IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18813 of 2015
Date of Decision: August 08, 2016

Nar Singh Lal Luthra ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amit Chaudhary, Advocate
for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab.

<u>FATEH DEEP SINGH, J.</u>

In this petition under Section 482 Cr.P.C the petitioner complainant Nar Singh Lal Luthra has sought to impugn an order dated 16.02.2015 passed by learned Judicial Magistrate 1st Class, Sangrur whereby, criminal complaint No. 121-A dated 22.10.2012 (Annexure P1) under Section 138 Negotiable Instrument Act was ordered to be returned to the complainant to be presented before the concerned Court. Upon hearing the learned counsel for the two sides, it is the case of the complainant/ petitioner that respondent no.2 accused Dr. Chander Shekhar took ₹4,27,500/- from the complainant and in acknowledgement of the same had issued a cheque bearing No.109851 dated 12.08.2012 of this amount drawn on HDFC Bank, branch at Phase II Vanasthalipuram, Hyderabad through his account No.10432560000562 and it was on the assurance of the accused the complainant accepted the same and presented the cheque to his Bank i.e. State Bank of Patiala, Main Branch, Sangrur and vide memo dated 16.8.2012 the cheque was returned back dishonoured on account of "stop payment". Consequent thereupon, a legal notice dated 24.08.2012 was served upon the accused and after the requisite period on 03.10.2012 complaint (Annexure P/1) was filed.

Upon this complaint, the impugned order (Annexure P/2) was passed and that is how the petitioner is before this Court.

Heard learned counsel for the parties.

As has been contended by learned counsel for the petitioner, the Legislature vide Act of Parliament passed on 29.12.2015 had brought about The Negotiable Instruments(Amendment) Act, 2015 which is deemed to have come into force on 15.06.2015 whereby, by virtue of amendment earlier issued through ordinance, provisions of Section 142A were added to the Act, which read as follows:

> 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 direction of any court, all cases transferred to the court having jurisdiction under subsection*
> *Instruments (Amendment) 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 subsection (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 sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section138 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."

By virtue of amendment to Section 142 of the Act,

following provisions have been incorporated:

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."*

On bare perusal of these provisions, it is emphatically clear that where a cheque is delivered for collection through an account, the place of suing shall be the Court within whose local jurisdiction the branch of the Bank where the payee or holder in due course, as the case may be, maintains the account, is situated.

It is the case of the complainant that the cheque in question was submitted for encashment by the Branch of State Bank of Patiala, Sangrur and, therefore, by virtue of these provisions, the Court having jurisdiction over the place at Sangrur would be competent to try and decide the present matter.

Thus, it ensues that being a procedural law, a change in the law of procedure operates retrospectively and unlike the law relating to vesting right is not only prospective and thus to the mind of this Court the same lays down a rule of procedure, it ordinarily affects pending actions and it ought to have a retrospective effect as well.

Thus, it is very well clear as to the very applicability of this amendment to the cases before this Court. Furthermore, the Hon'ble Supreme Court in a subsequent view reported in ***2016(1) RCR (Civil) 320*** in the case of ***'Bridgestone India Private Limited v. Inderpal Singh',*** considering the ratios laid down in ***Dashrath Rup Singh Rathod's*** case (supra) have clearly held that once the cause of action accrues to the complainant, jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured and precisely this is what has transpired in the present case. Even the very provisions of Section 177 Cr.P.C. read with Sections 182(1), 184 and 220(1) comes to the aid of the petitioner in this manner. Thus, the Courts at Sangrur would be the place having territorial jurisdiction to try this matter.

Thus, in the totality of the same, the impugned order passed by the Court below cannot sustain and is as such set aside holding that the Courts at Sangrur shall have the jurisdiction to entertain and try this complaint as per law. Thus, the matter is ordered to be sent to the Court of learned Chief Judicial Magistrate, Sangrur, who may either try this matter himself or entrust the same to some other Court under his jurisdiction.

In the light of what has been discussed above, the petition is thus allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

August 08, 2016
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