

\$~4-33.

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

+

Date of Decision: 19.01.2017

% **TR.P.(CRL.) Nos. 37-66/2016**

GOYAL MG GASES PVT LIMITED

..... Petitioner

Through: Mr. Pramod Kumar Dubey, Mr. Rohit Priya Ranjan, Ms. Megha & Mr. Anurag Andley, Advocates.

versus

IND SYNERGY LIMITED & ORS

..... Respondents

Through: Mr. Vikas Pahwa, Senior Advocate along with Mr. Siddharth Agarwal, Mr. S. Santanam Swaminadhan, Mr. Rahul Sharma, Ms. Nishtha Khurana, Mr. Sanjay Shukla & Ms. Kinnori Ghosh, Advocates for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. These 30 petitions have been preferred by the petitioner/ complainant under Section 407 Cr.P.C. read with Section 482 Cr.P.C. and Article 227 of the Constitution of India to, firstly, seek quashing of the common order dated 02.06.2016 passed by the learned MM (N.I. Act)-01, South-East, Saket, in the 30 complaints filed by the petitioner/ complainant against the respondents under Section 138 of the Negotiable Instruments Act.

2. By the common impugned order dated 02.06.2016, the applications filed by the petitioner/ complainant for transfer of the said 30 complaints have been dismissed on the premise that the said complaints stood returned by the learned M.M. on 30.08.2014 with direction to re-file the same in the Court having territorial jurisdiction in pursuance of the judgment of the Supreme Court dated 01.08.2014 in ***Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr.***, (2014) 9 SCC 129, and thus, the Court of the learned Magistrate had become functus officio. The learned Magistrate held that Negotiable Instruments (Amendment) Act, 2015 is applicable only in respect of pending cases, and the said 30 complaint cases of the complainant were no longer pending after passing of the order dated 30.08.2014.

3. These 30 petitions arise in the same factual background, and the grievance of the petitioner in these 30 petitions is also in respect of common impugned order dated 02.06.2016. Learned counsels have addressed common arguments in all these cases. In fact, respondent No.1 has filed its reply in Trp.(Crl.) No.37/2016 and learned senior counsel for the respondents has submitted that the said reply may be read in all the other cases as well. Consequently, I proceed to dispose of these 30 petitions by this common judgment. The factual background in which these petitions have come to be filed may now be taken note of.

4. It is the case of the petitioner that in relation to commercial transactions between the parties, the respondents issued numerous cheques to the complainant. The complaints came to be filed since the cheques had been dishonoured upon presentation and the amounts covered by the said cheques were not paid despite issuance of the statutory notices under Section

138 of the NI Act. 37 such complaints were preferred – including the 30 complaints in which the common impugned order has been passed by the learned MM dated 02.06.2016. In all these 37 cases, the learned Magistrate took cognizance and summoned the respondent/ accused vide order dated 07.03.2014.

5. While the complaints were pending, the Supreme Court rendered its decision in *Dashrath Rupsingh Rathod* (supra), wherein the Supreme Court ruled on the aspect of territorial jurisdiction of the Court which could entertain the complaints under Section 138 of the NI Act. The Supreme Court held that the offence under Section 138 of the NI Act stands committed on the dishonour of the cheque and, accordingly, the Judicial Magistrate of the place where the dishonour occurs is ordinarily the place where the complaint may be filed, entertained and tried. The Supreme Court held that the place of the issuance, or delivery of the statutory notice, or where the complainant chooses to present the cheque for encashment by his bank, are not relevant for the purposes of territorial jurisdiction of the Court where the complaint could be filed. The Supreme Court held that the territorial jurisdiction in respect of the offence under Section 138 of the NI Act is restricted to the Court within whose local jurisdiction the offence has been committed, which is the place where the dishonour by the bank – on which it is drawn, is situated.

6. The Supreme Court then proceeded to pass directions in relation to the pending complaints under Section 138 of the NI Act throughout the country. The direction in this regard is contained in paragraph 22 of the said decision, which reads as follows:

*“22. 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 respondent-accused 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 respondent-accused 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.**” (emphasis supplied)*

7. In view of the aforesaid decision in ***Dashrath Rupsingh Rathod*** (supra), the learned Metropolitan Magistrate vide orders dated 30.08.2014 directed return of the 37 complaints and original documents to the

complainant, after placing certified copies of the same on record, since the cheques in question in the said 37 cases were drawn on Bank of India, Raigarh, Chhattisgarh. Since notice had not been framed in the said 37 complaints, in view of the decision in *Dashrath Rupsingh Rathod* (supra), the Court held that it had no territorial jurisdiction to try the said cases and, consequently, directed return of the complaints to be filed before the Court having territorial jurisdiction to try the same within thirty days from the date of the order.

