



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 19th September, 2023***

+ **CRL.M.C. 5081/2018 & CRL.M.A. 33563/2018 (stay)**

SUNIL MANTRI

..... Petitioner

Through: Mr.P.N. Ravindran, Senior Advocate
with Mr.M.K.Ghosh, Ms.Tina Garg
and Mr.Amrit B.Mohanty, Advocates.

versus

MAHARASHTRA SAVINGS & ANR

..... Respondents

Through: Mr.Pankaj Kumar Singh,
Mr.Gurmeher S. Sistani and Mr.Beh
Daniel Mathew, Advocates for R-1.
Mr.Rishi Manchanda Standing
Counsel along with Siddharth Mullick
Advocate for the official liquidator
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CRL.M.C. 5081/2018

1. The present petition has been filed impugning the order dated 31st July, 2018, passed by the learned Additional Sessions Judge (ASJ), Saket District Courts in Criminal Revision No. 204191/2016.

2. Vide the aforesaid impugned order, the revision petition filed on behalf of the respondent no.1/complainant was allowed and the order dated 22nd January, 2016, passed by the learned Metropolitan Magistrate (MM),

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Saket District Courts was set aside.

3. Brief facts leading to the present petition are as under: -

a. The accused company, of which the petitioner herein was a director, issued a cheque dated 1st September, 2013, of Rs.13,88,00,000/- drawn on Dena Bank, Mumbai to the respondent no.1. The respondent no.1 presented the said cheque for payment at Syndicate Bank, New Delhi, however, the same was returned by the bank stating that the payment for the cheque has been stopped by the company.

b. Following this, the respondent no.1 filed a complaint before the learned MM in which the petitioner was arrayed as an accused under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) on 11th October, 2013.

c. On 1st August, 2014, the Supreme Court pronounced its judgment in ***Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.***, (2014) 9 SCC 129, and held that the courts within whose jurisdiction the cheque had been dishonoured by the bank on which it is drawn, would be the competent courts of jurisdiction for entertaining complaints under Section 138 of the NI Act. The Supreme Court further directed that all pending complaints filed in a court not having jurisdiction would be returned back to the complainant and refiled within 30 days of their return before the court of appropriate jurisdiction.

d. In view of the aforesaid judgment in ***Dashrath Rupsingh Rathod*** (supra), the learned MM, vide order dated 21st August, 2014, returned the complaint filed by the respondent no.1 and directed that the same be filed before the court of competent jurisdiction within 30 days.

e. On 15th June, 2015, an ordinance, being the Negotiable Instruments

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(Amendment) Ordinance, 2015 (Ordinance) was promulgated wherein, Section 142(2) and Section 142A were inserted in the NI Act. In terms of the newly inserted Section 142(2), the jurisdiction under Section 138 of the NI Act was vested in the court where the cheque was delivered for collection through the account of the payee. As per the newly inserted Section 142A, all cases filed under Section 138 of the NI Act were to be transferred to the court of appropriate jurisdiction under Section 142(2) of the NI Act.

f. In view of the aforesaid amendment, the respondent no.1 filed an application for restoration of the complaint on 20th October, 2015, which was dismissed by the learned MM vide order dated 22nd January, 2016, as the same was not filed within 30 days.

g. The respondent no.1 filed a revision petition against the aforesaid order of the learned MM, which was allowed by the learned ASJ vide the impugned order dated 31st July, 2018.

4. Counsel for the petitioner submits that in terms of the judgment of the Supreme Court in ***Dashrath Roopsingh Rathod*** (supra) and as per the direction of the learned MM dated 21st August, 2014, since the respondent no.1 had failed to re-file its complaint within 30 days before the court of appropriate jurisdiction at Mumbai, there was no complaint pending in any court in terms of Section 142A introduced by the aforesaid Ordinance on 15th June, 2015.

5. Counsel for the petitioner further submits that no valid reasons were given on behalf of the respondent no.1 to file the restoration application after a delay of more than one year and therefore, there is no infirmity in the order that was passed by the learned MM dismissing the application of the



respondent no.1.

6. Per contra, the counsel appearing for the respondent no.1 submits that the present petition is fully covered in its favour by the judgments passed by the Coordinate Benches of this Court in (i) **Pankaj Garg v. State (Govt. of NCT of Delhi) and Ors.**, 2015 SCC OnLine Del 12810, and (ii) **Liugong India Pvt. Ltd. v. State (Govt. of NCT of Delhi) and Ors.**, 2018 SCC OnLine Del 8322.

