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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 23rd July, 2018

+ CRL.M.C. 1823/2016

INDIASIGN P.LTD.

..... Petitioner

Through: Ms. Nisha Narayanan, Advocate

versus

HINDUSTAN BROADCASTING CO. P. LTD.

& ANR.

..... Respondent

Through: None

+ CRL.M.C. 1831/2016

INDIASIGN PVT. LTD

..... Petitioner

Through: Ms. Nisha Narayanan, Advocate

versus

HINDUSTAN BROADCASTING CO. P. LTD.

AND ANR.

..... Respondents

Through: None

+ CRL.M.C. 1832/2016

INDIASIGN P. LTD.

..... Petitioner

Through: Ms. Nisha Narayanan, Advocate

versus

HINDUSTAN BROADCASTING CO. P. LTD.

& ANR

..... Respondents

Through: None

+ CRL.M.C. 1833/2016

INDIASIGN P.LTD.

..... Petitioner

Through: Ms. Nisha Narayanan, Advocate

versus

HINDUSTAN BROADCASTING CO. P.LTD

& ANR

..... Respondents

Through: None

+ CRL.M.C. 1834/2016

INDIASIGN P.LTD.

..... Petitioner

Through: Ms. Nisha Narayanan, Advocate

versus

HINDUSTAN BROADCASTING CO. P. LTD.

& ANR

..... Respondents

Through: None

+ CRL.M.C. 1835/2016

INDIASIGN P.LTD.

..... Petitioner

Through: Ms. Nisha Narayanan, Advocate

versus

HINDUSTAN BROADCASTING CO. P. LTD.

& ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner company had presented six criminal complaints in the court of the Metropolitan Magistrate, they having been

registered as Crl. Complaint nos.328/1/13, 337/1/13, 338/1/13, 382/1/13, 1080/1/14 & 1099/1/14 – each seeking prosecution of the respondents for the offence under Section 138 of the Negotiable Instruments Act, 1881 on the allegations that no payments had been made by them pursuant to the notices of demand in the wake of dishonor of certain cheques which had been issued by the respondents in favour of the petitioner (complainant) towards discharge of their liability. The Metropolitan Magistrate appears to have initially taken cognizance on the said complaints and, after preliminary inquiry, issued processes against the respondents.

2. The complaints, however, were directed by order dated 24.01.2015 to be returned to the complainant in view of the directions of the Supreme Court in the decision reported as *Dashrath Rupsingh Rathod Vs. State of Maharashtra and Anr.*, (2014) 9 SCC 129, taking note of the fact that the cheques in question had been drawn and issued by the respondents against the account of the first respondent with the Central Bank of India, Tonk Road, Lal Kothi, Jaipur, Rajasthan, the prosecution for such offences on basis of such cheques pertaining to the place where the drawee bank was situate, the court of the Metropolitan Magistrate in New Delhi lacking the territorial jurisdiction.

3. The Central Government promulgated Negotiable Instruments Act (Amendment) Ordinance, 2015 which came into force on 15.06.2015 incorporating certain legislative changes in the Negotiable Instruments Act, 1881. On the basis of the said ordinance, the

petitioner (complainant) moved an application for recall of the aforementioned order dated 24.01.2015. As the said Ordinance lapsed on 31.08.2015, the applications, however, became infructuous and were disposed of accordingly by order dated 18.09.2015. Later, the said Ordinance was re-promulgated as Ordinance no.7 of 2015. On the strength of amendment to the law thus carried by the second Ordinance, fresh applications were moved by the petitioner seeking recall of the order dated 24.01.2015. The Metropolitan Magistrate, by order dated 16.12.2015, however, declined to entertain the complaints once again, *inter alia*, observing that the complaints had been returned prior to the promulgation of the Ordinance and further that the court of the Magistrate had become infructuous, there being no power to review / recall of the order of transfer of the complaint cases.

4. Aggrieved by the aforementioned view taken by the Magistrate, the petitioner (complainant) has approached this court in the context of the six criminal complaint cases.

5. On notice, respondents appeared through counsel. Opportunity for reply to be filed in these matters was granted. No reply, however, has been submitted. When these matters are taken up for hearing, there is no appearance on behalf of the respondents.

6. The learned counsel for the petitioner has been heard and the record perused.

7. The second Ordinance referred to above has since been replaced by the amendment of law by the legislature by enactment of the

Negotiable Instruments (Amendment) Act, 2015 whereby sub-section (2) was inserted to Section 142, the existing clause contained therein having been re-numbered as sub-Section (1), this besides insertion of new Section 142A. For present purposes, the provisions contained in Section 142(2) and Section 142A need to be noted. They may be extracted as under :-

“Section 142

x x x

(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 his account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation – For the purpose of clause (a), where the 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.”

“Section 142 A - Validation for transfer of pending cases – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 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). 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) Act, 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, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

8. The legislature has thus clarified that the court within whose local jurisdiction the branch of the bank where the payee or the holder in due course maintains the account in which the cheque in question is delivered for collection would ordinarily be the court of competent jurisdiction to take cognizance of and inquire into and try the offence

under Section 138 of the Negotiable Instruments Act, 1881. By this reckoning, the court of the Metropolitan Magistrate at New Delhi District would be the jurisdictional court to deal with the criminal complaint cases in as much as the cheques in question here were presented by the petitioner for collection through its bank having branch in Connaught Place, New Delhi. The provision contained in Section 142 A, as has been inserted by the amendment, itself clarifies that the transfer of these criminal cases from Delhi to Jaipur in the given facts and circumstances would not be proper, the amendment having retrospective effect and negating the effect of the directions in *Dashrath Rupsingh Rathod* (supra).

9. In above view, the petitions are allowed. The impugned orders of the Metropolitan Magistrate transferring or declining to entertain criminal complaint cases are set aside. In the result, the criminal complaint cases would stand revived on the file of the concerned Metropolitan Magistrate of New Delhi district, who is directed to proceed further thereupon in accordance with law. The parties are directed to appear before the Metropolitan Magistrate on 14.08.2018.

10. The petitions are disposed of in above terms.

R.K.GAUBA, J.

JULY 23, 2018

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