8. The petitioner challenged the order dated 30.08.2014 passed by the learned MM before this Court by filing a Criminal Miscellaneous (Main) petition. The operation of the order dated 30.08.2014 directing return of the complaint for it being filed before the competent Court having jurisdiction at Raigarh, Chhattisgarh was, however, stayed by this Court.

9. I may observe that in respect of 7 of the said 37 complaints, the petitioner had taken the complaints on 25.09.2014 and filed the same before the competent Court at Raigarh, Chhattisgarh on 29.09.2014, since certified copies in respect of the said 7 complaints had been provided to the petitioner.

10. Subsequently, the petitioner filed 35 similar Criminal Miscellaneous (Main) petitions before this Court, and vide order dated 01.10.2014 in each of these cases, the operation of the order dated 30.08.2014 passed in the respective complaints were stayed. Yet another petition was filed in respect of one of these cases, and on 15.10.2014, the Court had stayed the operation of the order dated 30.08.2014. Thus, in all the 37 complaint cases – which

had been directed to be returned to the complainant vide order dated 30.08.2014 (for being filed before the competent Court having jurisdiction at Raigarh, Chhattisgarh), the petitioner obtained stay of the operation of the order passed by the learned Magistrate on 30.08.2014.

11. Eventually, vide judgment dated 16.12.2014, this Court dismissed all the Criminal Miscellaneous (Main) petitions preferred by the petitioner by holding that the Courts in Delhi had no territorial jurisdiction to entertain and try the complaints. The order dated 30.08.2014 passed by the learned MM in each of the cases was upheld.

12. The petitioner then preferred Special Leave Petitions (SLPs) before the Supreme Court to assail the common judgment dated 16.12.2014. The Supreme Court issued notice in the SLPs on 13.01.2015 and also granted interim stay of the judgment passed by this Court on 16.12.2014. The Supreme Court also ordered that “*in the meantime, the petitioner may re-file the complaint which the Magistrate will keep it on record, though may not proceed with the matter until further orders*”.

13. Learned counsel for the petitioner has pointed out that the said direction pertained to the 7 complaints which had, in the meantime, been returned to the petitioner for being filed before the competent Court having jurisdiction at Raigarh, Chhattisgarh. The petitioner states that in view of the said direction, the said complaints were re-filed before the learned Metropolitan Magistrate at Delhi having jurisdiction to deal with the same.

14. So far as the 30 cases with which I am presently concerned, the complaints remained with the learned Magistrate at Saket Courts, Delhi.

The submission of the petitioner in this regard is that since operation of the order dated 30.08.2014 had initially been stayed by this Court vide order dated 01.10.2014, and thereafter by the Supreme Court, there was no reason or occasion for the petitioner to take back the complaints from the Court of the concerned learned Metropolitan Magistrate, Saket Courts. In view of the stay of operation of the order dated 30.08.2014, the said order could not have been given effect to, and, its non-compliance could not have visited the petitioner with any adverse consequences.

15. The further case of the petitioner is that during pendency of the SLPs before the Supreme Court – while the stay was operating, the “Negotiable Instruments (Amendment) Ordinance, 2015” and, subsequently, the Negotiable Instruments (Amendment) Act – so as to amend the Negotiable Instruments Act, came to be issued/ passed. The submission of the petitioner is that the effect of the said Ordinance and the Amendment Act was that all complaints under Section 138 of the NI Act, which were pending when the said judgment was delivered and which stood transferred in terms of the judgment of the Supreme Court in ***Dashrath Rupsingh Rathod*** (supra), were to be filed and tried before the same Court which had passed the order of transfer.

16. In the light of the aforesaid amendment – initially introduced by an Ordinance, and thereafter by an Amendment Act, the petitioner states that the petitioner moved applications for revival of the complaints. The same, however, remained pending since the interim order passed by the Supreme Court was in vogue. Once the Amendment Act had been passed in pursuance of the Ordinance, the SLPs preferred by the petitioner were

disposed of as infructuous on 11.03.2016.

