

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CrI.M.C.No. 4877/2015**

Judgment reserved on : 8th March, 2018
Date of decision : 3rd April, 2018

M/S LIUGONG INDIA PVT LTD Petitioner
Through: **Mr. Gulshan Chawla, Adv.**

versus

STATE (GOVT OF NCT OF DELHI) & ORS..... Respondent
Through: **Mr. Izhar Ahmad, APP for**
State.
Mr. S.L. Gupta, Adv. for R-2 to
4.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present petition, the petitioner M/s. LiuGong India Pvt. Ltd. through its authorized signatory Mr. Ashok Kumar seeks the setting aside of the impugned order dated 08.10.2015 of the learned MM-06, South East, Saket Courts, Delhi in CC no. 157/1/12 whereby the application filed by the complainant i.e. the present petitioner seeking revival of the complaint which was returned on 14.05.2015 in view of the directions of the Hon'ble Apex Court in case titled as ***Dashrath Rupsingh Rathod Vs. State of Maharashtra Cr. Appeal No. 2287 of 2009, 2014 (3) Law Herald 2697 (SC)*** in as much as the impugned cheque was drawn on the Bank of India, Basant Lok, New

Delhi located outside the jurisdiction of South East District, Delhi and as the proceedings of the present complaint have not yet reached the stage of Section 145(2) of The Negotiable Instruments Act, 1881 as the recording of evidence had not commenced, it was observed that the learned Trial Court lacks territorial jurisdiction over the present matter and thus the complaint was ordered to be returned to the complainant along with the affidavit by way of evidence and other original documents observing to the effect that the learned Trial Court did not have territorial jurisdiction over the matter, the petitioner seeks restoration of the same to its original stage and that the delay, if any, for filing the application for restoration / revival before the learned MM concerned be condoned.

2. The notice was issued to the respondents with respondent no. 1 arrayed on record being the State. The proceedings against the respondent no. 5 Mr. Ram Laljharia, Director of the respondent no. 1 company i.e. M/s. Yograj Infrastructure Ltd. have already been dismissed as withdrawn on 29.11.2017 in view of the submissions made on behalf of the petitioner.

3. The written submissions on behalf of the petitioner and on behalf of the respondents no. 2 to 5 had already been submitted before withdrawal of the case against the respondent no.5 , are on record.

4. Oral arguments were addressed on behalf of either side.

5. The averments put forth through the complaint in question instituted on 29.09.2012 by the petitioner herein were to the effect that the petitioner is a limited company, which was engaged in the business of manufacturing, sale of machines pertaining to construction and

earthmoving under the brand name of LiuGong and which company also provides product support services qua the said machines; that the accused persons arrayed therein as the respondents no. 2 to 4 (and arrayed to the present petition initially as the respondents no. 2 to 5) are stated to have placed orders for supply of machines with the complainant company i.e. the petitioner for supply of the same at the desired destination as per requirement from time to time and towards payments of outstanding dues stated against the material supplied to them and cheque bearing no. 015292 dated 30.01.2012 and cheque bearing no. 015293 dated 20.02.2012, i.e. two cheques both amounting to Rs.25,00,000/- each drawn on the Bank of Baroda, Basant Lok, New Delhi in favour of the complainant's company signed by the accused no. 2 i.e. the respondent no. 3 herein on behalf of the accused no. 1 i.e. the respondent no. 2 herein were issued to the petitioner. The cheques as per the complaint were stated to have been signed by accused no.2 with the consent, connivance and knowledge of all other accused directors of the respondent no. 2 herein to the complainant in favour of the complainant company which when deposited by the complainant in its bank account maintained with the HDFC Bank Ltd., Kalkaji, New Delhi for encashment were returned unpaid by the banker for insufficient funds vide Instrument Advices 28.07.2012 and 16.08.2012 with the remarks "INSUFFICIENT FUNDS". The cheques instrument advices along with cheques in original were received by the complainant on 30.07.2012 and 21.08.2012 and had been filed with the complaint.

6. After issuance of the notice dated 23.08.2012 to the accused calling upon the accused for payment of dishonoured cheques, when the payment was not made within 15 days of the receipt of the notice, the complaint was filed under Section 138 read with Section 141 and 142 of the The Negotiable Instruments Act, 1881 on 27.09.2012.

