

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO. 169 OF 2015

- 1] M/s Shri Saikrupa Sugar and Allied Industries Company
Corporate under the Company's Act
And having its Head Office at Accolade
"A-Wing", Flat No. 064, Bhandari Land
Mark, Opp. To Reliance Mart,
Kharadi, Pune-411 014.
Through its Managing Director,
Shri Hiranman s/o Nanasaheb Patil,
Age 58 years, occ. Service,
- 2] Shri Vikram Babanrao Pachpute,
age 30 years, occ. Business,
R/o Shrigonda, Tq. Shrigonda,
District Ahmednagar,
- 3] Rajkumar Sudamrao Dhamdhere,
age 50 years, occ. Business,
R/o A type Bungalow, Tirupati Park,
N-4, CIDCO, Aurangabad-431003

...Petitioners
[Original Accused]

VERSUS

Axix Bank Limited
[A banking company carrying on the
Banking business under the Banking
Regulation Act, 1949, incorporated under
The Companies Act, 1956 and having
Its registered office at "Trishul", 3rd Floor,
Opposite Samartheshwar Temple,
Law Garden, Ellis Bridge,
Ahmedabad-380006, Gujrat and Branch
Office Interalia at Hotel Sanket Complex,
189/6, Tilak Road, Ahmednagar
through its Power of Attorney Holder,
Shri Allhad Sudhakar Rao Lahoti

...Respondent

Mr. R.R.Karpe, Advocate for the Petitioners
Mr. M.M.Patil (Beedkar), advocate for Respondent

CORAM : INDIRA K. JAIN, J.
DATED : 2nd February, 2016

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for parties.

2] This petition takes an exception to the order, dated 12.11.2014 passed below Exh.47 by the learned Judicial Magistrate, First Class, Ahmednagar in S.T.C. No. 2523 of 2013.

3] The facts giving rise to the petition may be stated in brief as under : -

Respondent/Bank filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioners before the learned Judicial Magistrate, First Class, Ahmednagar. During pendency of complaint, petitioners submitted an application (Exh.47) stating therein that complaint was not maintainable for want of jurisdiction and the same be returned to complainant for its presentation before the proper Court.

4] Application (Exh.47) was submitted relying on the decision of the Hon'ble Apex Court in **Dashrath Rupsingh Rathod vs State of Maharashtra and another [2014 (3) Bom.C.R.(Cri.) 593(S.C.)]**.

5] The learned counsel for petitioners submitted that complainant had filed an affidavit in lieu of examination-in-chief before the Trial Court. Recording of evidence had not commenced and the case had not reached to the stage as contemplated under Section 145 (2) of the Negotiable Instruments Act. In view of this, the learned counsel submits that the ratio laid down in the case of **Dashrath** (supra) would apply and it was incumbent on the learned Magistrate to return the complaint for its presentation to the Court.

6] Per contra, learned counsel for respondent/Bank referred to the decision of the Hon'ble Apex Court in **M/s Bridgestone India Pvt. Ltd. Vs Inderpal Singh [2015 (13) SCALE 155]** and submitted that in view of Section 142(2)(a) amended through the Negotiable Instruments (Amendment) Second Ordinance 2015 jurisdiction for initiating the proceedings under Section 138 of the Negotiable Instruments Act would also vests in a Court where the cheque was presented and the same was dishonoured. Learned

counsel submits that decision in case of **Dashrath** has been referred by the Hon'ble Supreme Court in the recent decision of **M/s Bridgestone India Pvt. Ltd.** and provisions having retrospective effect Writ Petition needs to be dismissed.

7] With the assistance of the learned counsel for parties, this court has gone through the decisions of the Hon'ble Apex Court in **Dashrath Rupsingh Rathod** and **M/s Bridgestone India Pvt. Ltd.** The facts in the present case are mostly identical to the facts before the Hon'ble Supreme Court in the case of **M/s Bridgestone India Pvt.Ltd.** In paragraphs 12 and 13 the Hon'ble Apex Court has observed thus :-

“ 12) We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142A(1) to the effect, that the judgment rendered by this Court in Dashrath Rupsingh Rathod's case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonour of the cheque in the present case arises.

13) Since cheque No. 1950, in the sum of Rs.26,958/-, drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI Bank, Indore, which intimated its dishonour to the appellant

on 04.08.2006, we are of the view that the Judicial Magistrate, First Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable Instruments (Amendment) Second Ordinance, 2015. The words "...as if that sub-section had been in force at all material times...." used with reference to Section 142(2), in Section 142A(1) gives retrospectivity to the provision. "

8] In view of the proposition of law laid down by the Hon'ble Supreme Court in **M/s Bridgestone India Pvt.Ltd.** this court finds that Writ Petition is without substance and merits. Hence the following order.

ORDER

- (i) Criminal Writ Petition No. 169 of 2015 stands dismissed.
- (ii) Rule is discharged.
- (iii) No order as to costs.

9] At this stage, learned counsel for petitioners makes a request to extend the interim relief for a period of two weeks.

Extension of interim relief stands rejected.

[INDIRA K. JAIN, J.]

dbm/crwp169.15