17. The submission of the petitioner is that although the petitioner's applications for revival of the complaints remained pending before the learned MM, Saket, but since the Court at Saket did not have territorial jurisdiction in terms of the amended Act, the petitioner filed applications before the learned MM, Saket seeking transfer of the said complaints to the competent Court at Patiala House Courts having jurisdiction in the matter. The applications were filed on the premise that under Section 142(2)(a) of the Negotiable Instruments Act, 1881, as amended by Negotiable Instruments (Amendment) Act, 2015, the complaint could be preferred within the jurisdiction of the Court where the branch of the bank – where the payee or holder in due course, as the case may be, maintains the accounts, is situated. Since the petitioners/ complainant's bank account – in respect of the cheques involved in the complaints in question were maintained with the State Bank of India having its branch at Tolstoy Marg, New Delhi, which falls within the jurisdiction of the PS – New Delhi District, New Delhi, i.e. within the jurisdiction of the Patiala House Courts, the said applications were preferred by the petitioner. As noticed above, the learned Metropolitan Magistrate by the common order has dismissed all these applications.

18. The submission of learned counsel for the petitioner is that the impugned common order dated 02.06.2016 is patently laconic. Firstly, the learned Metropolitan Magistrate has failed to appreciate that its common order dated 30.08.2014 directing return of the complaints for them being filed before the Court having territorial jurisdiction (as understood in the light of the judgment in *Dashrath Rupsingh Rathod* (supra)), was stayed,

firstly, by the High Court, and thereafter, by the Supreme Court. Since the stay was operating, the petitioner could not have, and was not obliged to collect the complaints and to re-file the same before the learned Magistrate at Raigarh, Chhattisgarh till the issues raised by the petitioner had been finally decided. The non-compliance of the order dated 30.08.2014 could not have visited the petitioner with any adverse consequences.

19. Learned counsel for the petitioner further submits that a perusal of the impugned order shows that the learned Magistrate has completely negated the effect of the amendment introduced, firstly, by the Negotiable Instruments (Amendment) Ordinance, 2015, and thereafter by the Negotiable Instruments (Amendment) Act, 2015. The purport of the said amendment was to neutralize the effect of the judgment rendered by the Supreme Court in ***Dashrath Rupsingh Rathod*** (supra), and that too, retrospectively.

20. Learned counsel for the petitioner further submits that the learned Magistrate while passing the impugned common order dated 02.06.2016 has taken a very narrow and hyper technical view, and thereby defeated the cause of substantial justice. The submission of learned counsel for the petitioner is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be advanced. In support of the aforesaid submission, learned counsel for the petitioner has placed reliance on ***DDA Vs. Saraswati Devi & Others***, 141 (2007) DLT 484 (DB), and the decision of the Supreme Court in ***Union of India Vs. Ajit Singh***, Civil Appeal No.4465/2013 decided on 02.04.2013.

21. Learned counsel for the petitioner also places reliance on the decision of this Court in ***Pankaj Garg Vs. State (Govt. of NCT of Delhi) & Another***, Crl.M.C. No.4239/2015 decided on 13.10.2015, wherein this Court has considered the impact of the amendment carried out to the Negotiable Instruments Act post the decision of the Supreme Court in ***Dashrath Rupsingh Rathod*** (supra), as also the decision of the Supreme Court in ***Bridgestone India Private Limited Vs. Inderpal Singh***, (2016) 2 SCC 75, wherein the Supreme Court has clearly held that the amendment to the Negotiable Instruments Act by introduction of Section 142A, is retrospective.

22. On the other hand, Mr. Pahwa, learned senior counsel for the respondents submitted that the view taken by the learned Magistrate in the impugned common order is correct and does not call for interference, since the amendment to the Negotiable Instruments Act is in respect of “pending cases” and it cannot be said that in the present cases complaints were pending since they had been directed to be returned to the complainant vide orders dated 30.08.2014 for being re-filed within thirty days before the concerned Magistrate at Raigarh, Chhattisgarh. Thus, the learned Magistrate was correct in observing that he had become functus officio after having passed orders for return of the complaints as nothing was pending before him when the petitioner’s applications for transfer and revival of the complaints in question were moved. Mr. Pahwa has sought to place reliance on the decision in ***Dashrath Rupsingh Rathod*** (supra), and particularly paragraph 22 thereof, which has been extracted above.

