

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 34 OF 2017**

The Bicholim Urban Co-operative Bank Ltd.,
with its Branch Office at Ponda, Goa, duly
represented herein, through its Asst. Sr.
Officer, Shri Sagun Narshiv Shetye, s/o Shri
Narshiv Shetye, aged 49 years, married,
service, residing at 1-A, Govt. Quarters,
Patto-Colony, Patto, Panaji-Goa. Petitioner

Versus

1. Shri Ahamed Actar Shaikh, r/o H.
No. 214/5, Muslim-Wada, Bhoma,
Ponda-Goa.
2. The State, through Public Prosecutor Respondents

Shri R.G. Ramani, Advocate for the Petitioner.

Shri Balkrishna Sardessai, Advocate for the Respondent No. 1.

CORAM:- C.V. BHADANG, J.

DATE:- 20th JUNE, 2017.

ORAL JUDGMENT:

Heard. Rule made returnable forthwith. The
learned Counsel for the respondent no. 1, waives service.
Heard finally by consent of parties.

2. The petitioner had filed a complaint under Section
138 of the Negotiable Instruments Act, 1881 (the Act, for

short), against the respondent no. 1 before the learned Judicial Magistrate First Class, Ponda. Admittedly, the said complaint was filed within the limitation, as provided under Section 142 of the said Act. Undisputedly, the said complaint was filed in the Court of the Judicial Magistrate First Class at Ponda, where the payee bank (Banker of the petitioner), was situated.

3. The Hon'ble Apex Court in the case of **Dashrath Roopsingh Rathod Vs. State of Maharashtra, AIR 2014 SC 3519** , inter alia held that such a complaint has to be filed in the Court, within whose jurisdiction, the drawee bank is situated. Admittedly, the drawee bank, in this case, is situated at Panaji. On the basis of the judgment in the case of **Dashrath Roopsingh Rathod** (supra), the learned Judicial Magistrate First Class, by an order dated 29.09.2014, returned the complaint for presentation to the proper Court. The papers were physically returned to the petitioner on 09.10.2014. The judgment in the case of **Dashrath Roopsingh Rathod** (supra), required the complaint to be filed within 30 days of its return, in which case, the complaint was to be treated to be filed within limitation, provided the original complaint was filed within the prescribed limitation.

4. The petitioner presented the complaint before the Judicial Magistrate First Class at Panaji on 29.12.2014, in which case, there was delay of 51 days in the presentation of the complaint. Hence, the petitioner filed an application for condonation of delay, which the learned Judicial Magistrate First Class rejected on 11.12.2015.

5. The petitioner feeling aggrieved by the order dated 29.09.2014 and the order dated 11.12.2015, has approached this Court.

6. Shri Ramani, the learned Counsel for the petitioner, on instructions, states that the petitioner is not pressing for the challenge to the order dated 11.12.2015, by which the application for condonation of delay was rejected. This is on account of the fact that under the amended provisions, the Judicial Magistrate First Class at Ponda, would continue to have jurisdiction. He therefore restricts the challenge to order dated 29.09.2014, by which the complaint was returned for presentation to the proper Court.

7. I have heard Shri Ramani, the learned Counsel for the petitioner and Shri Sardessai, the learned Counsel for the

respondent no. 1.

8. The Negotiable Instruments Act was amended by Act No. 26 of 2015 w.e.f. 15.06.2015. Sub-Section 2 of Section 142 and Section 142-A(1) of the Act, as introduced by the said amendment, which are relevant for the purpose, read as under:-

“142. Cognizance of offences. — [(1)]

[(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.”

“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 direction 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 Act, as if that

sub-section had been in force at all material times.

(2)

(3)”

9. It can thus be seen that under the amended provisions, the complaint could be filed within the jurisdiction of the Court, where the payee bank is situated. This would be as per Section 142(2)(a) of the Act. Section 142-A makes it explicit that all the cases transferred to the Court having jurisdiction under Section 142(2)(a), as amended by the amending Act, shall be deemed to be transferred under the said Act as if, that sub-section has been in force at all material times. It is clear that Section 142-A has a retrospective operation.

10. I thus find that in view of the amendment to the provisions of the Negotiable Instruments Act 1881 by Act No. 26/2015, the Court of Judicial Magistrate First Class at Ponda, would have territorial jurisdiction to entertain and try the complaint. In that view of the matter, the order dated 29.09.2014 needs to be set aside.

11. In the result the following order is passed:

ORDER

- (a) The petition is allowed.
- (b) The impugned order dated 29.09.2014, is hereby set aside.
- (c) The Criminal Case No. 639/NIA/2014/A, is restored to the file of the learned Judicial Magistrate First Class at Ponda, for disposal in accordance with law.
- (d) The learned Judicial Magistrate First Class at Panaji, shall send the papers of the said case to the Court of the Judicial Magistrate First Class at Ponda, forthwith.
- (e) Parties to appear before the learned Judicial Magistrate First Class at Ponda on 17.07.2017 at 10:00 a.m.
- (f) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.