

M/S BRIDGESTONE INDIA PVT. LTD

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v.

INDERPAL SINGH

(Criminal Appeal No.1557 of 2015 etc.)

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NOVEMBER 24, 2015

[JAGDISH SINGH KHEHAR AND R. BANUMATHI, JJ.]

Negotiable Instruments Act, 1881:

ss. 138, 142 and 142A – Proceedings u/s. 138 – Territorial jurisdiction for – Held: s. 142(2)(a) as amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015 vests jurisdiction for initiating the proceedings in the court where the cheque is delivered for collection, where the payee/holder of cheque maintains an account – Jurisdiction – Territorial jurisdiction.

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s. 142A – Vis-a-vis provisions of Cr.P.C. – Overriding effect of – Held: In view of non-obstante clause in sub section (1) of s. 142A provisions of Cr.P.C. would have to give way to the provisions of the Act, on the issue of jurisdiction.

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Allowing the appeals, the Court

HELD: 1. Section 142(2)(a) of Negotiable Instruments Act, 1881 amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence u/s. 138 of the 1881 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). [Para 12] [162-D-E]

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2. Insofar as the offence u/s. 138 is concerned, on the issue of jurisdiction, the provisions of the Code of

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- A 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 u/s. 138 Act is concerned. Thus, 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. [Paras 11 and 12] [161-H; 162-A-B, F]

3. In the present case, since cheque drawn on the Bank at Chandigarh, was presented for encashment at the Bank at Indore, which intimated its dishonor to the appellant, the Judicial Magistrate, at Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant u/s. 138 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. [Para 13] [162-G-H; 163-A-B]

- F **Dashrath Rupsingh Rathod v. State of Maharashtra and Anr. (2014) 9 SCC 129 – held inapplicable.*

Case Law Reference

- G (2014) 9 SCC 129 held inapplicable Para 9
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1557 of 2015.

- H From the Judgment and Order dated 05.05.2011 of the High Court of Madhya Pradesh at Indore in M. Cr. C Mp. 2677 of 2010

WITH

Crl. A. Nos. 1562, 1563 and 1564 of 2015.

Wills Mathews, M. P. Upadhyay, Ginesh P., Devendra Kumar Tiwari, P. George Giri for the Appellant.

S. K. Verma for the Respondent.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. Criminal Appeal No.1557 of 2015 (Arising out of SLP(Crl.)No.7850 of 2011)

1. Leave granted.

2. Despite service, no one has entered appearance on behalf of the respondent.

3. A cheque No.1950, drawn on the Union Bank of India, Chandigarh, was issued by Inderpal Singh (the respondent herein) to the appellant – M/s Bridgestone India Pvt.Ltd. The cheque was in the sum of Rs.26,958/-. The appellant – M/s Bridgestone India Pvt.Ltd. presented the above cheque at the IDBI Bank in Indore. The appellant received intimation of its being dishonoured on account of "...exceeds arrangement..." on 04.08.2006 at Indore.

4. The appellant issued a legal notice on 26.08.2006, which was served on the respondent – Inderpal Singh on 06.09.2006, demanding the amount depicted in the cheque. The appellant informed the respondent, that he would be compelled to initiate proceedings under Section 138 of the Negotiable Instruments Act, 1881, if payment was not made by the respondent within 15 days from the date of receipt of the legal notice.

5. Consequent upon the issuance of the aforementioned legal notice wherein the respondent was required to reimburse the cheque amount to the appellant, and the respondent having failed to discharge his obligation, proceedings were initiated

A by the appellant on 13.10.2006 in the Court of the Judicial Magistrate, First Class, Indore, under Section 138 of the Negotiable Instruments Act, 1881.

B 6. The accused-respondent - Inderpal Singh, preferred an application before the Judicial Magistrate, First Class, Indore, Madhya Pradesh, under Section 177 of the Criminal Procedure Code, contesting the territorial jurisdiction with respect to the above cheque drawn on the Union Bank of India, Chandigarh. The prayer made by the respondent, that the C Judicial Magistrate, First Class, Indore, did not have the jurisdiction to entertain the proceedings initiated by the appellant – M/s Bridgestone Indian Pvt.Ltd. was declined on 02.06.2009. The Judicial Magistrate, First Class, Indore, relied on the judgment rendered by this Court in K.Bhaskaran vs. D Sankaran Vaidhyan Balan and another, AIR 1999 SC 3762, to record a finding in favour of the appellant. Dissatisfied with the order passed by the Judicial Magistrate, First Class, Indore, dated 02.06.2009, the respondent-Inderpal Singh preferred a petition under Section 482 of the Criminal Procedure Code, E in the High Court of Madhya Pradesh before its Indore Bench. Having examined the controversy in hand and keeping in mind the fact, that a number of documents were presented by the respondent – Inderpal Singh during the course of hearing before the High Court, by an order dated 03.12.2009, the F petition filed by the accused-respondent was disposed of, by remitting the case to the Judicial Magistrate, First Class, Indore, requiring him to pass a fresh order after taking into consideration the additional documents relied upon, and the judgments cited before the High Court.