7. Vide the order dated 14.05.2015 in view of the verdict of the Hon'ble Apex Court in ***Dashrath Rupsingh Rathod (Supra)***, it was observed by the learned Trial court that the impugned cheque was drawn upon and dishonoured by the Bank of India, Basant Lok, New Delhi located outside the jurisdiction of the South East District, Delhi and that the proceedings of that complaint had not till then reached the stage of Section 145(2) of The Negotiable Instruments Act, 1881 and that the recording of the evidence had not commenced and it was held that due to lack of territorial jurisdiction over the matter, the complaint was thus ordered to be returned to the complainant along with the affidavit by way of evidence and other original documents and the complainant was directed to file the certified photocopies of the complaint and aforesaid documents with the Ahlmad of the Court before receiving the originals thereof. Further it was directed vide order dated 14.05.2017 that the complainant was at liberty to file the complaint afresh before the Court of competent jurisdiction as per the directions of the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod (Supra)***.

8. The petitioner has submitted further that the complainant i.e. the petitioner herein was thus to file the complaint before the concerned Court within a period of 30 days after the order dated 14.05.2015 of

the learned MM concerned but the District Courts were closed on 09.06.2015 for the summer vacation and in the meanwhile the Government of India through the President of India, promulgated The Negotiable Instruments (Amendment) Act, 2015 dated 15.06.2015 wherein it was specified under clause 3(2) to the effect_ ***“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 where the payee or holder in due course, as the case may, maintains the account, is situated”*** and it was thus submitted on behalf of the petitioner that in terms of Section 142A(1) of the The Negotiable Instruments Act, 1881 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 the Section 138 which were pending in any Court whether filed before it or transferred to it before the commencement of The Negotiable Instruments (Amendment) Act, 2015 were to 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.** It has been submitted on behalf of the petitioner to the effect that the Government of India through the President of India re-promulgated the Ordinance on 22.09.2015 which was deemed to come into force on 15.06.2015 and thus in view of the said Ordinance which was made effective on 15.06.2015 by virtue of the deeming provisions of the Ordinance, the petitioner herein moved an application before the learned MM, Saket Courts, New Delhi for revival / restoration of the complaint under Section 138 of The

Negotiable Instruments Act, 1881 on 29.09.2015, which was dismissed on 08.10.2015 observing to the effect that the complaint had been returned on 14.05.2015 and having been sent to the Record Room, the Court of the learned MM did not have power to revive and restore the complaint.

9. Admittedly the cheques in question are issued by the accused drawn on the Bank of Baroda, Basant Lok, New Delhi and thus did not fall within the jurisdiction of the South East District, Saket on the date when the complaint was returned on 14.05.2015.

10. Section 142 of The Negotiable Instruments Act, 1881 as on the said date reads to the effect : -

“142 Cognizance of offences. —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]”

11. The Hon'ble Apex Court vide its judgment in *Dashrath Rupsingh Rathod (Supra)* vide paragraph 56 & 57 held : -

“To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured. (emphasis supplied)

(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

57. Before parting with this aspect of the matter, we need to remind ourselves that an avalanche of cases involving dishonour of cheques has come upon the Magistracy of this country. The number of such cases as of October 2008 were estimated to be more than 38 lakhs by the Law Commission of India in its 213th Report. The result is that cases involving dishonour of cheque is in all major cities choking the criminal justice system at the Magistrate's level. Courts in the four metropolitan cities and other commercially important centres are particularly burdened as the filing of such cases is in very large numbers. More than five lakh such cases were pending in criminal courts in Delhi alone as of 1st June 2008. The position is no different in other cities where large number of complaints are

filed under S.138 not necessarily because the offence is committed in such cities but because multinational and other companies and commercial entities and agencies choose these places for filing the complaints for no better reason than the fact that notices demanding payment of cheque amounts were issued from such cities or the cheques were deposited for collection in their banks in those cities. Reliance is often placed on Bhaskaran's case to justify institution of such cases far away from where the transaction forming basis of the dishonoured cheque had taken place. It is not uncommon to find complaints filed in different jurisdiction for cheques dishonoured in the same transaction and at the same place. This procedure is more often than not intended to use such oppressive litigation to achieve the collateral purpose of extracting money from the accused by denying him a fair opportunity to contest the claim by dragging him to a distant place. Bhaskaran's case could never have intended to give to the complainant/payee of the cheque such an advantage. Even so, experience has shown that the view taken in Bhaskaran's case permitting prosecution at any one of the five different places indicated therein has failed not only to meet the approval of other benches dealing with the question but also resulted in hardship, harassment and inconvenience to the accused persons. While anyone issuing a cheque is and ought to be made responsible if the same is dishonoured despite compliance with the provisions stipulated in the proviso, the Court ought to avoid an interpretation that can be used as an instrument of oppression by one of the parties. The unilateral acts of a complainant in presenting a cheque at a place of his choice or issuing a notice for payment of the dishonoured amount cannot in our view arm the complainant with the power to choose the place of trial. Suffice it to say, that not only on the Principles of Interpretation of Statutes but also the potential mischief

which an erroneous interpretation can cause in terms of injustice and harassment to the accused the view taken in the Bhaskaran's case needs to be revisited as we have done in foregoing paragraphs."

