

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.3160 of 2014

Date of Decision:-01.02.2016

M/s. Jeet Radiators and Meter Works and another

...Petitioners

Versus

M/s. Namdhari Traders and another

...Respondents

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. G.S. Brar, Advocate for the petitioners.

Mr. Rohit Suri, Advocate for the respondents.

HARI PAL VERMA J.(Oral)

Petitioners have filed the present revision petition against the order dated 03.09.2014 (Annexure P-2) passed by Judicial Magistrate 1st Class, Ludhiana, whereby while taking into consideration the law laid down by Hon'ble Apex Court in **Dashrath Rup Singh Rathod Vs. State of Maharashtra and another, 2014(3) RCR(Criminal) 904**, the complaint under Section 138 of Negotiable Instruments Act, 1881 (for brevity "the Act") filed by the petitioners-complainant was ordered to be returned to enable him to present the same before a Court of competent jurisdiction.

Brief facts of the case are that the respondents-accused in order to discharge his liability, issued a cheque bearing No. 870049 dated 23.03.2013 for Rs.7,50,000/- drawn on Punjab National Bank, Chail Chowk, Mandi (HP) in favour of the petitioners-complainant. The petitioners-complainant presented the said cheque to his Banker i.e. Allahabad Bank, Vardman Branch, Chandigarh Road, Ludhiana but same was dishonoured by the bank of respondents-accused vide memo dated 26.03.2013. Petitioners thereafter served a notice dated 09.04.2013 upon the respondents-accused but he failed to make the payment and ultimately complaint dated 22.05.2013 under section 138 of the Act was filed before the Court of Judicial Magistrate 1st Class, Ludhiana which was fixed for evidence of respondents-accused. However, vide impugned order dated 03.09.2014, the learned Magistrate returned the complaint for its presentation before a court of competent jurisdiction.

Learned counsel for the petitioners-complainant submits that the complaint was at post summoning stage and fixed for evidence of respondents-accused and as per the ratio of law laid down by Hon'ble Apex Court in **Dashrath Rup Singh Rathod's case (supra)**, cannot be returned by the Magistrate.

Learned counsel for the respondents-accused, does not dispute the fact that the complaint was at post summoning stage and fixed for evidence of the accused-respondents, however, submits that after the judgment of **Dashrath Rup Singh Rathod's case (supra)**, the Ministry of Law and Justice (Legislative Department) has issued the Negotiable Instruments

(Amendment) Ordinance, 2015 (for brevity “Ordinance, 2015”), which came into force on 15th June, 2015. Subsequent thereto, the Ministry of Law and Justice (Legislative Department) has also issued ‘The Negotiable Instruments (Amendment) Second Ordinance, 2015’ vide notification dated 22.09.2015.

Heard.

Undisputedly, keeping in view the judgment passed by Hon’ble Apex Court in **“Dashrath Rup Singh Rathod’s case (supra)”**, complaint was ordered to be returned to the complainant for its presentation before the competent Court of jurisdiction. Subsequent thereto, the Ministry of Law and Justice (Legislative Department) issued the Negotiable Instruments (Amendment) Ordinance, 2015, which came into force on 15th June, 2015.

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”

A perusal of the aforesaid provision transpires that after issuance of the 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)**.

Hon’ble Apex Court in para 20 of **Dashrath Rup Singh Rathod’s case (supra)**, has held that the cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Act, will proceed to continue at the place where they are filed. Said para reads as under:-

“20. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this

judgment will have only prospective pertinence, i.e. applicability to Complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred.”

This Court has considered similar controversy in case titled as “**The Patiala Central Co-operative Bank Ltd. Vs.**

Seema, CRM-M-6308 of 2015, decided on 04.08.2015 and quashed the order, returning the complaint for filing before the court of competent jurisdiction, and directed the trial court to proceed with the complaint.

In view of the aforesaid position, as well as the Negotiable Instruments (Amendment) Ordinance, 2015 and as per the ratio of law laid down by Hon'ble Apex Court in para no.20 of **Dashrath Rup Singh Rathod's case (supra)** the impugned order is not sustainable in the eyes of law.

Accordingly, the present petition is allowed, impugned order 03.09.2014 (Annexure P-2) passed by Judicial Magistrate 1st Class, Ludhiana is set aside and the trial Court is directed to proceed with the aforesaid complaint in accordance with law.

February 01, 2016
ANJAL

(HARI PAL VERMA)
JUDGE