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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 300 of 2016**

Dhanesh Finance and Leasing Proprietor Accredited Distributor Pvt. Ltd.,
 Directors or respectively Anil Kumar Baradiya, aged about 48 years, S/o
 Dulichand Baradiya, Sunil Baradiy aged about 43 years, S/o Dulichand
 Baradiya and Siddesh Baradiya aged about 24 years, S/o Nirmal Baradiya,
 R/o Sadar Bazaar, Rajnandgaon, Chhattisgarh.

---- Petitioner

Versus

Punit Ram Yadav S/o Kripa Ram Yadav, R/o Near Gayatri Mandir Village
 Sakari, District Bilaspur, Chhattisgarh.

---- Respondent

Cr. M. P. No. 309 of 2016

Dhanesh Finance and Leasing Proprietor Accredited Distributor Pvt. Ltd.,
 Directors or respectively Anil Kumar Baradiya, aged about 48 years, S/o
 Dulichand Baradiya, Sunil Baradiy aged about 43 years, S/o Dulichand
 Baradiya and Siddesh Baradiya aged about 24 years, S/o Nirmal Baradiya,
 R/o Sadar Bazaar, Rajnandgaon, Chhattisgarh.

---- Petitioner

Vs

Bharat Lal Dhruw S/o Dukalu Ram Dhruw, R/o Mahmad Road, Lal Khadan
 Bilaspur District Bilaspur, Chhattisgarh.

---- Respondent

Cr. M. P. No. 310 of 2016

Dhanesh Finance and Leasing Proprietor Accredited Distributor Pvt. Ltd.,
 Directors or respectively Anil Kumar Baradiya, aged about 48 years, S/o
 Dulichand Baradiya, Sunil Baradiy aged about 43 years, S/o Dulichand
 Baradiya and Siddesh Baradiya aged about 24 years, S/o Nirmal Baradiya,
 R/o Sadar Bazaar, Rajnandgaon, Chhattisgarh.

---- Petitioner

Vs

Umendra Kumar Lahre S/o Angan Lal Lahare R/o Pavan Anand Lakdi Tall,
 Mini Basti, Jarha Bhata, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

Cr. M. P. No. 306 of 2016

Accredited Distributor Pvt. Ltd., Directors or respectively Anil Kumar Baradiya,
 aged about 48 years, S/o Dulichand Baradiya, Sunil Baradiy aged about
 43 years, S/o Dulichand Baradiya and Siddesh Baradiya aged about 24
 years, S/o Nirmal Baradiya, R/o Sadar Bazaar, Rajnandgaon,
 Chhattisgarh.

---- Petitioner

Vs

Vincent Disuza S/o Late F. Disuza, R/o Takiya Para, Durg District Durg,
Chhattisgarh

---- Respondent

For Petitioner : Shri Rakesh Thakur, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/02/2017

All the petitions have been filed under Section 482 CrPC assailing the common order dated 01.12.2015 passed in Criminal Revision Nos. 47/2015, 49/2015, 50/2015 and 52/2015 by the Sessions Judge, Rajnandgaon.

2. The brief narration of the facts relevant for adjudication of the present petitions is that the petitioner is a financial company dealing with grant of loan for the purpose of purchasing property including vehicle. The petitioner institution had given loan to the respondents for the purchase of vehicles and towards the repayment of loan, the respondents had issued respective cheques in favour of the petitioner from their banks. Subsequently, there was a default on the part of the respondents in repayment of the loan amount. When the said cheques issued by the respondents in favour of the petitioner were put for clearance in the bank of petitioner's establishment at Rajnandgaon, the same got dishonoured and the bank of the respondents intimated to the bank of the petitioner that the respective bank accounts of the respondents do not have sufficient fund. Subsequently, after compliance of the mandatory requirement as required under the Negotiable Instrument Act, the complaint cases were filed before the JMFC, Rajnandgaon registered as Complaint Case Nos. 1171/2013, 773/2014, 1380/2013 & 1254/2013.

3. Notices were also issued to the respondents. The respondents upon appearance filed a preliminary objection that the Court at Rajnandgaon not

having the territorial jurisdiction as per the unamended provision of Negotiable Instrument Act, the complaint cases should have been filed at the place where the bank account of the respondents situated.

4. The trial Court taking into consideration the judgment of the Supreme Court in the case of **Dashrath Rupsingh Rathod Vs. State of Maharashtra & Another** reported in **(2014) 9 SCC 129** allowed the preliminary objection and held that the trial Court at Rajnandgaon does not have the jurisdiction and it was ordered for returning of the complaints to be presented before the concerned Court having the jurisdiction as per the unamended provision of Section 142 of the Negotiable Instrument Act.

