

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.254

CRM-M-39975-2016(O&M)
Date of decision: 19.07.2022

PARAMVIR SINGH MOR

....Petitioner

Versus

PROFESSIONAL PLACEMENTS PVT LTD AND ANR

....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Jainainder Saini, Advocate
for the petitioner.
* * *

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 19.08.2014 vide which the complaint case No.1342-II dated 16.11.2011 titled as “Paramveer Singh Mor Versus Professional Private Limited & another” u/s 138 of the Negotiable Instruments Act, 1881 pending before the Court of Judicial Magistrate First Class, Hisar, was returned in original in compliance of the law laid down in case titled “Dashrath Rupsingh Rathod Vs. State of Maharastra & Anr”.

Learned counsel for the petitioner contends that subsequent to the passing of the aforesaid order dated 19.08.2014, an amendment in the Negotiable Instruments Act, 1881 was duly notified by the Ministry of Law and Justice on 15.06.2015 and the provision was suitably amended. Apart therefrom, the Hon'ble Supreme Court, in the matter of “Bridgestone Private

Limited Vs. Inderpal Singh and Others” reported as 2016 (1) RCR (Civil) 320 duly considered the judgment of “Dashrath Rupsingh Rathod Vs. State of Maharastra & Anr” and specifically held that the place where a cheque is delivered for collection i.e. the branch of the bank of the payee and holder in due course and where the drawee maintains an account would be determinative of the place of territorial jurisdiction.

Notice had been issued to the respondents, however, they have remained unserved. Nevertheless, considering that the respondents are yet to prefer an appearance before the Judicial Magistrate First Class, Hisar and the present case has remained pending for last six years and in light of the order which this Court intends to pass, it is felt that keeping the matter pending for effecting service of respondents is not likely to advance any interest of justice.

Without commenting on the merits of the case and noticing that the respondents had already been summoned by the Magistrate finding a prima facie case, wherein such order of summoning is yet to be assailed by any person aggrieved, adjudication on the present petition at this stage is not likely to prejudice any right of the respondent. The complaint in question was never returned/dismissed on merits but was returned on the issue of territorial jurisdiction. Such issue is not fluid anymore and thus, the petitioner cannot be left high and dry at the very initial stage of prosecution.

The relevant statutory provisions, as amended, are extracted hereinafter below:-

Section 142(2) of the Negotiable Instruments Act, 1881 reads as under:-

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 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.

Section 142(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."

Section 142A of the Negotiable Instruments Act, 1881 reads as

under:-

142A. (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.

The said provisions have been interpreted by the Hon'ble

Supreme Court in the judgment of “**Bridgestone Private Limited Vs. Inderpal Singh**” reported as 2016(2) SCC 75 as under:-

“Since cheque No.1950, in the sum of Rs.26958/-, drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at IDBI Bank, Indore, which intimated its dishonour 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.”

Hence, the statute has been given a retrospective effect, thus vesting the jurisdiction in the Court where it was instituted prior to the judgment of “*Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr*” (supra)

Besides, the petitioner has specifically submitted that upon the return of the complaint, the petitioner never presented the same to any other Court and no other complaint between the parties was instituted in any other Court as well.

In view of the aforesaid judgment of “*Bridgestone Private Limited* (supra) as well as amendment carried out to the Negotiable Instruments Act of 1881 by the Parliament, the present petition is allowed and the order dated 19.08.2014 is set aside and complaint case No.1342-II dated 16.11.2011 is ordered to be restored to its original number and the Illaqa Magistrate is directed to proceed in the matter in accordance with the

law.

The petitioner shall present the complaint in original before the Illaqa Magistrate within a period of 02 weeks of the receipt of certified copy of this order, whereupon further necessary proceedings in the said complaint shall be undertaken by the competent Court.

19.07.2022
Amandeep

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No