

**231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M-18600-2015**

Jiwan Kumar

..... Petitioner

Versus

P.A. Terly

.....Respondent

CRM-M-18690-2015

Decided on: 01.06.2023

Yogesh Kumar

..... Petitioner

Versus

P.A. Terly

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Prince Goyal, Advocate, for the petitioners.

Mr. Tarun Singla, Advocate, for the respondent.

Rajesh Bhardwaj, J.

This order will dispose of two above-said petitions as these are inter connected.

The petitioners have approached this Court praying for setting aside the orders dated 23.04.2015 passed in cases titled as Jiwan Kumar vs. P.A. Terly, and Yogesh Kumar Vs. P.A. Terly, under Section 138 of Negotiable Instruments Act (for short, "the Act"), passed by the Court of learned Chief Judicial Magistrate, Bathinda, vide which the trial Court has returned the complaints on the ground of territorial jurisdiction.

Brief facts of both the cases are that the respondent took a loan of Rs.9,00,000/- and Rs.5,00,000/- through cheque from the petitioner-complainants with a promise to return the same with interest within a period of one year. In order to discharge his liability, the respondent issued cheque No.772113 dated 16.07.2013 of Rs.14,80,710/- (in CRM-18600-2015) and cheque No.772126 dated 16.07.2013 of Rs.8,22,616/- (in CRM-M-18690-2015) of State Bank of India, Rausar (Shahajahanpur) to the petitioners and both the petitioners presented the above-said cheques to their banker i.e.

State Bank of Patiala, Branch Bhucho Kalan on 16.07.2013 for encashment, however, on 17.08.2013, the concerned Bank informed that cheques have been returned by the State Bank of India Rausar (Shahajahanpur) with remarks “insufficient funds”. Notices were issued by both the petitioners to the respondent for making payment within 15 days, however, the respondent failed to make the payment and thus, complaints dated 17.09.2013 under Section 138 of the Act were filed by the petitioners against the respondent. The respondent was summoned by the learned trial Court i.e. CJM, Bathinda, however, thereafter the respondent-accused filed applications for return of the complaints to be presented before the competent Court of law at Rausar (Shahajahanpur) in view of the law laid down by Hon’ble Supreme Court in case of Dashrath Rupsingh Rathod vs. State of Maharashtra and another, 2014(3) CrI. Court Cases 581. The trial Court vide order dated 23.04.2015 in view of the law laid down in Dashrath Rupsingh Rathod (supra) accepted the applications filed by the respondent and thus, returned the complaints filed by the respective petitioners. The learned trial Court observed that drawer Bank is at Rausar (Shahajahanpur) and thus, directed the complaints to be returned to the petitioner-complainants for the purpose of filing the same before appropriate Court within a period of 30 days from the date of receipt of copy of the order. Aggrieved by the same, the petitioners have approached this Court by way of filing the present petitions.

It has been contended by learned counsel for the petitioners that in view of the law laid down in Dashrath Rupsingh Rathod (supra), the complaints had been returned by the trial Court to the petitioners on the premise that the Court at Bathinda had no territorial jurisdiction to entertain

the same and it would be the drawer Bank in Rausar (Shahajahanpur) where the Court would have territorial jurisdiction to entertain the same. It has been submitted that thereafter the Act was amended in the year 2015 by inserting Section 142-A and the amendment came into force w.e.f. 15.06.2015. He submits that in view of the amendment, both the Courts at both places where the drawer Bank and the drawee Bank are situated, would have territorial jurisdiction to entertain the complaint under Section 138 of the Act. He further submits that in view of the same, the ratio of the law laid down in Dashrath Rupsingh Rathod (supra) is nullified. He has placed reliance upon the ratio of law laid down by Hon'ble Supreme Court in Bridgestone India Pvt. Ltd. vs. Inderpal Singh, 2016(3) RCR (Criminal) 171, where, it has been observed in para No.13 as under:-

“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.”

Learned counsel for the petitioners has submitted that even if the impugned orders are passed prior to the amendment came in force, the amendment being retrospective in nature as held by Hon'ble Supreme Court (supra), the impugned orders cannot survive being against the statute and the law settled and thus, deserve to be set aside. He submits that as per the

amended Section 142-A(2) of the Act and the law laid down by Hon’ble Supreme Court, the petitioners had rightly filed the complaints at Bathinda, where the drawee Bank is situated and thus, the trial Court be directed to proceed with the complaints filed by the petitioners in accordance with law.

Learned counsel for the respondent has fairly conceded that law settled and thus, has agreed that as per the latest amendment and the law settled by Hon’ble Supreme Court, both the Courts situated at the places, where the drawer Bank and drawee Bank are situated, would have the territorial jurisdiction to entertain the complaint and thus, the Court at Bathinda would have jurisdiction to entertain the complaints filed by the petitioners.

Heard.

Both the sides are in agreement that Section 142-A(2) of the Act has been inserted vide amendment in the year 2015 which came into force w.e.f. 15.06.2015. As per amendment, the Courts situated at both the places i.e. of drawer Bank and drawee Bank, would have the territorial jurisdiction to entertain the complaint and further as held by Hon’ble Supreme Court in Bridgestone India Pvt. Ltd. (supra), the amendment will have retrospective effect. Hence, the impugned orders dated 23.04.2015 (in both petitions) being against the statute and the law laid down, are set aside. The trial Court at Bathinda is directed to entertain the complaints filed by the petitioners and proceed further with the trial as in accordance with law.

The petitions stand allowed in above-said terms.

01.06.2023
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE