

CRM-M-26529-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-26529-2014 (O & M)
Date of Decision: 03.12.2019

Hans Raj Grover and another

... Petitioners

Versus

Mandeep Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Raman Sharma, Advocate,
for the petitioners.

Mr. K.S.Kang, Advocate,
for the respondent.

HARNARESH SINGH GILL, J.

The petitioners have filed this petition under Section 482 Cr.P.C. for quashing of complaint No.CC-1614/13 dated 17.09.2012 (Annexure P-8) and all the consequential proceedings arising therefrom, including the summons dated 09.05.2014 (Annexure P-9).

In the present petition, the matter relates to the maintainability/jurisdiction of complaint under Sections 138 and 142 of the Negotiable Instruments Act (for brevity, 'N.I.Act'), titled as 'Mandeep Singh Vs. For New Diamond Property Consultant and another', instituted on 17.09.2012, by the respondent-complainant against the petitioners-accused in the Court at Patii, District Tarn Taran.

Now during the pendency of the complaint and the present petition, amended provision of the Negotiable Instruments Act Ordinance

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2015, came into force on 15.06.2015 and as per the same, the complaint is to be presented where the account is being maintained. For ready reference, relevant amendment in Section 142 of the N.I.Act is 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.”

From the perusal of the aforesaid provision, it transpires that after amendment in the N.I.Act, the offence under Section 138 of the N.I.Act shall be inquired into and tried only by a Court within whose local jurisdiction; 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 if the cheque is presented for

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payment by the payee or holder in due course otherwise through an account, the branch of drawee bank where the drawer maintains the account, is situated.

It is the case of the petitioners that since the cheque in question got dishonoured at Chandigarh, therefore, jurisdiction to try the present complaint is of the Court at Chandigarh as per the amended Section 142 (3) of the N.I.Act.

In *M/s Rakesh Oswal Hosiery Mills Pvt. Ltd. Vs. M/s Jain Rubber and Foam Mills and others* 2016 (3) R.C.R. (Criminal) 235, this Court has held as under:

“11. Thus, it ensues that being a procedural law, a change in the law of procedure operates retrospectively and unlike the law relating to vesting right is not only prospective and thus to the mind of this Court the same lays down a rule of procedure, it ordinarily affects pending actions and it ought to have a retrospective effect as well. Thus, it is very well clear as to the very applicability of this amendment to the cases before this Court. Furthermore, the Hon’ble Supreme Court in a subsequent view reported in **2016(1) RCR (Civil) 320: 2015 (6) Recent Apex Judgments (R.A.J.) 422: in the case of ‘Bridgestone India Private Limited v. Inderpal Singh’**, considering the ratios laid down in **Dashrath Rup Singh Rathod’s case** (supra) have clearly held that once the cause of action accrues to the complainant, jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured and precisely this is what has transpired in the present case. Even the very provisions of Section 177 Cr.P.C. read with Sections 182(1), 184 and 220(1) comes to the aid of the petitioner in this manner.”

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In the present case, the complaint was filed on 17.09.2012. Even though, the amended Section 142(3) N.I.Act came into force on 15.01.2015, yet as per the ratio of law laid down in above referred cases, a change in the law of procedure operates retrospectively. Therefore, the Court at Patti, District Tarn Taran, has no jurisdiction to entertain and try the present complaint.

Though the prayer of the petitioners in the present petition is for quashing of the complaint, yet keeping in view that there is only procedural error in filing the complaint (Annexure P-8), the same is ordered to be transferred from the Court of the Judicial Magistrate Ist Class, Patti, District Tarn Taran, to the Learned Sessions Judge, Chandigarh, who may assign the same to the court of competent jurisdiction there. Learned Judicial Magistrate Ist Class, Patti, District Tarn Taran, shall ensure that entire record of the case is sent to the learned Sessions Judge, Chandigarh.

The parties are directed to appear before the learned Sessions Judge, Chandigarh, on 28.02.2020.

Disposed of.

03.12.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No