

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

1. CRM-M-7505-2016 (O&M)

Kulwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

2. CRM-M-7541-2016 (O&M)

Kulwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

3. CRM-M-7549-2016 (O&M)

Kulwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

4. CRM-M-7540-2016 (O&M)

Kulwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

Date of decision : 29.11.2022

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. D. D. Singh, Advocate
for the petitioner/complainant in all the cases.

Mr. P. S. Pandher, AAG, Punjab.

None for respondent No. 2/accused.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above mentioned four

petitions as they are similar in nature.

Prayer in these petitions is for quashing of orders dated 04.12.2015, passed by the trial Court separately in four complaints*, vide which the applications filed by the petitioner/complainant for revival of the said complaints, under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), have been dismissed.

Brief facts of the case are that the petitioner/complainant has filed aforesaid four complaints under Section 138 of the N. I. Act read with Section 420 IPC against respondent No.2/accused on account of dishonouring of some cheques drawn on ICICI Bank, Connaught Place Branch, New Delhi.

It is further submitted that after the preliminary evidence was recorded, the trial Court issue process against respondent No. 2/accused, vide orders dated 28.07.2014, however, the accused did not put in appearance before the Court.

Learned counsel for the petitioner further submits that in the meantime, in the judgment rendered in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another, 2014 (3) SCC (Criminal) 673***, Hon'ble Supreme Court held that the complaint filed under Section 138 of the N. I. Act can be filed against the drawer of the cheque only before the Court, within whose jurisdiction, the cheque was dishonoured by the drawer's bank.

Learned counsel further submits that in terms of the aforesaid judgment, the trial Court, vide orders dated 22.01.2015 (Annexure P-3) returned the complaints to the petitioner/complainant for presentation before the competent Court of jurisdiction, however, the original case files of the

complaints were never handed over to the petitioner and in the meantime, some amendments were made in Section 142 of the N. I. Act by adding Sub-section 2 to Section 142 and as well as Section 142-A, which reads as under:

“In the principal Act, section 142 shall be numbered as subsection (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 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.

SEC.1] THE GAZETTE OF INDIA EXTRAORDINARY
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5. (1) The Negotiable Instruments (Amendment) Second Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.”

Learned counsel for the petitioner further submits that in the light of the amendments made in the N. I. Act, the petitioner moved application(s) before the trial Court for revival of the complaints as there

was no adjudication on merits and the Court at Amritsar had the jurisdiction to entertain and decide the complaints in view of the amended provisions of the N. I. Act, however, the trial Court dismissed the said applications by passing the following order:

“Heard. The present application has been moved by the complainant for revival of the complaint which was returned by the Id.Predecessor of this Court vide order dated 22.01.2015 in view of the judgment of Hon'ble Supreme Court ***Dashrath Rupsingh Kathod Vs. State of Maharashtra & another*** decided on 1.8.2014. The Id.Counsel for complainant has argued that though the order was passed by Id.Predecessor of this Court but the file was never taken by him for filing the same in the competent Court in view of the order dated 22.1.2015. However, it is well settled principle of law that the criminal Court has no power to review of its own order which is duly fortified by judgment of Hon'ble Supreme Court of India in **Adalat Prasad Vs. Roop Lal Jindal & others** decided on 25th August 2004. Now once the order has already been passed by the Id. Predecessor of this Court, this Court vests no power of deal with the present case and the application filed by complainant for revival of the complaint is hereby dismissed. Papers be consigned to record room.”

These petitions are pending since 2016. The service on respondent No. 2/accused is complete, however, his counsel is not appearing for the last two dates.

After hearing learned counsel for the petitioner and going through the aforesaid amendments made in the N. I. Act, this Courts finds that the impugned orders dated 04.12.2015, passed by the trial Court, are not sustainable as in the light of said amendments and also in view of the

judgment in *Dashrath Rupsingh Rathod's* case (supra), the Court of JMIC, Amritsar, which has initially returned the complaints vide order dated 22.01.2015, has the jurisdiction to entertain and decide the complaints.

Accordingly, the present petitions are allowed and the impugned orders dated 05.12.2015, passed by the trial Court in all the four complaints, are set aside.

The complaints are remanded back to the trial Court/JMIC, Amritsar to decide them on merits, in accordance with law.

The petitioner/complainant is directed to appear before the trial Court on 19.12.2022.

Let a photocopy of this order be placed on the file of other connected cases.

29.11.2022

(ARVIND SINGH SANGWAN)
JUDGE

Waseem Ansari

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

*	
1	Criminal Complaint No. 7408 dated 28.07.2014, filed under Section 138 of the N. I. Act read with Section 420 IPC.
2	Criminal Complaint No. 202/2607 dated 28.07.2014, filed under Section 138 of the N. I. Act read with Section 420 IPC.
3	Criminal Complaint No. 9159 dated 23.09.2014, filed under Section 138 of the N. I. Act read with Section 420 IPC.
4	Criminal Complaint No. 9138 dated 23.09.2014, filed under Section 138 of the N. I. Act read with Section 420 IPC.