

PC.

1. Heard learned Counsels for the respective parties. Rule. By consent, Rule made returnable forthwith.
2. The petitioner is the complainant in C.C. No. 185/ST/2013 filed before the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai.
3. The complainant had filed a complaint under Section 138 of the N.I. Act alleging that the accused no.1 had issued cheque

dated 13.12.2012 for Rs.40,00,000/- towards purchase of Solar components. The complainant had stated that the said cheques were presented in Punjab National Bank, Opera House Branch, Mumbai. The said cheques were dishonoured and despite the receipt of the statutory notice, the accused no.1 company and its directors failed to make payment. Hence, complaint under Section 138 of the N.I. Act came to be filed against the accused no.1 company.

4. The learned Magistrate, after considering the judgment in the case of *Ahuja Nandkishor Dongre Vs. State of Maharashtra & Anr. 2007(1) Bom.C.R.(Cri.) 1031* and *Sharda Polycolours Pvt. Ltd. in W.P No.1159/2012*, held that the drawee bank was not situated within the jurisdiction of the Court and hence the Court has no jurisdiction to entertain the complaint. The said order was challenged in Criminal Revision Application No.1262 of 2013. The learned Sessions Judge, Greater Bombay dismissed the revision application mainly on the basis of the decision of the Apex Court in the case of *Dashrath Rupsingh Rathod Vs. State of*

Maharashtra & Anr. 2014 STPL (Web) 499 SC.

5. It may be mentioned that Section 142 of N.I. Act, as 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. (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 of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

“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.”

6. 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.

7. In the instant case, the petitioner complainant had stated that he had deposited the subject cheques with Punjab National Bank, Opera House Branch, Mumbai. The complaint was filed in the court of Metropolitan Magistrate, Girgaon, Mumbai. The bank in which the petitioner had deposited the cheques is within the local jurisdiction of Girgaon Court.

8. Under the circumstances and in view of the amended provisions of the Act, the Metropolitan Magistrate Court, 14th Court, Girgaon, Mumbai has jurisdiction to try the case. Hence, the impugned order dated 26th February, 2015 passed by the

learned Sessions Judge, Greater Bombay in Revision Application No.1262 of 2013 and order dated 2nd September, 2013 passed by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai are quashed and set aside. Rule is made absolute.

9. The learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai is directed to proceed with the complaint filed by the petitioner in accordance with law.

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

(ANUJA PRABHUDESSAI, J.)