23. Mr. Siddharth Agarwal has also advanced his submissions on behalf

of the respondents. He submits that the applications were moved by the petitioner – seeking revival and transfer of the complaints, highly belatedly. The submission is that the SLPs of the petitioner were disposed of on 11.03.2016 as infructuous in view of the amendment carried out to the Negotiable Instruments Act vide Negotiable Instruments (Amendment) Act, 2015. However, the applications for transfer were filed only on or about 03.05.2016, i.e. well beyond the period of thirty days.

24. Mr. Agarwal has submitted that even if this Court were to allow the transfer applications moved by the petitioner, the issue of limitation should be left open to be decided by the concerned Magistrate to whom the complaints are transferred.

25. Having heard learned counsel for the parties, perused the impugned common order dated 02.06.2016 and the aforesaid decisions relied upon by the parties, I am of the view that the common impugned order is patently laconic and cannot be sustained. I am also inclined to allow the prayer of the petitioner for transfer of the said 30 complaints as sought by the petitioner.

26. The orders dated 30.08.2014 passed by the learned Magistrate directing return of the 37 complaints for their being re-filed before the concerned Magistrate having jurisdiction at Raigarh, Chhattisgarh were not accepted by the petitioner. The petitioner approached this Court to assail the said orders, and the said orders were stayed by this Court. With a view to save its complaints from being labeled as being barred by limitation – on account of their not being filed within thirty days after replacing them with

certified copies, the petitioner apparently filed 7 of the returned complaints before the competent Court at Raigarh, Chhattisgarh. However, the said filing, in any event, would have to be treated as “without prejudice” since the petitioner assailed the common order dated 30.08.2014 by filing 37 Criminal Miscellaneous (Main) petitions before this Court, including in respect of the said 7 cases. Apparently, the petitioner was not returned the original complaints in respect of the 30 cases in question by the time this Court, while entertaining the petitioner’s Criminal Miscellaneous (Main) petitions, stayed the operation of the order dated 30.08.2014. The effect of the stay of the common order dated 30.08.2014 by this Court at the instance of the petitioner, obviously, was that the petitioner was not obliged to collect the complaints after replacing the same with certified copies and to file the same before the competent Court at Raigarh, Chhattisgarh. In fact, the learned Magistrate was also bound by the said stay order and could not have directed return of the complaints for being filed before the competent Court at Raigarh, Chhattisgarh. Once stayed, the said order could not have been given effect to. In *Mulraj v. Murti Raghonathji Maharaj* AIR 1967 SC 1386, the Supreme Court has held that when there is a stay granted by a superior court of the proceedings before a subordinate court “*it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity.*”.

27. Thus, the status of the 30 complaints remained as they were prior to the passing of the order dated 30.08.2014. The said stay order continued to operate continuously till all the Criminal Miscellaneous (Main) petitions were disposed of by this Court vide judgment dated 16.12.2014. Soon

thereafter, the petitioner preferred SLPs before the Supreme Court to assail the common judgment dated 16.12.2014, and on 13.01.2015, the Supreme Court stayed the operation of the common judgment in the Criminal Miscellaneous (Main) petitions dated 16.12.2014. Thus, the stay order in respect of the common order dated 30.08.2014 passed by the learned MM (directing return of the complaints for being filed before the competent Court at Raigarh, Chhattisgarh), was revived. The petitioner was, thus, once again not obliged to comply with the order dated 30.08.2014 and take back the complaints after replacing the same with certified copies for being re-filed before the competent Court at Raigarh, Chhattisgarh. Non-compliance of the order dated 30.08.2014 could not have visited the petitioner with any adverse consequences.

28. As noticed above, while the SLPs were still pending and the stay granted by the Supreme Court was still operating, the Negotiable Instruments Act was amended, firstly, by Ordinance, and thereafter, by an Amendment Act with the introduction of Section 142(2) and Section 142A.

