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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 975/2015

S K MALHOTRA

..... Petitioner

Through: Mr. Saurabh Malhotra and Mr. Vikas
Jain, Advs.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Rajesh Gogna, CGSC, Mr. Rijul
Singh Uppal with Mr. Akhilesh Sagar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **08.11.2017**

Crl.M.As. 6917/2015, 7803/2016 and 3914/2016

1. This petition impugns the order dated 4.9.2014 passed by the Metropolitan Magistrate, Dwarka Courts, Delhi in CC No. 1868 of 2014. It is the petitioner's case that his complaint should be tried by the jurisdictional Court in Delhi and not by the Court in Chandigarh, where the case has been so transferred by the impugned order. The said transfer was ordered pursuant to the 2002 amendment to Section 142 of the Negotiable Instruments Act which came into effect from 06.02.2003.

2. However thereafter an Ordinance was promulgated on

22.09.2015 which reads as under:

4. In the principal Act, after section 142, the following section shall be inserted, namely:—

“142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 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 the Negotiable Instruments (Amendment) Ordinance, 2015, 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 before which the first case was filed and is pending, as if that sub-section had been in force at all material times.’’.

3. Subsequently on 26.12.2015, Section 142A (2) of the N.I. Act was amended again so as to read as under:

“(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.

4. The petitioner contends that this Court in **Goyal MG Gases Pvt. Limited vs. IND Synergy Limited & Ors.** TR.P.(CRL.) Nos. 37-66/2016, decided on 19.01.2017, had allowed a similar petition. It held, *inter alia*:-

“... 40. I cannot appreciate the observation made by the learned Magistrate in the impugned order accusing the petitioner of resorting to "forum shopping". In the face of the retrospective amendment carried out to the Negotiable Instruments Act, the complaints were correctly instituted at Delhi and the petitioner had sought transfer of the complaints to the Court of the learned MM, New Delhi District at Patiala House Courts, where the complaints could be properly maintained. There was no occasion for the learned Magistrate to make any such observation, since the petitioner has diligently pursued its remedies, firstly, by approaching this Court to assail order dated 30.08.2014, and thereafter, the Supreme Court.

41. I do not find any merit in the submission of learned counsel for the respondents that the complaints were not “pending” on account of the passing of the order dated

*30.08.2014. As noticed above, the said order had been stayed, firstly, by this Court, and thereafter, by the Supreme Court. Consequently, the complaints remained in the same position in which they were, prior to the passing of the order dated 30.08.2014 at the time when the Negotiable Instruments Ordinance was issued, which was then replaced by the Amendment Act. The expression "... .. and such complaint is pending that Court " has to be understood in the light of the purpose of the amendment carried out to the Act, whereby Section 142(2) was inserted and Section 142 (A) introduced. The purpose was to undo the effect of **Dashrath Rupsingh Rathod** (supra). Thus, whether the complaint is "pending" has to be understood as on the date when the orders were passed by the learned Magistrate in pursuance of the direction contained in para 22 of **Dashrath Rupsingh Rathod** (supra). Thus, there is absolutely no merit in the submissions of learned counsel for the respondents that the complaints were not pending when the amendment to the Act was carried out retrospectively."*

5. The Court further observed that the decision in **Dashrath Rupsingh Rathod vs State of Maharashtra** (2014) 9 SCC 129 will not non-suit the appellant/ complainant from maintaining his complaint before the learned Judicial Magistrate First Class Indore in view of the amendment carried out by the Ordinance, which was later transmuted into an amendment of the Act.
6. Since the Ordinance of 2015 and the amendment to the Act thereafter, both were with retrospective effect, the Delhi Court where the complaint was pending would have jurisdiction over it. In the circumstances, the petition is allowed.
7. The Court is informed that the case file is still with the Delhi

Court and the same has not been transferred to the Chandigarh Court. In the circumstances, it is directed that the case file be retained and tried by the Court of the Metropolitan Magistrate, Dwarka, Delhi.

7. The petition is disposed off in the above terms.

NAJMI WAZIRI, J

NOVEMBER 08, 2017/acm