

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-20441 of 2015 (O&M)

Jyoti Garg

...Petitioner

VERSUS

BCL Homes Limited and others

...Respondents

(ii) CRM No.M-20492 of 2015 (O&M)

Dharminder Kumar

...Petitioner

VERSUS

BCL Homes Limited and others

...Respondents

(iii) CRM No.M-20494 of 2015 (O&M)

Bala Rani

...Petitioner

VERSUS

BCL Homes Limited and others

...Respondents

(iv) CRM No.M-20495 of 2015 (O&M)

Savitri Devi

...Petitioner

VERSUS

BCL Homes Limited and others

...Respondents

Date of Decision: April 05, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.C.Kinra, Advocate
for the petitioners.

Mr.Ashish Verma, Advocate
for the respondents.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned four connected cases as the point for determination in all the cases is the same.

The above-mentioned petitions have been filed by petitioners for setting aside the judgment dated 14.05.2015 passed by learned Addl. Sessions Judge, Barnala as well as order dated 29.09.2014 passed by learned JMJC, Barnala, whereby the criminal complaint No.26 of 2014 instituted by the petitioners has been ordered to be returned and to be filed before the Court of competent jurisdiction within 30 days from the date of return of the documents.

Notice of motion was issued in all the cases and learned counsel for the respondents appeared and contested the petitions.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the petitioners, at the time of arguments, relied upon the judgment passed by the Hon'ble Supreme Court in ***Bridgestone India Private Limited vs. Inderpal Singh, 2016(1) SCC (Criminal) 472***, in which it is held that Section 142(2) (a) vests jurisdiction for initiating proceedings under Section 138 inter alia, in the territorial jurisdiction of court, where cheque is delivered for collection (through an account of branch of bank where payee or

holder in due course maintains an account). Again, insofar as offence under Section 138 is concerned, on the issue of jurisdiction, provisions of Cr.P.C. would have to give way to provisions of instant enactment on account of non obstante clause in Section 142-A(1). Likewise, based on Section 142-A(1), any judgment, decree, order or direction issued by a Court, would have no effect insofar as territorial jurisdiction for initiating proceedings under Section 138 is concerned. Hence, judgment rendered by Supreme Court in ***Dashrath Rupsingh Rathod, (2014) 9 SCC 129***, would not stand in way of appellant insofar as territorial jurisdiction for initiating proceedings emerging from dishonour of cheque in present cases arises. Since cheque drawn on a bank at Chandigarh was presented for encashment at a Bank at Indore, which intimated its dishonour to appellant, it is held that Indore Court would have territorial jurisdiction to take cognizance of proceedings initiated under Section 138 of the Negotiable Instruments (Amendment) Second Ordinance, 2015.

It is also held in the judgment that the amended provision under Section 142(2) and 142(A) as inserted by Negotiable Instruments (Amendment) Second Ordinance, 2015 (and since enacted vide the Negotiable Instruments [Amendment] Act, 2015) said provisions deemed to come into force w.e.f 15.06.2015.

Learned counsel for the respondents admitted the position and also relied upon the judgment cited by learned counsel for the petitioners and has not contested the position as laid down in the above-cited judgment.

Learned JMIC, Barnala vide order dated 29.09.2014 relied upon the judgment passed by the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod vs. State Maharashtra and others in criminal appeal No.2287 of 2009*** and returned the complaint with the direction to file within 30 days from the date of return.

In view of the amended Act as discussed above, the impugned order dated 29.09.2014 is liable to be set aside. Otherwise also, learned counsel for the respondents has not contested the legal position before this Court.

Keeping in view the above discussion, the order dated 29.09.2014 passed by learned JMIC, Barnala and judgment dated 14.05.2015 passed by learned Addl. Sessions Judge, Barnala, dismissing the revision, are set aside. Therefore, finding merit in all petitions, the same are accepted.

The parties are directed to appear before learned JMIC, Barnala on 28.04.2016. In case, the complaints filed by these petitioners have been returned, that shall be represented before learned JMIC, Barnala on the date of appearance as indicated hereinabove and the Court will decide the same as per law.

April 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE