

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MMO No. 223 of 2014.**

**Date of Decision : 18<sup>th</sup> August, 2015.**

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M/s Mahindra and Mahindra

**.....Petitioner.**

**Versus**

Vikram Singh

**.....Respondent.**

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**Coram**

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? Yes.

**For the Petitioner:** Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi, Advocate.

**For the Respondent:** Mr. Rajiv Rai, Advocate.

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**Sureshwar Thakur, Judge (Oral)**

The instant petition is directed against the impugned order rendered on 22<sup>nd</sup> August, 2014 by the learned Additional Chief Judicial Magistrate, Court No.2, Shimla in Case No.3752-3 of 2014, whereby, he ordered for the returning of the complaint to the complainant/petitioner on the ground that the Criminal Court of competent jurisdiction within whose territorial limits, the bank where the cheque issued by the respondent/accused to the petitioner herein was sent for clearance is located, is vested with the jurisdiction to entertain, besides adjudicate upon it. The aforesaid conclusion qua the non-maintainability of the complaint

instituted before it by the petitioner/complainant on the score of its lacking territorial jurisdiction, the learned Additional Chief Judicial Magistrate, Court No.2, Shimla has committed infraction of the mandate of the judgment of the Bombay High Court reported in **Mr. Ramanbhai Mathurbhai Patel vs. State of Maharashtra and another, Criminal Writ Petition No. 2362 of 2014, decided on 25<sup>th</sup> August, 2014** as well as of the mandate of the amended sub section 2(a) of Section 142 of the Negotiable Instruments Act and of Section 142A (1) of the Negotiable Instruments Act, whose provisions stand extracted hereinafter and which amended provisions mandate that the location of the bank where a negotiable instrument is delivered for collection through an account and wherein the payee maintains his/its account would be the necessary parameter besides the apt determinant for forming a conclusion qua the jurisdiction of the Court to entertain besides adjudicate upon a complaint arising from dishonour of negotiable instrument,. In other words, the location of the bank where the payee holds his account and presents the negotiable instrument for collection through account would vest, constitute or clothe jurisdiction in the court within whose territorial limits the bank aforesaid is situated. The provisions of amended sub

Section (2)(a) of Section 142 and Section 142A of the Negotiable Instruments Act read as under:-

“142 (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

142A. (I) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any judgment decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the Court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.”

Since, the provisions engrafted in Section 142A(1) of the Negotiable Instruments Act contemplate that all cases arising out of Section 138 thereof as pending in any Court, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall stand transferred to the Court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times. Obviously, then with the provisions of amended sub Section (2) (a) of Section 142 of the Negotiable Instruments Act having been given retrospectivity in operation, they bring within the amplitude, domain as well as within the ambit thereof, the instant complaint which though instituted in November, 2013, yet when in

consonance with the diktat of Section 142A (1) of the Negotiable Instruments Act, it was pending in the Court of the learned Additional Chief Judicial Magistrate, Court No.2, Shimla, renders it hence amenable to be governed by the principles enunciated in Section 142(2)(a) of the Negotiable Instruments Act for determining on its anwill the jurisdictional competence of the Court aforesaid to entertain, try and adjudicate the instant complaint. With satiation of the principles of Section 142A(1) of the Negotiable Instruments Act envisaging the applicability of the provisions of Section 142(2)(a) of the aforesaid Act, to all cases arising out of Section 138 of the Act aforesaid as pending in any Court whether filed before it or transferred to it before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 being triable by the Court having jurisdiction within the parameters enshrined in Section 142(2)(a) of the Act aforesaid, having stood begotten, comprised in the pendency at the apposite stage of the instant complaint before the learned Additional Chief Judicial Magistrate, Court No.2, Shimla even though instituted prior to coming into being on the statute book of Section 142(2)(a) of the Negotiable Instruments Act renders, hence, the Court of the Additional Chief Judicial Magistrate, Court

