# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION
## CRIMINAL WRIT PETITION NO. 613 OF 2018

Goldie Sud … Petitioner

Versus

1. Share Khan Ltd.
2. The Union of India
3. The State of Maharashtra
4. Shilpa Sud … Respondents.

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Mr. Goldie Sud, petitioner present in person.

Mr. Deepak Sharma a/w Ms. Megha Sharma and Chaitanya Purankar i/by DMS Legal, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

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DNYANESHWAR ASHOK ETHAPE Digitally signed by DNYANESHWAR ASHOK ETHAPE Date: 2022.11.11 10:32:47 +0530

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 15th July, 2022**

**PC :**

1. The petitioner had challenged the notice dated 05.02.2016 issued by learned 30th Metropolitan Magistrate Court, Kurla, Mumbai in C.C. No.39/SS/2016 on exhibit-16, orders dated 11.01.2016, 29.09.2017 passed in the aforesaid proceedings and order dated 20.12.2017 passed by Additional Sessions Judge, Greater Mumbai rejecting application No. 1058 of 2017.

2. The complaint is filed by respondent No.1 for an offence punishable under Section 138 of the Negotiable Instruments Act (for short “N.I. Act”). It is alleged that the

complainant/company is having its office at A-206, Phoenix House, 2nd floor Phoenix Mills Compound, S.B. Marg, Lower Parel (W) Mumbai and Head Office at Lodha Ithinj, Techno Campus 10th Floor, Beta Building, Off JVLR. Opp. Kanjurmarg Station, Kanjurmarg (E), Mumbai. The complainant/company carry on business of buying and selling shares and stocks, derivatives transactions etc. all over India. The accused No.1 towards discharge of liability arising from a transaction issued cheque bearing No. 426806 dated 07.05.2010 for Rs. 10,00,000/- in favour of complainant/company. The accused No.1 had represented that he is husband of accused No.2 and both are operating joint account and the above cheque was issued by both accused and signed by accused No.2 being wife of accused No.1. The cheque was issued in the name of “ShareKhan Ltd.” i.e. complainant/company. It was drawn on Punjab National Bank Vile Parle (W), Mumbai. Accused No.1 had entered into an agreement with the complainant/company for buying and selling of shares and securities and for derivatives transactions. Accused No.1 had been maintaining account with the complainant/company for purchase and sale of shares, securities and for derivative transactions. At the time of executing agreement both accused had furnished various documents and also represented to complainant/company that accused No.1 had joint bank account wherein accused No.2 is the joint account holder. After execution of said agreement the complainant/company had been dealing with accused for purchase and sale of shares, securities. The amount of Rs.8,06,323.98/- was outstanding and due to be payable by accused No.1 for the said transactions. The cheque was dishonoured with remark funds insufficient. The cheque was issued towards discharge of liability. Demand notice was issued to the accused. Complaint was filed.

3. The complaint was filed in the court of Learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai on 31.08.2010. It was numbered as 13550/SS/2010. The complainant was preferred application for transfer of case to Court of Metropolitan Magistrate, 53rd Court at Mulund, Mumbai on 01.09.2010. The Roznama dated 03.09.2010 mentions that order was passed on application for transfer of case. The case was transferred to Court of Metropolitan Magistrate, 53rd Court at Mulund, Mumbai.

4. Verification statement of the complainant was recorded on 08.09.2010 by the Court of learned

Metropolitan Magistrate, 53rd Court, Mulund, Mumbai and process was issued against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act on the same date.

5. The learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai passed the order dated 12.12.2014, observing that the complaint has not reached up to section 145(2) of Negotiable Instruments Act. After scrutinizing the complaint, it is seen that the alleged cheque has been drawn on the bank, which is not situated within the jurisdiction of court and in view of observation of the Hon'ble Supreme Court in the case of Dasharath Roopsingh Rathod Vs. State of Maharashtra, that Court has no jurisdiction to proceed further with proceedings. In view of observation and direction of Supreme Court, the complaint is required to be returned to the complainant to present it before the Competent Court. Hence, the complaint be returned to complainant to present it before competent Court. The complaint was presented again before the Court of Metropolitan Magistrate, 30th Court at Kurla, Mumbai on 11.01.2016. The complainant preferred application before the Court for issuing notice to accused for his presence