G 7. The Judicial Magistrate, First Class, Indore, yet again, by an order dated 11.01.2010 held, that he had the territorial jurisdiction to adjudicate upon the controversy raised by the appellant – M/s Bridgestone India Pvt.Ltd. under Section 138 H of the Negotiable Instruments Act, 1881. The decision rendered

by the Judicial Magistrate, First Class, Indore, was again assailed by the accused-respondent in yet another petition filed by him under Section 482 of the Criminal Procedure Code, in the High Court of Madhya Pradesh before its Indore Bench. The High Court accepted the prayer made by the accused-respondent - Inderpal Singh by holding, that the jurisdiction lay only before the Court wherein the original drawee bank was located, namely, at Chandigarh, where-from the accused-respondent had issued the concerned cheque bearing No.1950, drawn on the Union Bank of India, Chandigarh.

8. Dissatisfied with the order passed by the High Court of Madhya Pradesh, dated 05.05.2011, the appellant has approached this Court through the instant appeal.

9. During the course of hearing, learned counsel for the appellant cited the decision rendered by a three-Judge Bench of this Court in Dashrath Rupsingh Rathod vs. State of Maharashtra and another, (2014) 9 SCC 129, and pointedly invited our attention to the conclusions drawn by this Court in paragraph 58, which is extracted hereunder:

"58. To sum up:

58.1 An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

58.2 Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee

- A or holder under clause (c) of proviso to Section 138.
- 58.3 The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if
- B (a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.
- C (b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque, and
- (c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.
- D 58.4 The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.
- E 58.5 The proviso to Section 138 simply postpones/ defers institution of criminal proceedings and taking of cognizance by the court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.
- F 58.6 Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.
- G 58.7 The general rule stipulated under Section 177 CrPC applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with
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other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.” A

In view of the decision rendered by this Court in Dashrath Rupsingh Rathod’s case, it is apparent, that the impugned order dated 05.05.2011, passed by the High Court of Madhya Pradesh, Bench at Indore, was wholly justified. B

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: C
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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:- G

(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 H

A 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 (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.

C *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.”

D 4. In the principal Act, after section 142, the following section shall be inserted, namely:-

E 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.

F (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

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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. A

(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.” B C D

(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. E F

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 H

- A 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.

14. In the above view of the matter, the instant appeal is allowed, and the impugned order passed by the High Court of Madhya Pradesh, by its Indore Bench, dated 05.05.2011, is set aside. The parties are directed to appear before the Judicial Magistrate, First Class, Indore, on 15.01.2016. In case the complaint filed by the appellant has been returned, it shall be re-presented before the Judicial Magistrate, First Class, Indore, Madhya Pradesh, on the date of appearance indicated hereinabove.

Criminal Appeal No.1562 of 2015 (Arising out of SLP(Crl.)No.9758 of 2011), Criminal Appeal No.1563 of 2015 (Arising out of SLP(Crl.) No. 10019 of 2011) and Criminal Appeal No.1564 of 2015 (Arising out of SLP(Crl.)No.10020 of 2011)

1. Leave granted.

2. Despite service, no one has entered appearance on behalf of the respondent.

3. Learned counsel for the appellant states, that the controversy raised in the instant appeals is identical to the one adjudicated upon by this Court in Criminal Appeal No.1557 of 2015 (Arising out of SLP(Crl.)No.7850 of 2011)[M/s Bridgestone India Pvt.Ltd. vs. Inderpal Singh] on 24.11.2015. The instant appeals are accordingly allowed in terms of the order passed by this Court in in Criminal Appeal No.1557 of 2015 [M/s Bridgestone India Pvt.Ltd. vs. Inderpal Singh] on 24.11.2015.