

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No. M-35274 of 2014
DECIDED ON: JANUARY 07, 2016

KUSUM GHANGAS

.....PETITIONER

VERSUS

PAWAN BHARDWAJ

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Wazir Singh, Advocate
for the petitioner.

None for the respondent

JASPAL SINGH, J.

Instant petition has been preferred under Section 482 of the Code of Criminal Procedure for quashing of order dated September 22, 2014 passed by learned Judicial Magistrate Ist Class, Panipat, whereby complaint filed by complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act' only) has been returned for filing before the court of competent jurisdiction.

2. In response to the notice of motion issued, no one has put in appearance on behalf of respondent.

3. Heard.

4. Undisputably, keeping in view the judgment passed by Hon'ble Apex Court in "***Dashrath Rup Singh Rathod v. State of Maharashtra and another***", 2014 (3) RCR (CrL) 904, complaint was ordered to be returned to the complainant for its presentation before the competent Court of jurisdiction. Subsequent thereto, Ministry of Law and Justice (Legislative Department) issued the Negotiable Instruments (amendment) ordinance, 2015, which came into force on 15th June, 2015.

5. The aforesaid ordinance carried out the amendment in Section 142 of the Act, which reads as under:-

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.”

6. A glance at the aforesaid provision transpires that after issuance of ordinance 2015, offence under Section 138 of the Act shall be inquired into and tried only by a Court within whose local jurisdiction, 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 if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of drawee bank where the drawer maintains the account, is situated. The aforesaid amendment appears to have been carried out to overcome the judgment captioned as ***Dashrath Rup Singh Rathod's*** case (supra).

7. In view of the discussion narrated above as well as facts and amendment, impugned order is not sustainable in the eyes of law. This view also stands fortified from other various judgments i.e. **CRM-M-No. 41124 of 2014 titled as M/s Mohindra Engineering Works v. Chamkaur Singh decided on 29.09.2015; CRM-M-6308 of 2015 titled as The Patiala Central Co-operative Bank Ltd vs. Seema decided on 04.08.2015; CRM-M-33847 of 2014 titled as M/s Said Deep Traders vs. Shree Gusaiji Traders and other decided on 14.09.2015 and CRM-M-30501 of 2014 titled as M/s Nahar Industrial Enterprises Ltd. vs. M/s Neelam Enterprises and another decided on 02.11.2015.**

8. Accordingly, instant petition is allowed whereby impugned order dated September 22, 2014 (Annexure P-1) passed in Complaint No.1476 of 2013, dated December 11/16, 2013 captioned as Kusum

Ghangas v. Pawan Bhardwaj, is set aside and the trial court is directed to proceed with the aforesaid complaint in accordance with law.

JANUARY 07, 2016
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(JASPAL SINGH)
JUDGE