

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-8266 of 2015
Date of Decision: 02.11.2015.**

Nirbhai Singh

.....Petitioner

Vs.

Sukhwinder Singh @ Raju

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sandeep Saini, Advocate for
Mr. Sherry K. Singla, Advocate
for the petitioner.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 4.2.2015 (Annexure P-1) whereby complaint in question was ordered to be returned to the complainant on the ground of want of territorial jurisdiction.

Learned counsel for the petitioner has submitted that the controversy involved in the present case is covered by the decision of this Court in Criminal Miscellaneous-M-33326 of 2014 decided on 8.10.2015.

Order passed in Criminal Miscellaneous-M-33326 of 2014 dated 8.10.2015 reads as under:-

“Petitioner has filed this petition challenging the order dated 01.12.2014, whereby complaint in question was to be presented before the appropriate

Court in view of the decision given by the Apex Court in **Dashrath Rup Singh Rathod Vs. State of Maharashtra and another 2014(3) RCR (Crl.) 904.**

Learned counsel for the petitioner has submitted that although the complaint was ordered to be returned to the complainant in view of the decision given by the Apex Court but subsequently Ministry of Law and Justice (Legislative Department) had issued an ordinance which came into force on 15.06.2015. As per the same, the complaint could be presented in the Court within whose jurisdiction the cheque in question had been presented for encashment or before the Court within whose jurisdiction, the Bank of the drawer of the cheque was situated. Thereafter, another similar ordinance was issued on 22.09.2015. In the present case, the cheque in question was presented for encashment with the Bank at Ludhiana, hence, the Court at Ludhiana had the jurisdiction to try the case. Learned counsel for the petitioner has placed reliance upon **CRM-M-No. 41124 of 2014 titled as M/s Mohindra Engineering Works Vs. Chamkaur Singh decided on 29.09.2015, CRM-M-6308-2015 titled as The Patiala Central Co-operative Bank Ltd. Vs. Seema decided on 04.08.2015, CRM-M-33847-2014 titled as M/S Said Deep Traders Vs. Shree**

Gusaiji Traders and others decided on 14.09.2015

by this Hon'ble Court.

Learned counsel for the respondent, on the other hand has opposed the petition.

Para 3 of the ordinance dated 15.06.2015 reads as under:-

“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 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.”

Para 3 of the ordinance dated 22.09.2015 reads as under:-

“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.”

Thus, as per the above ordinance the Court within whose jurisdiction, the cheque in question is presented for encashment is competent to try the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Accordingly, this petition is allowed. Impugned order dated 01.12.2014 is set aside and the trial Court is directed to dispose of the complaint in accordance with law.”

In the present case, the cheque in question was presented for encashment by the complainant at Ahmedgarh, District Sangrur. Hence, the Court at Malerkotla, District Sangrur has the jurisdiction to try the complaint.

Thus, the present case is covered by the decision given by this Court in Criminal Miscellaneous-M-33326 of 2014 decided on 8.10.2015.

The present case along with other cases involving similar issue were listed for today. A perusal of the impugned order reveals that the accused had not put in appearance before the Trial Court so far. However, in view of the order passed today in the similar/identical case No. Criminal Miscellaneous-M-30501 of 2014, which is fully applicable to the present case as well, this petition is disposed of without effecting service on the respondent as that would unnecessarily delay the matter and the exercise would be purely academic.

Accordingly, this petition is allowed. Impugned order dated 4.2.2015 (Annexure P-1) is set aside and the Trial Court is directed to dispose of the complaint, in accordance with law.

However, respondent would be at liberty to move an appropriate application, if the respondent still feels aggrieved.

**(SABINA)
JUDGE**

November 02, 2015
Gurpreet