

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-41007 of 2014

Date of Decision: 05.05.2016

Avtar Singh

...Petitioner(s)

Versus

Rajnish Soni & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. Suveer Sheokand, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C.
is for quashing of order dated 5.11.2014 (Annexure P-2) passed
by learned Judicial Magistrate Ist Class, Ludhiana in complaint
No.461 of 2013 dated 17.7.2013 titled as *Avtar Singh v. Rajnish
Soni & ors.*

Learned counsel for the petitioner contends that
though the impugned order dated 5.11.2014 (Annexure P-2) was
passed in view of decision of Hon'ble the Apex Court in the case
of **Dashrath Rup Singh Rathod Vs. State of Maharashtra 2014(3)**

RCR (Criminal) 904, but in view of amended provisions of of the
Negotiable Instruments Act, 1881 (for short, "the Act"), the

complaint can be presented in the Court within whose jurisdiction the cheque in question was presented for encashment or before the Court within whose jurisdiction, the bank of the drawer of the cheque was situated.

I have heard learned counsel for the parties and perused the impugned order.

The amended provisions of Sections 142(2) and 142A of the Negotiable Instruments Act, 1881 by way of the Negotiable Instruments (Amendment) Second Ordinance 2015, read as under:-

“In the principal Act, Section 142 shall be numbered as subsection (1) thereof and after subsection (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.”

“142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 shall be deemed to have been transferred under this Ordinance, 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 (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 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 this Ordinance, 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.”

In view of the aforesaid, it can be safely inferred that the Court within whose jurisdiction the cheque in question is presented for encashment is competent to try the complaint under Section 138 of the Act. Thus, the Court at Ludhiana will have the jurisdiction to entertain the instant complaint.

Accordingly, the present petition is allowed, impugned order dated 5.11.2014 (Annexure P-2) is set aside and the trial Court is directed to proceed with the matter in accordance with law.

May 05, 2016
AK

(HARI PAL VERMA)
JUDGE