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

CRIMINAL WRIT PETITION NO.1523 OF 2014

Rajendra Vitthal Bhavar,
Age : 34 years, Occ. Business
R/o Gondegaon,
Tq. Shirampur, Dist. Ahmednagar ..PETITIONER

VERSUS

Limchand Balu Pawar,
Age : 34 years, Occ. Business,
R/o At Gudam tanda, Post Chapner,
Tq. Kannad, Dist. Aurangabad ..RESPONDENT

Mr K.B. Borde, Advocate for petitioner;
Mr Hemant Surve and Mr Kshitij Surve, Advocates for respondent

CORAM : N.W. SAMBRE, J.

DATE : 28th April, 2016

ORAL ORDER :

The proceedings under section 138 of the Negotiable Instruments Act, initiated by the petitioner vide S.T.C. No.4871 of 2012 were disposed of on 1st December, 2014 by Judicial Magistrate First Class (Court No.3), Rahata, with following observations :-

“(1) The complaint and the documents filed along with list at Exh.3 be returned to the complainant for presenting the same in the proper court having jurisdiction to try and entertain it.

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(2) The complainant is directed to collect the aforesaid documents within 15 days from today by retaining its xerox copies on record of this court. “

2. Learned Counsel appearing on behalf of the petitioner would submit that since the proceedings have reached at the stage of recording of cross-examination of the petitioner-complainant, the order is not sustainable, particularly in view of legal position which went unnoticed by the Magistrate. So as to substantiate his contention, learned Counsel has invited my attention to the judgment of the Punjab and Haryana High Court, in the matter of **Sumit Madaan vs. Ramanpreet Singh**, in CRM No. M-9383 of 2016, decided on 8th April, 2016. In paragraph 3 of the said judgment, the Court has observed thus :-

“The short prayer in this petition is that the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short the Act) was filed by the petitioner before the Jalandhar Court, however, the Jalandhar court in terms of the judgment of the Apex Court in *Dashrath Rupsingh Rathod v/s State of Maharashtra and another*, AIR 2014 SC 3519, ordered the return of the file within 30 days for presentation before the Amritsar Court where the cheque was dishonoured. It is stated that the petitioner did not collect the file. Now, amendment has been made in the Act by Act No.7 of 2015 titled as 'The Negotiable Instruments (Amendment) Second Ordinance, 2015', whereby the effect of *Dashrath Rupsingh Rathod's case (supra)* has been taken away and the complaint is maintainable at Jalandhar court in the territorial jurisdiction in which the cheque was issued. Learned Counsel for the petitioner contends that he filed the

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application before the lower court at Jalandhar for restoring the 1 of two file, which was declined on 9.9.2015.”

3. Apart from above, he would submit that the stage of the proceedings are required to be appreciated by the learned Magistrate.

4. The claim is opposed by Mr Surve, learned Counsel appearing on behalf of the respondent on the ground that the view expressed by the learned Magistrate is based on the Apex Court judgment which still holds the field. He would submit that it was incumbent on the part of the petitioner to comply with the order, which is impugned, as the petitioner is not left remedy-less.

5. Having bestowed my thoughts to the submissions made, it is required to be noted that the anomaly in the matter of Dashrath Rupsing Rathod vs. State of Maharashtra & anr., reported in AIR 2014 SC 3519, was taken care of by the Parliament by issuing Ordinance and subsequently carrying out appropriate amendment to the Negotiable Instruments Act. Reliance as is placed by the petitioner on the judgment in the matter of Sumit Madaan (supra) squarely covers the issue. As such, order impugned is not sustainable and is liable to be set aside.

6. In the result, the order dated 1st December, 2014, passed by Judicial Magistrate First Class, Rahata, in S.T.C. No.4871 of 2012, is quashed and set aside.

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Criminal writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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