12. Thus as on the date 14.05.2015, the order of return of the complaint, the Court of learned MM, South East District, Delhi did not have jurisdiction over the cause of action which in terms of the verdict of the Hon'ble Apex Court was within the jurisdiction of the Court where the cheques had been dishonoured, and the cheques in the instant case were dishonoured by the Bank of Baroda, Basant Lok, New Delhi though mentioned to have been dishonoured by the Bank of India, Basant Lok, New Delhi.

13. Vide The Negotiable Instruments (Amendment) Act, 2015 dated 15.06.2015, which came into force at once, Section 142(2) was inserted to The Negotiable Instruments Act, 1881 and Section 142A was also inserted. On 22.09.2015, The Negotiable Instruments (Amendment) Act, 2015 was promulgated and vide order dated 15.06.2015, the amendments to Section 142 of The Negotiable Instruments Act and the insertion of Section 142A to The Negotiable Instruments Act was made, which read as under : -

"142A. 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 time”

14. Thus in terms of the amendment to The Negotiable Instruments Act, 1881, jurisdiction in relation to an offence punishable under Section 138 of The Negotiable Instruments Act, 1881 lay only with the branch of the bank where the payee of the holder in due course maintained his / its account which in the instant case was the HDFC Bank Ltd., Kalkaji, New Delhi i.e. the bank of the petitioner herein i.e. the complainant of the CC no. 157/1/12 and thus the jurisdiction lay with the Court having jurisdiction over the area of Kalkaji i.e. South

Eash District, New Delhi on the date when the application seeking revival / restoration of the complaint, was taken up on 08.10.2015.

15. The submissions of the petitioner are to the effect that he could not avail his remedies till 14.06.2015 in as much as the Courts were closed from 09.06.2015 for the summer vacation and the certified photocopies of the complaint and aforesaid documents have not been received till 29.09.2015. It has thus been submitted on behalf of the petitioner that in view of the amendments made in The Negotiable Instruments Act, which are retrospectively made applicable in terms of Section 142A(1) of the Negotiable Instruments Act, 1881, the petition be restored to its original number and original stage.

16. On behalf of the respondents no. 2 to 4, the petition has been vehemently opposed submitting to the effect that the amendments made in The Negotiable Instruments Act, 1881 do not have retrospective application and that the petitioner did not choose to comply with the order dated 14.05.2015 within the stipulated period of one month of filing of the complaint afresh in the Court having jurisdiction over Basant Lok, New Delhi and thereafter filed the application seeking restoration / revival of the petition in view of the amendments to under Section 142 and to Section 142A of The Negotiable Instruments Act, 1881, which it was contended were not retrospectively applicable. *Inter alia* it was submitted on behalf of the respondents no. 2 to 4 that the delay in re-filing the complaint on 08.10.2015 had not been explained in as much as the complaint had not been filed afresh till 29.09.2015 and it was further submitted on behalf of the respondents that the complaint in any event had not been

re-filed within a period of 30 days and thus there was no infirmity in the impugned order.

17. It has also been submitted on behalf of the respondents that there is no explanation put forth by the petitioner for the delay in submission of the application seeking revival of the petition.

18. Through the written submissions that have been submitted on behalf of the respondents *inter alia* it was submitted that the ordinance dated 15.06.2015 does not have retrospective effect and does not effect the position of law as detailed vide order dated 14.05.2015.

19. At the outset, it is essential to observe that the amendments made in The Negotiable Instruments Act, 1881 vide the ordinance dated 15.06.2015 are retrospectively applicable as in terms of The Negotiable Instruments (Amendment) Act, 2015 dated 15.06.2015 which was re-promulgated on 22.09.2015 and brought into The Negotiable Instruments Act, 1881 by The Negotiable Instruments (Amendment) Act, 2015 with retrospective application and Section 142A brought into play by the said amendment dated 15.06.2015 subsequently laid down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or judgment, decree, order or direction of any Court, all cases transferred to the Court having jurisdiction vide sub-section (2) of Section 142 of the amendment Act as amended vide The Negotiable Instruments (Amendment) Ordinance, 2015 would be deemed to have been transferred under the Act as if that sub-section had been in force all material times. Thus, it is apparent that in terms of the provisions of Section 142A(1), the amended provisions of Section 142(2) of the NI Act, 1881 thereof are

deemed to have been in play and operation at all times and give retrospective applicability to Section 142(2) of the The Negotiable Instruments Act, 1881 as has been upheld by the Hon'ble Supreme Court vide its verdict in *Bridgstone India Pvt. Ltd. Vs. Inderpal Singh* dated 24.11.2015 in paras no. 10 to 13 to the effect : -