No.2, Shimla, with jurisdictional competence to try the offence arising out of dishonour of negotiable instrument. As a concomitant then the provisions of amended sub section (2) of section 142 of the Negotiable Instruments Act acquire force or are to be construed to be invocable for bestowing jurisdiction for reasons assigned hereinafter, upon the Court of the learned Additional Chief Judicial Magistrate, Court No.2, Shimla to entertain, besides adjudicate upon the complaint instituted before it by the complainant/petitioner herein, arising from dishonour of the negotiable instrument issued to it by the respondent/accused. However, before proceeding to formidably conclude whether the Court of the learned Additional Chief Judicial Magistrate, Shimla had the requisite jurisdiction to entertain, besides adjudicate upon the complaint instituted before it by the petitioner herein/complainant, it is imperative to determine whether the parameter enshrined in Section 142(2)(a) of the Negotiable Instruments Act has stood satiation. In concluding whether satiation of the principles enunciated in Section 142(2)(a) of the aforesaid Act for, hence, bestowing jurisdiction upon the learned Additional Chief Judicial Magistrate, Court No.2, Shimla to entertain besides adjudicate upon the complaint instituted before it

by the petitioner, has been begotten, the uncontroverted factum of the petitioner herein maintaining, while its being payee or holder in due course of the dishonoured negotiable instrument, its account at State Bank of India, Boileauganj Branch, Shimla gains significance. With material on record portraying the palpable fact of the petitioner herein maintaining, while its being payee or holder in due course of the dishonoured negotiable instrument, its account at State Bank of India, Boileauganj, Shimla, whereto he presented the negotiable instrument for collection through account, necessarily then the parameter enunciated in Section 142(2)(a) of the Negotiable Instruments Act, of the Court within whose territorial limits the branch of the bank where the payee or holder in due course of the dishonoured negotiable instrument maintains his/its account and whereto presents it for collection through account, is situated being clothed, vested or enjoying jurisdiction to entertain, besides adjudicate upon the complaint preferred before it by the petitioner herein, stands satiated. As a corollary then with the State Bank of India, Boileauganj Branch, Shimla where the petitioner herein while its being payee or holder in due course of the dishonoured negotiable instrument is maintaining its account and whereto it had proceeded to present

the negotiable instrument for collection through account, being located within the territorial limits of the Court of the learned Additional Chief Judicial Magistrate, Court No.2, Shimla, the latter court enjoyed besides stood clothed with jurisdiction to entertain besides adjudicate upon the complaint instituted before it by the petitioner herein. The petitioner herein was maintaining while its being payee or holder in due course of the negotiable instrument its account at State Bank of India, Boileauganj, Shimla, whereto it presented the cheque, handedover to it by the respondent/accused for encashment which came to be routed by the former bank for collection to PNB, Shimla wherefrom it was transmitted to PNB, Rani Kotla Branch, Bilaspur, where the respondent/accused held/maintained his account, obviously, for reiteration then when the location of the State Bank of India, Boileauganj Branch, Shimla, wherein the petitioner herein maintained while its being payee or holder in due course of the negotiable instrument , its account, is within the territorial limits of the jurisdiction of the learned Additional Chief Judicial Magistrate, Court No.2, Shimla, hence, vests the latter Court with jurisdictional competence to receive and adjudicate upon the complaint as instituted before him arising from the dishonour of negotiable instrument issued in its favour by the

respondent/accused. The mere fact that the dishonoured negotiable instrument was sent for collection by SBI, Boileauganj Branch, Shimla to PNB, Branch Office Shimla wherefrom it was transmitted to Punjab National Bank, Rani Kotla, Bilaspur would not per se tantamount to a conclusion as erroneously formed by the learned Additional Chief Judicial Magistrate, Court No.2, Shimla, on a gross misinterpretation of the apposite statutory provisions of the aforesaid Act, that hence, the Judicial Magistrate within whose territorial limits the aforesaid drawee bank was located is vested with jurisdiction to entertain or adjudicate upon the complaint. While rendering the aforesaid pronouncements, the learned Additional Chief Judicial Magistrate, Shimla has paid reverence to the factum of the location of the bank where the respondent/accused holds his account than to the apposite parameters as enunciated in the afore referred discussion of the Court within whose territorial limits, the bank where the payee holds or maintains his/its account and whereto it presents the negotiable instrument for collection through account being rather vested with jurisdiction to try the complaint arising from dishonour of negotiable instrument. The conclusion formed by the learned Additional Chief Judicial Magistrate is founded upon an erroneous