before the Court. The Learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai by order dated 05.02.2016 issued notice to the accused. While the case was pending before the Court of Metropolitan Magistrate, 53rd Court at Mulund, Mumbai, warrant was issued against petitioner vide order dated 13.06.2011. The petitioner preferred Criminal Writ Petition No. 268 of 2015 before this Court. The petition was heard on 12.07.2016. On that day, the petitioner had submitted that if the petition is allowed by consent and non-bailable warrant issued by the earlier Court is set aside, he would appear in the said proceedings, which is transferred to the Metropolitan Magistrate, 30th Court at Kurla in C.C. No.39/SS/2016 without prejudice to any of his rights on 01.08.2016, on which date the matter has been posted. The Advocate for complainant agreed to allow petition by consent, on the condition that petitioner files an affidavit in support of statement that he would appear before the Court. The petition was adjourned to 13.07.2016. On 13.07.2016, the petitioner filed an undertaking before this Court, it was stated on oath that, he would be appearing before the learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai on 01.08.2016. The petition was partly allowed and disposed off vide order dated 13.07.2016. The complainant filed application exhibit-15 in C.C. No.39/SS/2016, to substitute its representative, since the representative through whom the complaint was filed had left the job and the complainant company passed resolution in favour of another person and wants to substitute her as complainant. Say was filed by accused. It was contended on behalf of accused that the case was returned by Mulund Court on 12.12.2014 to the complainant to file the case in Court within 30 days. The complainant filed the case on 11.01.2016. Hence, the case is not maintainable according to law. The cause of action did not arise within the jurisdiction of that Court. The learned Magistrate, 30th Court Kurla, vide order dated 29.09.2017 allowed the application exhibit-15 and complainant company was directed to replace complainant Preeti Agarwal in place of Kinjal Kirit Shah. While allowing the said application it was observed that the application is pending since 11.01.2016. The accused had preferred Criminal Writ Petition No. 268 of 2015 before High Court, but the accused have not raised objection regarding jurisdiction and maintainability of complaint. The accused had not filed separate application challenging jurisdiction of Court. Newly added section 142-A of Negotiable Instruments Amendment Act, does not prescribe time limit for validation of transfer of pending cases to file in the Court having competent jurisdiction. The petitioner preferred application Exh-30 for cancellation of bailable warrant through his advocate. Vide order dated 29.09.2017, the learned Magistrate cancelled the warrant issued against petitioner. He was directed to remain present on each and every date in future as he undertook in the application. The complainant filed application Exhibit-37 for issuing non bailable warrant against both accused and contempt notice against accused No.1 (petitioner). The learned Magistrate vide order dated 29.09.2017 issued non bailable warrant against accused No.2. The petitioner preferred Criminal Revision Application No. 1058 of 2017 before the Court of Sessions for Greater Bombay, challenging order dated 11.01.2016 accepting complaint, order dated 05.02.2016 issuing notice and order below exhibit-37 issuing non bailable warrant passed by learned Metropolitan Magistrate, 30$^{th}$ Court, Kurla, Mumbai. Vide order dated 20.12.2017 Revision application was rejected. The petitioner preferred present Writ Petition No. 613 of 2018. The petitioner preferred Criminal Application NO. 73 of 2018 in the said Writ Petition. The application was not pressed and it was dismissed as not pressed vide order dated 15.03.2018. This petition 673 of 2018 was kept pending. The petitioner than preferred Criminal Application No. 199 of 2018. The said application was preferred to recall order dated 30.01.2018 issuing non bailable warrant against petitioner. Vide order dated 18.05.2018, this Court directed the petitioner to appear before trial Court on 22.05.2018 and make fresh application seeking recall of order dated 30.01.2018. The trial Court was directed to hear and decide the application by keeping in mind that ordinarily non-bailable warrant is issued as a last resort. The implementation of warrant was stayed till 22.05.2018. Application was disposed off.

