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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 20th October, 2015

+ **CRL.M.C. No.4424/2015**

MOHD RAIZ (RAIZ AHMED) Petitioner

Represented by: Mr.Anjani Kr Mishra and
Mr.Pradeep Kr Sharma, Adv

versus

STATE OF NCT OF DELHI & ORS Respondents

Represented by: Mr.Kamal Kumar Ghei, APP
for the State/R1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A.15672/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.4424/2015

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby setting aside the impugned order dated 15.09.2015 passed by learned Additional Sessions Judge in Criminal Revision Petition No.25/2015 whereby the said Revisional Court set aside the order dated 27.09.2014 passed by learned Trial Court. Accordingly, the case was remanded back with direction that learned Trial Court shall pass a fresh order in the light of the Ordinance of 2015 in the Negotiable Instruments Act, 1881.

2. Learned counsel appearing on behalf of petitioner submitted that when the revision petition was allowed at that time the ordinance of 2015 had elapsed on 31.08.2015 and therefore, the cases of under Section 138 of the NI Act cannot be transferred in term of the said ordinance. A circular to this effect was also made published by the office of the Chief Metropolitan Magistrate, Saket Courts, New Delhi dated 09.09.2015 and also issued by the Registrar General of this Court. Thus, there was no transfer on the said date.

3. Further submitted that when amendment by ordinance 2015 was not in force, then the judgment of the Supreme Court in ***Dashrath Rupsingh Rathore vs State of Maharasthra 2014 VIII AD (SC) 293*** and rule propounded therein for the offences punishable under Sections 138 of the NI Act shall be applicable and learned Additional Sessions Judge failed to consider this important legal proposition in such cases.

4. Vide order dated 27.09.2014, learned Trial Court directed the complaint be returned to respondent No.2/complainant for being presented to the Court of competent jurisdiction in view of decision in ***Dashrath Rupsingh Rathore (supra)***.

5. Being aggrieved, the complainant/ respondent No.2 approached the learned Additional Sessions Judge vide Criminal Revision No.25/2015 which was allowed vide order dated 15.09.2015.

6. The case before the learned Trial Court by complainant / respondent No.2 was for the offence punishable under Section 138 of the NI Act on account of dishonour of two cheques totalling to the tune of Rs.89,03,656/-. Learned Trial Court after perusal of the case found that

complainant is maintaining his bank account at a place which is outside the territorial jurisdiction of Delhi Courts and returned the original complaint for respondent No.2 for being presented to the Court of competent jurisdiction.

7. For convenience, the relevant Sections 3 & 4 of the NI Act (Amendment) Ordinance, 2015 are reproduced as under:-

“3. In the principal Act, section 142 shall be numbered as subsection (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.”

8. Keeping in view the amendment noted above, which has nullified the effect of case of ***Dashrath Rupsingh Rathore (supra)*** and said ordinance came into force after lapse for first ordinance. Thereafter, another ordinance has come thus, first ordinance is in force.

9. Taking the amendment into view, I find no discrepancy in the order dated 15.09.2015 passed by learned Revisional Court.

10. Finding no merits in the instant petition, same is hereby dismissed with no order as to cost.

**SURESH KAIT
(JUDGE)**

OCTOBER 20, 2015
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