(2016) 04 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : CRM-M No. 32689, 326690, 32691, 32692, 32693, 32694, 32695 and 32696 of 2014

M/s. Rakesh Oswal Hosiery Mills Pvt. Ltd. — APPELLANT

Vs

M/s. Jain Rubber and Foam Mills and others — RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 177, 182(1)
Negotiable Instruments Act, 1881 (NI) — Section 142

Citation : (2016) 4 BC 344 : (2017) 1 CivCC 177 : (2016) 4 CriCC 597 : (2017) 1 DCR 168 : (2017) 1 NIJ 223 : (2016) 3 RCRCivil 214 : (2016) 3 RCRCriminal 235

Hon'ble Judges : Fateh Deep Singh, J.

Bench : Single Bench

Advocate : Namit Gautam, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Fateh Deep Singh, J. - In all the petitions detailed above, since common questions of law and facts have arisen and thus necessitates, for the sake of curbing prolixity, to dispose them off through a common judgment. It is clarified that the facts in the present findings have been extracted out of CRM-M No.32689 of 2014.

2. In this petition preferred under Section 482 Cr.P.C., the petitioner M/s Rakesh Oswal Hosiery Mills Private Limited (in short `the petitioner'') who also happens to be the complainant before the Court of learned Judicial Magistrate 1st Class, Ludhiana, has sought quashment of an order dated 04.09.2014 (Annexure P1) passed by the learned Magistrate, Ludhiana in criminal complaint No.52307/2013 dated 17.08.2013 preferred under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, `the Act''). In all, eight separate complaints were filed by the complainant/petitioner against the respondents.

3. It is the case of the complainant that on account of business transactions

between the petitioners and the respondents, the complainant had been supplying goods through various invoices detailed in the complaint and in all till last invoice dated 22.07.2008 had supplied goods worth RS. 90,80,827 out of which only RS. 52,53,530 were paid and in respect of the remaining amount and in acknowledgement of these dues it is alleged that the respondents had issued seven cheques for various amounts detailed in the complaints, all drawn on ICICI Bank, Model Town Branch, New Delhi with the assurance that the same shall be duly honoured.

4. On the assurance and representation of the respondents, the complainant alleges that he duly presented to his bankers these cheques from time to time for encashment and the same were returned back dishonoured on account of insufficiency of funds. It is thereafter, legal notices were issued and after the requisite period upon commission of offence, complaints were filed for each of these cheques.

5. It is during the course of events the learned Judicial Magistrate 1st Class, Ludhiana passed impugned orders (Annexure P1) and relying upon `Dashrath Rup Singh Rathod v. State of Maharashtra and another'' 2014(3) RCR (Criminal) 904, had directed the complainant to present the complaint along with documents within 30 days before the Court of competent jurisdiction. Precisely, it is over these very findings the petitioner has knocked at the doors of this Court.

6. Heard Mr. Namit Gautam, Advocate for the petitioner and in spite of notice having been served none has put in appearance on behalf of the respondents.

7. As has been contended by learned counsel for the petitioner, the Legislature vide Act of Parliament passed on 29.12.2015 had brought about The Negotiable Instruments (Amendment) Act, 2015 which is deemed to have come into force on 15.06.2015 whereby, by virtue of amendment earlier issued through ordinance, provisions of Section 142A were added to the Act, which read as follows:

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 subsection (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 subsection (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."

8. By virtue of amendment to Section 142 of the Act, following provisions have been incorporated:

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:-

"(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."

9. On bare perusal of these provisions, it is emphatically clear that where a cheque is delivered for collection through an account, the place of suing shall be the Court within whose local jurisdiction the branch of the Bank where the payee or holder in due course, as the case may be, maintains the account, is situated.

10. It is the case of the complainant that the cheques in question were submitted for encashment by the Branch of ICICI Bank, Ludhiana and therefore by virtue of these provisions, the Court having jurisdiction over the place at Ludhiana would be competent to try and decide the present matter.

11. Thus, it ensues that being a procedural law, a change in the law of procedure operates retrospectively and unlike the law relating to vesting right is not only

prospective and thus to the mind of this Court the same lays down a rule of procedure, it ordinarily affects pending actions and it ought to have a retrospective effect as well. Thus, it is very well clear as to the very applicability of this amendment to the cases before this Court. Furthermore, the Hon''ble Supreme Court in a subsequent view reported in 2016(1) RCR (Civil) 320 in the case of `Bridgestone India Private Limited v. Inderpal Singh'', considering the ratios laid down in Dashrath Rup Singh Rathod''s case (supra) have clearly held that once the cause of action accrues to the complainant, jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured and precisely this is what has transpired in the present case. Even the very provisions of Section 177 Cr.P.C. read with Sections 182(1), 184 and 220(1) comes to the aid of the petitioner in this manner. Thus, the courts at Ludhiana would be the place having territorial jurisdiction to try these matters.

12. Thus, in the totality of the same, the impugned order passed by the Court below cannot sustain and is as such set aside holding that the courts at Ludhiana shall have the jurisdiction to entertain and try all these complaints as per law. Keeping in view the provisions of Section 142A(3) of the Act, there being a number of criminal complaints between the petitioner and the respondents arising out of different cheques during the same course of business transactions, it be ensured that all these matters are entrusted to one and the same Court as it will not only facilitate easy disposal but uniformity as well. Thus, all these matters are ordered to be sent to the Court of learned Chief Judicial Magistrate, Ludhiana who may either try these matters himself or entrust the same to one and the same Court under his jurisdiction.

13. In the light of what has been discussed above, all these petitions are thus allowed in those terms.