29. In ***Pankaj Garg*** (supra), this Court considered the same arguments as adopted by the learned Magistrate in the impugned common order and advanced on behalf of the respondents by Mr.Pahwa and Mr.Agarwal. In ***Pankaj Garg*** (supra), the learned Magistrate had passed an order on 16.01.2015 directing return of the complaints in view of the decision of the Supreme Court in ***Dashrath Rupsingh Rathod*** (supra). The complainant then preferred Criminal Revision Petition, which was allowed by the learned Sessions Court in view of the Ordinance, whereby Section 142(2) was inserted and new Section 142A was introduced in the Negotiable

Instruments Act vide notification dated 15.06.2015. The Sessions Court allowed the revision on 03.07.2015. The accused then approach this Court in a petition under Section 482 Cr.P.C. Before this Court, the submission advanced by the accused was, firstly, that the amendment to the Negotiable Instruments Act by the Ordinance dated 15.06.2015 was not retrospective, and secondly, that the complaint was no longer pending before the Trial Court since the Trial Court had directed return of the complaint vide order dated 16.01.2015 and consigned the file to the Record Room. This Court rejected the submissions of the petitioner/ accused/ Pankaj Garg by, *inter alia*, observing that:

“7. it is not in dispute that order dated 16.01.2015 passed by learned Trial Court was in view of the decision of the Apex Court in Dashrath Rupsingh Rathod (supra) and thereafter, the amendment has been carried out by the ordinance mentioned above. Therefore, the complaint case remained at the same place where it was prior to the amendment to the statute.”

30. The Court further observed:

“9. As per above provision the cases which were transferred for lack of territorial jurisdiction as the bank of the drawer was not situated within the territorial jurisdiction of the Court concerned have been directed to be returned and tried by the same Court. It is clear from the order of learned MM dated 16.01.2015 that complaint case of respondent No.2 was directed to be returned as the bank of the drawer/ petitioner does not situate within the territorial jurisdiction of the court of learned MM.

10. The amendment in question is applicable retrospectively. The stage of the cases shall remain same as was before the case of Dashrath Rupsingh Rathod (supra).

Therefore, keeping in view the above ordinance such complaint cases which were returned to the complainant on account of lack of territorial jurisdiction for the reason of location of the bank of the accused / petitioner outside the territorial jurisdiction of the Court are bound to be tried by the said Court.” (emphasis supplied)

31. The impact upon the legal position particularly by the Ordinance promulgated, namely the Negotiable Instruments (Amendment) Ordinance, 2015 dated 15.06.2015 was considered by the Supreme Court in ***Bridgestone India Private Limited*** (supra). In this case, the bank of the drawer was situated at Chandigarh, and the payee deposited the cheque with its bank at Indore. After issuance of the statutory notice, the payee/ complainant filed a complaint under Section 138 of the NI Act at Indore. The accused/ drawer challenged the territorial jurisdiction of the Court to entertain the complaint. That challenge was rejected by the Magistrate by placing reliance on ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan***, (1999) 7 SCC 510.

32. The accused/ drawer then approached the High Court of Madhya Pradesh at Indore Bench. The High Court remitted the case to the Judicial Magistrate First Class, Indore requiring him to pass a fresh order. The learned Judicial Magistrate First Class, Indore once again held that he had the territorial jurisdiction to entertain the complaint. This decision was again assailed before the High Court of Madhya Pradesh. This time, the High Court vide judgment dated 05.05.2011 agreed with the accused/ drawer and held that the jurisdiction lay only before the Court within whose jurisdiction the original drawee bank was located, namely at Chandigarh, wherefrom the drawer/ accused had issued the cheque.

33. The complainant/ payee then approached the Supreme Court. The appellant/ payee was confronted with the decision in ***Dashrath Rupsingh Rathod*** (supra). However, by then, the Negotiable Instruments (Amendment) Ordinance had been promulgated, which was deemed to have come into effect from 15.06.2015. The Supreme Court noticed Sections 3 & 4 of the said Ordinance, whereby sub-Section 2 of Section 142 was introduced and Section 142A was incorporated in the Negotiable Instruments Act. The Supreme Court then proceeded to analyse the said provisions as follows:

“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 142-A 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 142-A. 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 Rupsingh Rathod case [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] 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 142-A(1) to the effect, that the judgment rendered by this Court in Dashrath Rupsingh Rathod case [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673], would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonour of the cheque in the present case arises.

16. Since Cheque No. 1950, in the sum of Rs 26,958, drawn on Union Bank of India, Chandigarh, dated 2-5-2006, was presented for encashment at IDBI Bank, Indore, which intimated its dishonour to the appellant on 4-8-2006, 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 142-A(1) gives retrospectivity to the provision.