6. The petitioner in person submits that there is delay in re-filing the complaint. Vide order dated 12.12.2014, the complaint was returned to complainant by learned 53rd Metropolitan Magistrate at Mulund, Mumbai for presenting it before competent Court. In view of decision of the Supreme Court in the case of **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another**[1], the complaint ought to have been re-filed within 30 days of its return. However, it was re-filed on 11.01.2016. There was delay of 395 days in re-filing complaint. It is barred by limitation

1 2014 ALL MR (Cri) 3333 (S.C.)

under Section 142(b) of the Negotiable Instruments Act (as amended) and also in view of aforesaid decision of Supreme Court. The ordinance which was operative from 15.06.2015 will not help the complainant since the present complaint was not pending in any Court. The time to present it had already expired. Learned Metropolitan Magistrate, 30th Court was misled and the complaint was entertained on 11.01.2016. The gazette ordinance effective on 15.06.2015 does not protect the complainant. As the ordinance is in protection for only pending complaints and not for complaints already returned. There was delay of 13 months. The ordinance refers to transferred/pending matters. The present complaint was neither transferred not pending. Therefore order dated 05.02.2016 and order dated 11.01.2016 are illegal. There was no application for condonation of delay in re-filing complaint. The learned Magistrate did not record reasons for entertaining complaint on 11.01.2016.

7. It is submitted that the learned Magistrate, 30th Court, Kurla, Mumbai has no jurisdiction to entertain complaint. It is apparent that the complainant tried to re-file complaint in many courts. The Court committed error in entertaining the

complaint. The cheque was put in drawee Khar Branch of HDFC Bank, as the complainant was maintaining account there. The learned Metropolitan Magistrate, 30th Court, Kurla had no jurisdiction. The jurisdiction could have been before 9th Metropolitan Magistrate, Bandra (West) Mumbai.

8. SEBI notification renders the claim of the complainant, *vis-a-vis* alleged cheque as illegal: A notification dated 18.11.1993 bars the complainant, being a stock broker, to receive third party cheques being the Joint account of Petitioner and his wife. The cheque ought to have been issued by petitioner's single operations account. In the complaint stated that a joint account cheque was accepted by the complainant. Therefore, acceptance of third party cheque renders the cheque as illegal under SEBI Rules. The aforesaid submission is supported by order dated 19.05.2003 of SEBI Tribunal in the matter of M/s. Enrich Finance & Securities Ltd., a member of NSE.

9. It is submitted that, cheque claimed to be delivered on 07.05.2010 is illegal. The stamp of HDFC Bank on the cheque annexed to the petition reflects of sending the cheque No.426806 dated 07.05.2010 for collection on 06.05.2010. In the complaint however the same cheque is

claimed by the complainant to be delivered to complainant on 07.05.2010. Therefore the complaint cannot be relied upon, because the same being false because the cheque no. 426806 dated 07.05.2010 could not have been presented in the complainant’s Bank a day prior to the day the petitioner allegedly delivered the cheque to the complainant.

10. It is submitted that, there is a Bar on 30th Metropolitan Magistrate, Kurla under Section 362 of Cr.P.C. to issue summons: The learned 30th Metropolitan Magistrate, Kurla Court on 03.09.2010 had returned the complaint to complainant stating to have no jurisdiction. However, on 11.01.2016 accepted the re-filing. Therefore, once passing order dated 03.09.2010 of “No Jurisdiction” therefore was a bar on learned 30th Metropolitan Magistrate Kurla Court to permit re-filing. Therefore, the summons issued to petitioner is illegal.

11. It is further submitted that, cheque is not signed by petitioner. This fact is admitted by complainant in verification statement and complaint. The petitioner can not be prosecuted.

12. It is submitted that there is interpolation by complainant: on 03.09.2010 the complaint was withdrawn and now re-filed after inter polation of a copy of Cheque. Apparently documents were added and removed. For 395 days complaint was with the complainant and kept papers with himself. Cheque at page 99 of the petition shows Khar Branch Account number 00602340027672 is different. The cheque at page 98 of petition shows new account number as Account number 145203400000165.

13. It is submitted that the learned Metropolitan Magistrate was misled into believing that the matter was transferred from Court. On false statement complaint was accepted by Court. The respondent No.1 made false statement before this Court in Criminal Writ Petition No. 268 of 2015, which was for quashing non bailable warrant. Through the complaint was returned, it was stated that it is pending. Vide letter dated 29.10.2015, the petitioner called upon complainant and its Advocate to substantiate the statement qua complaint being pending. The complaint was refiled on 11.01.2016.

14. It is submitted that copy of complaint was served on 16.04.2017, without exhibits. The difference between

original complaint and present complaint is doubtful. Complaint was served without relied upon documents, which amounts to denial of fair opportunity to accused to defend him.

