

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 18 OF 2015

Mr. Rajesh Gulati

.....Petitioner

V/s.

State of Maharashtra and others

....Respondents

Ms. Sufiyan Shaikh i/b Mr. Bijal K. Rathod Advocate for Petitioner.

Mr. Shashipal Shankar for Respondent no. 2

Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 14, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein happens to be original accused no. 3 in S.C.C. No. 51718 of 2007 pending before Judicial Magistrate First Class at Pune. Petitioner is being prosecuted for offence punishable under section 138 of Negotiable Instruments Act. The facts of the case in a nutshell are as follows.
- 4) Respondent no. 2 filed a complaint before Judicial Magistrate First Class at Pune contending therein that complainant happens to be a Multi State

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Co-operative Society. Accused no. 2 happens to be authorized signatory of accused no. 1 company and accused no. 3, 4 & 5 happen to be directors of the said company. According to the complainant, accused no. 2 had issued a cheque in favour of the complainant which was dishonoured. That in the month of October 2003 accused no. 1 through accused no. 4 had approached the complainant for the purpose of issuing letter of credit and inland for the import of commodities like superior kerosene oil, furnace oil etc. The memorandum of understanding was executed on 16/10/2003. The effective period for the said memorandum of understanding was for the period of six months. It was extended for a period of one year on the same terms and conditions. Accused company had failed to make payments in terms of memorandum of understanding. Accused company had then issued a cheque on 31/05/2006 drawn on HDFC Bank, New Delhi. Complainant had presented the said cheque for encashment to the State Bank of India, Market Yard Branch, Pune. The said cheque was sent to the payee bank i.e. HDFC Panchshil Park, New Delhi. The said cheque was dishonoured and the intimation of the dishonoured cheque was received by the complainant through State Bank of India, Market Yard Branch, Pune. It is in these

circumstances that complainant had, after issuing statutory notice, filed complaint before court of Judicial Magistrate First Class at Pune. Complainant had also furnished his affidavit of evidence. Thereafter, present petitioner i.e. original accused no. 3 had filed an application before learned Judicial Magistrate First Class, Pune, praying therein that case be transferred to Delhi as the cheque was dishonoured at Delhi. Accused no. 3 had placed implicit reliance upon the Judgment of **Dashrat Rupsingh Rathod Vs. State of Maharashtra and another** by the Hon'ble Apex Court. Learned Judicial Magistrate First Class, Pune vide order dated 14/11/2014 was pleased to reject the said application.

5) It is a settled position of Law that an amendment was carried out in the very Statute i.e. in the Negotiable Instruments Act. Amendment reads as follows.

“3. 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.

4. *In the principal Act, after section 142, the following section shall be inserted namely :-*

“142 A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amended) Ordinance, 2015, shall be deemed to have been transferred under this Act, 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 (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 the commencement of the Negotiable Instruments (Amendment) Act, 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 sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times”.

6) Needless to say that to cut over the Judgment in the case of **Dashrat Rupsingh Rathod Vs. State of Maharashtra and another** which would put the complainant into difficulty to file the complaints at the place where cheque was dishonoured, the said amendment was carried out. The amendment was to take effect from 29/12/2015, however, a retrospective effect was given. It was specifically noted that amendment shall be deemed to have come into force on 15/06/2015.

7) Amendment Clause 3 (2) of Negotiable Instruments Act specifically contemplates that offence under section 138 of Negotiable Instruments Act shall be inquired into and tried only by court within whose local jurisdiction the cheque is delivered for collection or the cheque is presented for payment by the payee and holder in due course. Needless to say that in the present case holder in due course i.e. complainant had presented the cheque for collection at Pune. The intimation of dishonour was received by the complainant at Pune and therefore, the proper jurisdiction would be at Pune. Learned Magistrate

has rightly rejected the application seeking transfer of matter.

8) There is no reason to interfere with the order passed by the learned Magistrate and in view of the amendment, petition deserves to be dismissed as the case cannot be transferred to Delhi. Hence, following order.

- (i) Writ Petition is dismissed.
- (ii) Interim relief granted in favour of the Petitioner vide order dated 19/01/2015 stands vacated.
- (iii) Learned Magistrate to proceed with the trial in S.C.C. No. 51718 of 2007, forthwith.
- (iv) Office to communicate this order to the concerned Court, forthwith.
- (v) Rule is discharged.
- (vi) Writ petition stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)