

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

**CRIMINAL WRIT PETITION NO.4532 OF 2014
WITH
CRIMINAL WRIT PETITION NO.4533 OF 2014
WITH
CRIMINAL WRIT PETITION NO.4534 OF 2014
WITH
CRIMINAL WRIT PETITION NO.4535 OF 2014**

Divvyani Anand Sarnaaik

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Manish Bohra for the Petitioner.

Mr. Durgesh Singh i/b. M/s. India Laws for Respondent No.2.

Mr. M.J. Dedhia, APP for Respondent No.1- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 20th OCTOBER, 2015.

P. C. :

The Petitioner herein who, was the original accused in criminal case Nos.2442/SS/2012, 2534/SS/2012, 2535/SS/2012 and 2536/SS/2012 respectively filed under section 138 of the Negotiable Instruments Act, has challenged the order dated 19th September, 2014 whereby his application for return of the complaint for presentation to the appropriate court having jurisdiction was rejected.

2. The learned counsel for the Petitioner submits that evidence has not yet commenced and the jurisdictional issue has to be decided as per the amended provisions incorporated in the ordinance No.6 of 2015 and 7 of 2015.

3. The application for return of complaint was filed in view of the judgment of the Hon'ble Apex Court in the case of **Dashrath Rupsingh Rathod Vs. State of Maharashtra (2014) 9 SCC 129**. Both the parties concede that the order cannot be sustained in view of the provisions of section 142 of the Negotiable Instruments Act, as amended by ordinance No.6 of 2015 and 7 of 2015, and which 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.”

4. In the light of the said amended provision, the case will have to be tried by the Court within whose local jurisdiction the branch of the bank where the payee or holder in due course as the case may be maintains the account.

5. Under the circumstances, the impugned order is set aside. The matter is remanded back to the Trial Court. The learned Magistrate is directed to decide the jurisdictional issue in the light of the amended provisions vis-a-vis the averments made in the complaint and the documents produced.

6. The writ petitions stand disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)