interpretation of amended provisions of the sub section (2)(a) of Section 142 and of Section 142A(1) of the Negotiable Instrument Act and of the judgment of the Bombay High Court reported in **Mr. Ramambhai's case supra**. The pronouncement at page 16-A of the paper book that the Punjab National Bank, Branch Office, Shimla rather conveyed besides communicated to SBI, Boileauganj Branch, Shimla, the bank where the petitioner/complainant maintains its account that the cheque transmitted to it by the latter bank stands returned for insufficient funds in the account held by the respondent/accused at PNB, Rani Kotla Branch, Bilaspur, was also a potent factor to have been borne in mind by the learned Additional Chief Judicial Magistrate, Shimla while determining whether hence the jurisdiction for the complainant being maintained at the instance of the petitioner herein vested hence with Courts at Bilaspur within whose local limits the Punjab National Bank, Rani Kotla Branch is located or whether the complaint was entertainable by the criminal court of competent jurisdiction at Shimla within whose territorial limits Punjab National Bank Shimla as well as State Bank of India, Boileauganj Branch, Shimla where the account of the petitioner is maintained, are located, especially with the latter bank having received at Shimla a

communication from the former bank that the cheque presented by the petitioner for collection of funds from the account of respondent/accused for want of sufficient funds stood dishonoured. However, the learned Additional Chief Judicial Magistrate having not paid reverence to the aforesaid imperative facts, rather having in a cursory manner on the mere fact of the negotiable instrument having been drawn at Punjab National Bank, Branch Officer, Rani Kotla, Bilaspur, has fallaciously concluded that hence the Courts within whose territorial limits the drawee bank is situated would have the jurisdiction. The error in its reasoning is apparent and it necessitates interference. Moreover, the learned Additional Chief Judicial Magistrate besides infracted the mandate of the Bomay High Court in a case reported in ***Mr. Ramanbhai Mathurbhai Patel vs. State of Maharashtra and another, Criminal Writ Petition No. 2362 of 2014, decided on 25<sup>th</sup> August, 2014*** wherein at paragraph the apposite pronouncements exist. The said paragraph stand extracted hereinafter:-

"8. It is thus clear that in the present case by issuing cheques payable at all branches, the drawer of the cheques had given an option to the banker of payee to get the cheques cleared from the nearest available branch of bank of the drawer. It, therefore, follows that the cheques have been dishonoured within the territorial jurisdiction of Court of Metropolitan Magistrate at Kurla. In view of the judgment of Hon'ble Supreme Court in the

matter of Dashrath v. State of Maharashtra (Cr. Appeal No.2287 of 2009), the learned Metropolitan Magistrate of Kurla Court has jurisdiction to entertain and decide the complaint in question.”

The existence of a dicta in the hereinabove extracted paragraph No.8 and its conveying that the place where the cheque stands dishonoured would be the necessary parameter for determining the jurisdiction of the Criminal Court of competent jurisdiction to maintain or entertain or adjudicate upon a complaint stands extantly established. Its substantiation is meted out by the existence of a communication at page 16-A of the paper book, meted out by the Punjab National Bank, Branch Shimla to the State Bank of India, Boileauganj Branch, Shimla, where the petitioner herein maintains its account, of the cheque presented before it by the petitioner herein having stood dishonoured for insufficient funds in the account of the respondent/accused, hence, facilitating an inference that when Shimla is the place where a communication was received by the petitioner herein qua the dishonour of negotiable instrument, concomitantly then the rendition of a communication to the petitioner, at Shimla qua the fact of the negotiable instrument issued to it by the respondent/accused having stood dishonoured, constituted the aforesaid place being construable to be the location where the negotiable instrument

stood dishonoured. Consequently, the Court of the learned Additional Chief Judicial Magistrate, Court No.2, Shimla within the territorial limits of whose jurisdiction Punjab National Bank, Branch Office, Shimla where from a communication qua the dishonour of negotiable instrument emanated, is located would have the necessary jurisdiction to entertain and adjudicate upon the complaint. Accordingly, the instant petition is allowed and the impugned order of 22<sup>nd</sup> August, 2014 is quashed and set aside. The learned Additional Chief Judicial Magistrate, Court No.2, Shimla is directed to adjudicate upon the complaint instituted by the petitioner herein before him, if it is on record and in case it is returned to the complainant/petitioner herein, the same on its being re-presented by the petitioner/complainant before it be entertained and be decided in accordance with law. The parties are directed to appear before the learned Additional Chief Judicial Magistrate, Court No.2, Shimla on 2<sup>nd</sup> September, 2015. All pending applications also stand disposed of.

Dasti copy.

**18<sup>th</sup> August, 2015.**  
(jai)

**(Sureshwar Thakur)**  
**Judge.**