15. It is submitted that impugned orders are not reasoned. Statutory notice was not served upon the petitioner. Liability is only Rs.8,06,323/- as stated by complainant in verification statement and complaint. Whereas the cheque is of Rs. 10 lakhs. Thus, the cheque in question is not issued against any enforceable debt to the complainant. Therefore, the complaint under Section 138 of Negotiable Instruments Act is not maintainable. The respondent No.1 have not properly demonstrated as to what services they have provided to accused. It is not shown as to how accused are liable to pay Rs.10 lakhs to the complainant.

16. The petitioner has relied upon following decisions:

(i) Ms. Indus Airways Pvt. Ltd and Ors. Vs. M/s. Magnum Aviation Pvt. Ltd. and Anr. delivered in Criminal Appeal No. 830 of 2014 dated 07.04.2014.

(ii) Starkey Laboratories India Pvt. Ltd Vs. Sanjay Gujral. Decided by Delhi High Court in Criminal L. P. 492 of 2017 dated 24.09.2019.

(iii) Sunil Todi And Ors. Vs. State of Gujarat and

Another delivered in Criminal Appeal No. 1446 of 2021 with Criminal Appeal No. 1447 of 2021 dated 03.12.2021.

(iv) Mohammad Sikandar Bhai Vs. State of U.P. and Another in Criminal Application No.617 of 2009 by Allahabad High Court on 23.12.2021.

(v) Sh Satinderjeet Singh Vs. Sameer Sondhi delivered in CRL. M.C. No.796 of 2022 and CRL. M.A. No. 3316 of 2022 (Stay) by Delhi High Court on 28.02.2022.

(vi) M/s. A. Seating & Ors. Vs. M/s. Nandini Modulars delivered in Criminal Revision Petition No. 1242 of 2021 by Karnataka High Court on 22.03.2022.

(vii) Dilip Hariramani Vs. Bank of Baroda in Criminal Appeal No.767 of 2022 by Supreme Court on 09.05.2022.

17. Learned advocate for respondent No.2 submits that the petitioner had failed to appear before the trial Court. He had not complied order dated 13.07.2016 passed by this Court in Criminal Writ Petition No. 268 of 2015. In the said order it was recorded that the petitioner had submitted that if petition is allowed by consent and non bailable warrant issued by the learned Metropolitan 53rd Court at Mumbai by order dated 13.06.2011 in C.C. No.326/SS/2010 is set aside, he would appear in the said proceedings, which are transferred to the learned Metropolitan Magistrate, 30th Court at Kurla in C.C. No.39/SS/2016 without prejudice to his

rights, on 01.08.2016, on which date the matter has been posted. Order further records that the advocate for respondent has submitted that the respondent No.2 is agreeable and the petition is allowed by consent, on the conditions that the petitioner in person shall file an affidavit in support of statement that he would appear before the Court. To enable the petitioner to file affidavit. The matter was adjourned to 13.07.2016. Order further records that the petitioner has filed an undertaking before this Court which was taken on record and since petitioner in person states on oath that he would appear before Court in CC No. 39/SS/2016 on 01.08.2016, the petition was partly allowed in terms of prayer clause (a) by consent. The advocate for respondent had submitted that since the petitioner in person desires copy of the complaint, which is pending before the Court of learned Metropolitan Magistrate, he would be supplied with such copy. All rights and contentions were kept open. In spite of undertaking the petitioner has not appeared before the trial Court. It is further submitted that the Negotiable Instruments Act was amended by incorporating Section 142(A) which relates to validation for transfer of pending cases. In view of the amendment offence under Section 138 of the N.I. Act is concerned on the issue of jurisdiction, the provisions of the Code of Criminal Procedure, 1973, Section 142(A) of the Act 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 court would have no effect in so far as territorial jurisdiction for initiating proceedings under Section 138 of the Negotiable Instruments Act. The complainant's bank account is maintained at HDFC Bank at Chembur Branch. Hence, the learned Magistrate 30th Court at Kurla, Mumbai have jurisdiction to entertain the complaint. Notice was issued to the petitioner intimating the petitioner about the case No. 39/SS/2016 in spite of receipt of notice the petitioner never appeared before the trial Court. The petitioner never abided order of this Court and after a period of more than one year approached the Sessions Court at Mumbai. The Revision Application was rejected. There is no illegality in impugned orders. The grounds urged by petitioner will have to be considered in trial.