“10. In order to overcome the legal position declared by this Court in Dashrath Rupsingh Rathod's case, learned counsel for the appellant has drawn our attention to the Negotiable Instruments (Amendment) Second Ordinance, 2015 (hereinafter referred to as 'the Ordinance'). A perusal of Section 1(2) thereof reveals, that the Ordinance would be deemed to have come into force with effect from 15.06.2015. It is therefore pointed out to us, that the Negotiable Instruments (Amendment) Second Ordinance, 2015 is in force. Our attention was then invited to Section 3 thereof, whereby, the original Section 142 of the Negotiable Instruments Act, 1881, came to be amended, and also, Section 4 thereof, whereby, Section 142A was inserted into the Negotiable Instruments Act. Sections 3 and 4 of the Negotiable Instruments (Amendment) Second Ordinance, 2015 are being extracted hereunder:

"3. In the principal Act, section 142 shall be numbered as sub- section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

(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."

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

A.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 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, 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, before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

(Emphasis is ours)

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.

11. 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 Rupsingh Rathod's case would also not non-suit the appellant for the relief claimed.

12. 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 Rupsingh 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.

13. 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."

(emphasis supplied)

and thus the ratio of the verdict of the Hon'ble Supreme Court in ***Bridgstone Industry Pvt. Ltd (Supra)*** makes it thus abundantly clear that in the instant case the jurisdiction lay only with the branch of the bank where the payee or holder in due course maintained his / its account, and the Court there alone would have jurisdiction, qua the complaint for an offence punishable under Section 138 of The Negotiable Instruments Act, 1881 which can be inquired into or tried and thus in the instant case as the bank of payee i.e. the complainant is the HDFC Bank Ltd., situated at Kalkaji, New Delhi, the Court having jurisdiction to try the offences punishable under Section 138 of The Negotiable Instruments Act, 1881 is situated in the area of the South East District, Delhi.

20. The verdict of this Court in the case titled as ***Pankaj Garg Vs. State (Govt. of NCT of Delhi) & Anr. dated 13.10.2015 in Crl. M.C. 4239/2015*** is to the similar effect and it is also significant that in this case the condonation of delay by the revisional Court for taking up the matter by the Court which has jurisdiction to continue with the proceedings in terms of the amended Section 142 of the Negotiable Instruments Act, 1881, was condoned. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Division Bench of the Kerala High Court in case titled as ***Binoy K. Mathew Vs. Godley***

Dev Joh, 2015(4) Civil Court Cases 016 (Kerala (DB) whereby also it was directed that the complaints were allowed to be presented in the respective Courts where they were originally filed in view of the amendment.

21. The submissions made thus on behalf of the respondents no. 2 to 4 qua the aspect of non-retrospective applicability of the amended provision of The Negotiable Instruments Act, 1881 cannot be accepted in view of the verdict of this Court in ***Pankaj Garg (Supra)*** and in view of the verdict of the Hon'ble Apex Court in case titled as ***Bridgestone India Pvt. Ltd. (Supra)***. Thus in view of the retrospective applicability of the provisions of Section 142(2) of The Negotiable Instruments Act, 1881 in view of the The Negotiable Instruments (Amendment) Act, 2015, the delay in filing the application for restoration / revival before the MM concerned in the South East District, Delhi is condoned to avoid failure of justice.

22. As apparently the Court of MM having jurisdiction to try cases under Section 138 of The Negotiable Instruments Act, 1881 of the South East, Saket has jurisdiction to proceed with the Complaint Case no. 157/1/12, the petition is thus allowed and the CC no. 157/1/12 is restored to its original stage and number to be taken up by the learned Court of MM concerned having jurisdiction over cases to try the offences punishable under Section 138 of The Negotiable Instruments Act, 1881 over the area of the South East District, Saket and to proceed further in accordance with law.

23. Copy of this order be sent to the learned CMM concerned through the learned District and Sessions Judge, South East District for compliance.

ANU MALHOTRA, J.

APRIL 3rd, 2018/MK