7. I have heard the parties and perused the material on record.

8. The Supreme Court in **Bridgestone India Private Limited v. Inderpal Singh**, (2016) 2 SCC 75, has observed that the provisions of Section 142A of the NI Act are retrospective in nature. Therefore, the judgment in **Dashrath Rupsingh Rathod** (supra) would not come in the way of territorial jurisdiction vesting in courts where the cheque was deposited by the payee.

9. In **Pankaj Garg** (supra), the Coordinate Bench of this Court has also observed that the aforesaid amendments introduced by the Ordinance are applicable retrospectively and the stage of the case would remain the same as was before the decision of the Supreme Court in **Dashrath Rupsingh Rathod** (supra).

10. The facts in **Pankaj Garg** (supra) are very similar to the facts in the present case in as much as the learned ASJ in **Pankaj Garg** (supra) had allowed the revision filed on behalf of the complainant therein. In the said case also, the complainant had not taken any steps to take back the complaint and file it with the competent court having jurisdiction as per the judgment in **Dashrath Rupsingh Rathod** (supra).

11. The relevant observations in **Pankaj Garg** (supra) are set out below: -

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“12. The amendment in question is applicable retrospectively. The stage of the cases shall remain same as was before the case of Dashrath Rupsingh Rathod (supra). Therefore, keeping in view the above ordinance such complaint cases which were returned to the complainant on account of lack of territorial jurisdiction for the reason of location of the bank of the accused/petitioner outside the territorial jurisdiction of the Court are bound to be tried by the said Court.”

12. The judgment of the Supreme Court in *Bridgestone India Private Limited (supra)* and the judgment of the Coordinate Bench in *Pankaj Garg (supra)* were followed by the judgment of another Coordinate Bench of this Court in *Liugong India (supra)*, where it was held that the provisions of Section 142(2) of the NI Act introduced by the aforesaid Ordinance are retrospective in nature and the delay in filing the application for restoration of the complaint was allowed.

13. The relevant observations in *Liugong India (supra)* are set out below:-

“21. The verdict of this Court in the case titled as Pankaj Garg v. State (Govt. of NCT of Delhi) & Anr. dated 13.10.2015 in Crl. M.C. 4239/2015 is to the similar effect and it is also significant that in this case the condonation of delay by the revisional Court for taking up the matter by the Court which has jurisdiction to continue with the proceedings in terms of the Court which has jurisdiction to continue with the proceedings in terms of the amended Section 142 of the Negotiable Instruments Act, 1881, was condoned. Reliance was also placed on behalf of the petitioner on the verdict of the Hon’ble Division Bench of the Kerala High Court in case titled as Binoy K. Mathew v. Godley Dev Joh, MANU/KE/1573/2015: 2015(4) Civil Court Cases 016 (Kerala (DB) whereby also it was directed that the complaints were allowed to be presented in the respective Courts where they were originally filed in view of the amendment.



22. *The submissions made thus on behalf of the respondents No. 2 to 4 qua the aspect of non-retrospective applicability of the amended provision of The Negotiable Instruments Act, 1881 cannot be accepted in view of the verdict of this Court in Pankaj Garg (Supra) and in view of the verdict of the Hon'ble Apex Court in case titled as Bridgestone India Pvt. Ltd. (Supra). Thus in view of the retrospective applicability of the provisions of Section 142(2) of The Negotiable Instruments Act, 1881 in view of the Negotiable Instruments (Amendment) Act, 2015, the delay in filing the application for restoration/revival before the MM concerned in the South East District, Delhi is condoned to avoid failure of justice."*

14. The reliance placed by the petitioner on the judgment of the High Court of Chhattisgarh in M/s A.K.R. Transport v. M/s Kamakshi Shipping, 2015 SCC OnLine Chh 177, is misplaced as the said judgment was delivered prior to the judgment of the Supreme Court in Bridgestone India Private Limited (supra).

15. In the present case, the learned ASJ has correctly placed reliance on the judgment in Pankaj Garg (supra) to hold that the complaint filed by the respondent no.1 herein had to be taken as pending before the Trial Court in light of the retrospective operation of the aforesaid Ordinance. Further, the explanation given by the respondent no.1 in not taking back the complaint and not filing the same before the courts in Mumbai was accepted and the delay in filing the restoration application was correctly allowed.

16. In view of the discussion above, there is no infirmity in the impugned order passed by the learned ASJ.

17. The present petition is dismissed.

AMIT BANSAL, J.

SEPTEMBER 19, 2023/rt

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