18. Learned advocate for the Respondent No.1 has relied upon the decision in the case of **Ms. Bridgestone India**

**Pvt. Ltd. Vs. Inderpal Singh**[2] and another decision of this Court in the case of **Ramanbhai Mathurbhai Patel Vs. State of Maharashtra and another**[3].

19. The complaint was filed before the Court of Metropolitan Magistrate, 30th Court, Kurla, Mumbai. In the complaint is is stated that the cheque was issued by accused in discharge of liability. It was deposited by complainant with their Bankers, HDFC Bank, Chembur Branch. The cheque was dishonoured . The complaint was transferred to Court of Metropolitan Magistrate at Mulund. Process was issued against the accused for offence under Section 138 of Negotiable Instruments Act. The complaint was then returned to complainant for presenting it before competent Court. Decision in the case of Dashrath Roopsingh Rathod (supra) was delivered by Apex Court. The learned Metropolitan Magistrate, Kurla, Mumbai took the complaint. Notice was issued to accused. The Revision application challenging orders passed by learned Magistrate was rejected. The learned Magistrate, 30th Court at Kurla has jurisdiction to entertain the complaint. There is no illegality in the impugned orders. The learned Sessions Judge while rejecting the Revision Application has observed

2 2015 AIR SCW 6556
3 2015(2) Mh.L.J. page 78

that the petitioner had not challenged order of Metropolitan Magistrate, 30th Court, Kurla, Mumbai regarding transfer of case nor challenged order of process. The Sessions Court dealt with the issue of delay in re-filing complaint by referring to decision of Supreme Court in the case of Dashrath Rathod (supra) wherein it was stated that complaints to be re-filed within 30 days. It was observed that it was a procedural aspect. The guidelines were Directory. The Court had discretion to accept the complaint in the interest of justice. There is no absolute bar to reject the complaint on this ground. When the complaint was presented the Negotiable Instruments Act, 2015 was in force. The petitioner had not complied undertaking to appear before Court. It is pertinent to note that persuant to the decision of apex Court, Negotiable Instruments (Amendment) ordinance, 2015 came into force on 15.06.2015 original Section 142 of the Negotiable Instruments Act, 1881, was amended. Section 142-A was inserted into the Act. The Amended Section 142 and 142-A reads as follows:-

> **Section 142. Cognizance of offences.**- [(1)] 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 complaint 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 try any offence punishable under section 138.]

[(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 cay 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 (2 of 1974) 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 (6 of 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 (20 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 cheqeus 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 (Ord. 6 of 2015), before which the first case was filed and is pending, as if that sub-section had been in force at all material times.]

I do not find any infirmity in the order entertaining the complaint by learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai on 11.01.2016. The Court than proceeded to issue notice/summons to accused. It is not necessary that these orders should be elaborate with reasons. Process was already issued after recording verification statement. Merely on the ground of alleged delay in presenting complaint, in the facts of this case, the complaint cannot be quashed.

20. The Apex Court in the case of M/s. Bridgestone India Pvt. Ltd. Vs. Inderpal Singh (supra) in paragraph Nos. 10, 11, 12 and 13 had observed as follows:-

> 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:
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> "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:-

142A. (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.

21. There are sufficient averments in the complaint regarding liability for which cheque was issued. The submissions of petitioner are devoid of merits. The complainant must be given opportunity to prove their case by leading evidence. The decision relied upon by petitioner were delivered in facts of respective cases and not applicable in the present case. The learned Magistrate has issued the process after looking into documents and since the *prima facie* case is made out for issuance of process. The submissions that the complaint was filed after enormous delay, cannot be accepted. Initially complaint was presented before the Court of learned Magistrate thereafter, there was a decision of the Supreme Court in the case of Dashrath Rupsingh Rathod (supra). Subsequently ordinance was brought into force Section 142(A) was incorporated by way of amendment to the Negotiable Instruments Act. The contention of the petitioner is that the amendment is applicable to only pending proceedings and

the present proceedings were not pending is devoid on merits. The submission that there was no legally enforceable liabilities and the other submissions advance by the petitioners are to be tested during the trial. Hence, petition is required to be dismissed.

**ORDER**

(i) The Writ Petition is rejected and disposed of.

**(PRAKASH D. NAIK, J.)**