* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26.11.2019

\+ **CRL.M.C. 6022/2019**

IN THE MATTER OF:

KUZHUVEL MATHAI MATHEW ..... Petitioner

Through: Mr.N.M.Varghese, Mr.Amarendra Choubey and Ms.Tessy Varghese, Advocates.

versus

NEERAJ GARG ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

Crl.M.A.No.41175/2019 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

Crl.M.A.No.41176/2019 (Delay in re-filing)

1. This is an application under Section 482 Cr.P.C. filed on behalf of the petitioner seeking condonation of delay in re-filing the present petition.
2. For the reasons stated in the application, the delay in re-filing the present petition is condoned.
3. Application stands disposed of.

CRL.M.C. 6022/2019

1. The present petition has been filed seeking quashing of the Complaint Case No.1693 of 2017 pending before the CMM, Karkardooma Courts, Delhi.

2. The only ground urged during the course of the arguments relates to the territorial jurisdiction of the Courts at Delhi. It is the submission of the learned counsel for the petitioner that as the cheque has been drawn on M/s. Standard Chartered Bank, Sharjah Branch, UAE, the dishonour of same had occurred outside the territory of India and as such the Courts in Delhi have no territorial jurisdiction. It was contended that the provisions of Cr.P.C. would override the provisions of the Negotiable Instruments Act as according to the learned counsel for the petitioner, the cause of action of issuance of cheque has occurred in UAE.

3. The present case relates to dishonour of a cheque bearing No.726479 of AED 1,00,000/- dated 27.12.2016 drawn on Standard Chartered Bank, Sharjah, UAE in the name of the complainant.

4. As per the complaint, on the petitioner's approaching the complainant, a friendly loan of AED 1,00,000/- was advanced by the complainant. In discharge of the aforesaid liability, the petitioner issued the aforesaid cheque to the complainant and assured of its encashment at the time of the presentation. It was stated that simultaneous to the advancement of the aforesaid friendly loan, a receipt was also executed acknowledging the receipt of the amount as well as handing over the aforesaid cheque. On specific assurance of the petitioner, the complainant presented the aforesaid cheque with his banker i.e., Canara Bank, Anand Vihar Branch, Delhi-110

092. The aforesaid cheque was dishonoured with the remarks "insufficient funds". The cheque along with the returning memo dated 31.03.2017 was returned unpaid to the complainant. After giving due notice, the complainant filed the aforesaid complaint before the Court of ACMM, Shahdara, Karkardooma Courts, Delhi and the petitioner has been summoned vide an order dated 20.03.2018.

5. By virtue of amendment, Section 142 (2A) came to be inserted on 15.06.2015 and conferred jurisdiction for the offence under Section 138 N.I. Act on a Court in whose jurisdiction the branch of the Bank where the payee or holder in due course maintains his account. The jurisdiction conferred is exclusive as indicated by the word "only" appearing in Section 142(2) of the N.I. Act. For the sake of felicity, Section 142(2) is reproduced as under:-

> *"142. Cognizance of offences.— [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
>
> xxx
>
> *(2) The offence under section 138 shall be inquired into and tried only by a court within whose local 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.*

6. The contention of the learned counsel for the petitioner insofar as the territorial jurisdiction of the Courts as well as the alleged conflict in the N.I. Act and the Cr.P.C. is no longer res integra and the same has been decided long back in the decision rendered by the Supreme Court in Bridgestone India Pvt. Ltd. Vs. Inderpal Singh reported as **2016 (2) SCC 275,** where it was held as under:-

> *"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.*
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> *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 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.

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 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.

16. 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".

7. In view of the afore-mentioned enunciation of law by the Supreme Court and the undisputed case that the cheque in question was presented for encashment by the complainant in Canara Bank, Anand Vihar Branch, Delhi-92, the present petition is dismissed along with pending applications.

8. Copy of this order be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 26, 2019
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