5. The Rejection of the complaint cases holding that the Court at Rajnandgaon does not have jurisdiction were subjected to challenge by the petitioner establishment before the Sessions Judge, Rajnandgaon where the revision petitions were registered as Criminal Revision Nos. 47/2015, 50/2015, 49/2015 and 52/2015. The Revisional Court also relying upon the decision of the Supreme Court in the Case of Dashrath Roopsingh (supra) rejected the revision petitions leading to the filing of the present CrMPs.

6. Counsel for the petitioner submits that subsequent to the decision of the Supreme Court in the case of Dashrath Roopsingh (supra) the Govt. in fact has diluted the said provision by amending Section 142 and by adding Section 142A of NI Act. The amendment was brought into by way of adding subsection 2 of Section 142 NI Act which reads as under:

“(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.

142-A. Validation for transfer of pending cases – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 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, 1915 (6 of 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 (Ord. 6 of 2015), before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

7. Counsel for the petitioner submits that by virtue of the amended provision, the Court at Rajnandgaon henceforth would have the jurisdiction to

entertain the complaint case. He further submits that the amendment has been done with retrospective effect and therefore, the orders passed by the JMFC as well as by the Revisional Court deserve to be set aside and the matter may be remitted to the trial Court for proceeding further with the complaint cases. Counsel for the petitioner refers to the recent decision of the Supreme Court in the case of **Bridgestone India Pvt. Ltd. Vs. Inderpal Singh** reported in **(2016) 2 SCC 75** which squarely deals with the issue raised in the present petition.

8. Having considered the submissions put forth by the counsel for the petitioner and also taking into consideration the subsequent amendment that has been brought into the provisions of the NI Act i.e. the addition of Subsection 2 of Section 142 of NI Act and the insertion of Section 142-A in the NI Act and also in the light of the decision of the Supreme Court in the case of *Bridgestone India (supra)*, this Court is of the opinion that the issue raised in the present petition being squarely covered by the decision of the Supreme Court it would not be proper to keep the petition pending by issuance of notice to the respondents and thereafter to wait for filing of their reply and then to proceed further to decide the matter finally. Accordingly, the present petitions are being disposed of at the motion stage itself in the light of the decision of the Hon'ble Supreme Court.

9. The Supreme Court in the aforesaid judgment of *Bridgestone India (supra)* in paragraph-13 & 16 has held as under:

13. A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, specially in view of the explanation thereunder, that with reference to an offence under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction.

14. It is, however, imperative for the present controversy,

that the appellant overcomes the legal position declared by this Court, as well as, the provisions of the Code of Criminal Procedure. Insofar as the instant aspect of the matter is concerned, a reference may be made to Section 4 of the Negotiable Instruments (Amendment) Second Ordinance, 2015, whereby Section 142A was inserted into the Negotiable Instruments Act. A perusal of Sub-section (1) thereof leaves no room for any doubt, that insofar as the offence under Section 138 of the Negotiable Instruments Act is concerned, on the issue of jurisdiction, the provisions of the Code of Criminal Procedure, 1973, would have to give way to the provisions of the instant enactment on account of the non-obstante clause in sub-section (1) of Section 142A. Likewise, any judgment, decree, order or direction issued by a Court would have no effect insofar as the territorial jurisdiction for initiating proceedings under Section 138 of the Negotiable Instruments Act is concerned. In the above view of the matter, we are satisfied, that the judgment rendered by this Court in Dashrath Rup Singh Rathod's case would also not non-suit the appellant for the relief claimed.

15. We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142A(1) to the effect, that the judgment rendered by this Court in Dashrath Rup Singh Rathod's case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonor of the cheque in the present case arises.

16. Since cheque No.1950, in the sum of Rs.26,958/-, drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI Bank, Indore, which intimated its dishonor to the appellant on 04.08.2006, we are of the view that the Judicial Magistrate, First Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable Instruments (Amendment) Second Ordinance, 2015. The words "...as if that sub-section had been in force at all material times..." used with reference to Section 142(2), in Section 142A(1) gives retrospectivity to the provision."

10. In the light of the authoritative decision in the aforesaid judgment, this Court is of the opinion that the two orders under challenge i.e. the order passed by the JMFC rejecting the complaint cases holding not having the

jurisdiction and the rejection of the revision petitions dated 01.12.2015 by the Revisional Court deserve to be and are accordingly set aside. The matter is remitted back to the Court of JMFC, Rajnandgaon to proceed further after issuing proper notice to the respondents and decide the matter from the stage at which the matter was fixed at the time of rejection of the complaint cases.

11. Accordingly, the present CrMPs stand allowed and disposed of.

**Sd/-
(P. Sam Koshy)
JUDGE**