17. In the above view of the matter, the instant appeal is allowed, and the impugned order passed by the High Court of Madhya Pradesh, by its Indore Bench, dated 5-5-2011 [Inderpal Singh v. Bridgestone India (P) Ltd. Misc. Criminal Case No. 2677 of 2010, order dated 5-5-2011 (MP)] , is set aside. The parties are directed to appear before the Judicial Magistrate, First Class, Indore, on 15-1-2016. In case the complaint filed by the appellant has been returned, it shall be re-presented before the Judicial Magistrate, First Class, Indore, Madhya Pradesh, on the date of appearance indicated hereinabove.” (emphasis supplied)

34. Thus, the Supreme Court very clearly held that ***Dashrath Rupsingh Rathod*** (supra) would not non-suit the appellant/ complainant from maintaining its complaint before the learned Judicial Magistrate First Class, Indore in view of the amendment carried out by the Ordinance, which matured into an Amendment Act. The Supreme Court also held the amendment to be retrospective such that it went back in time even before ***Dashrath Rupsingh Rathod*** (supra). The Supreme Court also passed operative orders that in case the complaint filed by the appellant had been returned, it shall be re-presented before the Judicial Magistrate First Class, Indore, Madhya Pradesh.

35. In the present cases, the 30 complaints with which I am presently concerned, had not been returned to the complainant in compliance of the order dated 30.08.2014. That order was stayed before the complaints were returned. Even if they had been returned, the same would have made no difference, since the operation of the initial order dated 30.08.2014 directing return of the complaints for their being filed before the competent Court at Raigarh, Chhattisgarh had been stayed, firstly, by the High Court and

thereafter, that stay was continued by the Supreme Court till the promulgation of the Ordinance on 15.06.2015, and thereafter the amendment to the Act was made. Thus, the complaints continued to lie before, and were pending before the learned MM which passed the order dated 30.08.2014.

36. A perusal of the impugned order shows that in paragraph 6 thereof, though learned Magistrate takes note of the fact that the order dated 30.08.2014 was challenged before this Court, the learned Magistrate has conveniently ignored the fact that the stay of the operation of the order dated 30.08.2014 was operating thereon during the pendency of the Criminal Miscellaneous (Main) petitions till they were dismissed on 16.12.2014.

37. Similarly, the learned Magistrate has also ignored the fact that the common judgment of this Court dated 16.12.2014 had been stayed by the Supreme Court on 13.01.2015 – thereby reviving the stay of the order dated 30.08.2014, and that stay continued till the promulgation of the Ordinance, followed by Amendment of the Act.

38. The learned Magistrate also failed to appreciate that there was no question of re-filing the 30 cases with which I am concerned, since the complaints had not been returned to the petitioner and taken by the petitioner in view of the intervening stay of the order dated 30.08.2014 by this Court, which stay continued to operate thereon till the disposal of the SLPs as infructuous vide order dated 11.03.2016.

39. So far as the other 7 cases are concerned, as noticed above, the petitioner after collecting the complaints, had filed the same before the competent Court at Raigarh, Chhattisgarh. Even in respect of those

complaints, the Supreme Court while passing the interim order dated 13.01.2015, permitted the petitioner to re-file the said complaints with the Magistrate, and in consequence thereof, the said 7 complaints apparently were re-filed by the petitioner before the Court of the learned MM, Patiala House Courts.

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 in 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.

42. There is also no merit in the submission of learned counsel for the respondents that the petitioner was obliged to “re-file” the 30 complaints. Since the said 30 complaints had not been collected or taken back by the complainant and they continued to remain pending on the file of the learned MM, Saket Courts, New Delhi, there was no question of the same being “re-filed” at any stage. For the aforesaid reasons, no issue of limitation can possibly arise in these cases in relation to the so-called “re-filing” of the complaints.

43. For all the aforesaid reasons, the impugned common order dated 02.06.2016 is set aside. In exercise of jurisdiction under Section 407 Cr.P.C., the complaints in question filed by the petitioner stand transferred to the Court of the learned CMM for being assigned to the Court of the competent MM having jurisdiction over PS – New Delhi District situated at Patiala House Courts, New Delhi.

44. The parties shall appear before the learned CMM, New Delhi District, Patiala House Courts on 22.02.2017.

45. The petitioner shall be entitled to costs quantified at Rs.5,000/- in each of these petitions. The costs be paid within eight weeks.

46. A copy of this order be communicated to the learned CMM, South-East District, Saket Courts, New Delhi, as well as to the learned CMM, New Delhi District, Patiala House Courts, New Delhi, for compliance.

VIPIN SANGHI, J.

JANUARY 19, 2017

B.S. Rohella