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

Judgment delivered on: 13th October, 2015

+ **CRL.M.C. No.4239/2015**

PANKAJ GARG

..... Petitioner

Represented by: Mr.Gaurav Gaur,
Mr.Narendra Gautam,
Mr.Hem Singh, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Represented by: Mr.Sudhershnan Joon, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No.15169/2015 (Exemption)

Exemption allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.4239/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has assailed the order dated 03.07.2015 passed by learned Additional Sessions Judge in Criminal Revision Petition No.27/2015 filed by respondent No.2.

2. Learned counsel appearing on behalf of petitioner submitted that vide order dated 16.01.2015 learned Trial Court in the light of the judgment *Dashrath Rupsingh Rathod vs State of Maharashtra & Ors 2014 III AD (Crl) (SC) 577*, the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as the 'NI Act')

filed by respondent No.2 was directed to be returned after compliance of due formalities.

3. He further submitted that learned counsel for complainant/ respondent No.2 was present before learned Trial Court on the date of passing of the above noted order dated 16.01.2015, however, no steps were taken to get the complaint returned and filed it before the Court having jurisdiction. Even thereafter, no steps taken by the respondent No.2, however, filed the Criminal Revision Petition mentioned above, in the light of the ordinance whereby Section 142 of the NI Act has been amended and new Section 142 A has been incorporated in the NI Act vide gazette notification dated 15.06.2015. The said revision was allowed vide the impugned order dated 03.07.2015.

4. Learned counsel further argued that the amendment in the NI Act is not having retrospective effect, therefore, learned Revisional Court had to see the legal position as on 16.01.2015 and not as on 03.07.2015.

5. Learned counsel also submitted that the Revisional Court has wrongly arrived at a conclusion that case was pending before learned Trial Court whereas vide order dated 16.01.2015 the matter was directed to be returned and the file was consigned to the Record Room. Therefore, had the complaint case pending before the learned Trial Court the position would have been different, however, in the present case, there was no complaint case pending before learned Trial Court or respondent No.2 has refiled it before the Court having jurisdiction in view ***Dashrath Rupsingh Rathod*** (*supra*). Thus, the order passed by learned Revisional Court vide order dated 03.07.2015 is illegal and improper.

6. It is pertinent to mention here that the respondent No.2/ complainant filed the aforesaid Revision Petition with condonation of delay application and same was disposed of by learned Revisional Court by a separate order dated 03.07.2015. Respondent No.2 sought condonation of delay on the ground that he was not able to file revision petition as he got fracture in his right leg and ankle and was operated in Max Hospital, Patparganj, Delhi and was hospitalised till 05.06.2014. Again petitioner was admitted in hospital on 10.08.2014 and remained till 15.08.2014, thereafter, he was taking medical treatment and was on bed rest. Therefore, he could not contact his counsel till 01.05.2015 and later on approached his counsel and got prepared the revision petition and filed in the Court. Keeping in view the grounds recorded above, learned Revisional Court condoned the delay in filing the revision petition.

7. As far as order dated 03.07.2015 passed in Criminal Revision Petition, it is not in dispute that order dated 16.01.2015 passed by learned Trial Court was in view of the decision of the Apex Court in ***Dashrath Rupsingh Rathod*** (*supra*) and thereafter, the amendment has been carried out by the ordinance mentioned above. Therefore, the complaint case remained at the same place where it was prior to the amendment to the statute. It is also not in dispute that learned Trial Court directed to return the complaint case, however, respondent No.2, due to his medical difficulty, not received the complaint case back or filed it before the Court having jurisdiction in view of ***Dashrath Rupsingh Rathod*** (*supra*). Thus, case remained with the office of learned Trial Court itself.

8. Section 142 A of the NI Act, which has been incorporated vide Gazette notification dated 15.06.2015 reads as under:-

“3. Amendment of Section 142- 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 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'.*

Validation for transfer of pending cases:- In the Principal Act, after section 142, following section shall be inserted namely:-

“142 A (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974) 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 subsection (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.

(3) If, on the date of 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 subsection (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.”

9. As per above provision the cases which were transferred for lack of territorial jurisdiction as the bank of the drawer was not situated within the territorial jurisdiction of the Court concerned have been directed to be returned and tried by the same Court. It is clear from the order of learned MM dated 16.01.2015 that complaint case of respondent No.2 was directed to be returned as the bank of the drawer/ petitioner does not situate within the territorial jurisdiction of the court of learned MM.

10. The amendment in question is applicable retrospectively. The stage of the cases shall remain same as was before the case of ***Dashrath Rupsingh Rathod*** (*supra*). Therefore, keeping in view the above ordinance such complaint cases which were returned to the complainant on account of lack of territorial jurisdiction for the reason of location of the bank of the accused / petitioner outside the territorial jurisdiction of the Court are bound to be tried by the said Court.

11. Keeping in view the facts and circumstances of the case, in the light of the amendment in Section 142A of the NI Act, I find no discrepancy in the order condoning the delay as well as order dated 03.07.2015 passed by learned Revisional Court.

12. Finding no merits in the instant petition, it is hereby dismissed with no order as to costs.

Crl. M.A.No.15170/2015 (for stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

OCTOBER 13, 2015

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