

(2016) 03 GUJ CK 0195

In the Gujarat High Court

Case No : Criminal Misc. Application No. 13062 of 2011

Brijendra Enterprise and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, Section 182(1), Section 184, Section 220, Section 220(1), Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, Section 142, Section 142(2), Section 142(2)(a), Section 142(2)(b), S

Citation : (2016) 03 GUJ CK 0195

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Bipin I. Mehta and Vicky B. Mehta, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants - original accused persons seek to invoke the inherent powers of this Court, praying for quashing of the proceedings of the Criminal Case No. 8758 of 2009 filed in the Court of the learned Metropolitan Magistrate (Negotiable Instruments Act), Court No. 7, Ahmedabad. They have also prayed to quash the order dated 3rd April 2010 passed below application Exh.3, by which the learned Magistrate recorded a finding that it had the territorial jurisdiction to proceed with the case. The applicant no. 1 is a proprietary concern of which the applicant no. 2 is the proprietor.

2. The facts of this case may be summarised as under:

"The respondent no. 2, a company registered under the provisions of the Companies Act, 1956, filed a private complaint No. 8758 of 2009 in the Court of the learned Metropolitan Magistrate (Negotiable Instruments Act), Court No. 7, Ahmedabad, for dishonour of the cheque punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act")."

3. It the case of the respondent no. 2 that it had business relations with the accused. The accused had been purchasing the goods from them as ordered. The accused issued a cheque bearing No. 064039 dated 4th June 2009 drawn on the Union Bank of India for the amount of Rs. 15,21,741=00 duly signed by him as the proprietor of the proprietary concern.

4. The cheque was drawn by the accused no. 2 of the account maintained by him with the Union Bank of India, Badalapur, District Jaunpur, State of Uttar Pradesh. The complainant deposited the cheque with the ICICI Bank Limited, Gorakhpur Branch, Gorakhpur, State of Uttar Pradesh. The cheque was dishonoured as the funds were insufficient in the account maintained by the complainant with the Union Bank of India. The complainant issued a statutory notice under Section 138 of the Act dated 6th July 2009. As the complainant failed to make the payment with the statutory time period, the complaint was lodged. The learned Magistrate took cognizance upon the said complaint.

5. It appears that the accused herein filed an application Exh.3, stating therein that as the entire transaction had taken place in the State of Uttar Pradesh, the Court at Ahmedabad had no territorial jurisdiction to entertain the complaint for the dishonour of the cheque although the registered office of the complainant is situated in Ahmedabad.

6. The learned Magistrate, by order dated 3rd April 2010, rejected the application. Hence, this petition.

7. On 19th September 2011, this Court passed the following order:

"Notice to the Respondents returnable on 10.10.2011.

Learned APP Mr. K.P. Raval waives service of Notice for Respondent No. 1 - State of Gujarat.

Ad interim relief in terms of paragraph 7(C) is granted till then."

8. Mr. Bipin Mehta, the learned advocate appearing for the applicants, vehemently submitted that when the entire transaction took place at Uttar Pradesh, the complaint could not have been filed by the complainant in Ahmedabad on the premise that it has its registered office at Ahmedabad. He submitted that no cause of action could be said to have arisen within the territorial limits of the learned Metropolitan Magistrate, Ahmedabad. In such circumstances, he prays that the order passed by the learned Magistrate below application Exh.3 be quashed and the complaint be returned to the complainant to be filed before the appropriate Court in the State of Uttar Pradesh.

9. On the other hand, this application has been vehemently opposed by Mr. Gaurav Mathur, the learned counsel appearing for the respondent no. 2 - original complainant.

10. Mr. Mathur invited my attention to the affidavit-in-reply filed on behalf of the complainant, inter alia, stating that:

"3. The contents of paragraph nos.1 and 2 are formal in nature and do not warrant any comments.

4. With reference to the contents of paragraph nos. 3.1 to 3.6, I submit that the place at which the Petitioners are carrying on business is not relevant for the purpose of determining jurisdiction for legal proceedings, more particularly, proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). It is denied that the Petitioner has no business dealings with the Answering Respondent at its Ahmedabad office. I say that the Petitioner has purchased goods manufactured by the Answering Respondent. The order for the goods delivered are processed at Ahmedabad office. The Answering Respondent in turns maintains a current and running account of the purchasers, in the present case, the Petitioners herein. The Invoices issued for the goods dispatched were subject to Ahmedabad Jurisdiction. Copy of a sample invoices dt. 12.02.09 & 05.03.09 in respect of the Petitioners are annexed hereto and marked Annexure - A (Colly). The Petitioners have issued the subject cheques in discharge of their obligation to make payment for the goods purchased. The said payment is payable at Ahmedabad.

5. I submit that since the Answering Respondent undertakes numerous transactions all across India, the Answering Respondent has entered into a CMS (Cash Management Service) agreement with its bankers, ICICI Bank Limited. In the said system, a centralised pooling account is created at Ahmedabad. Cheques received by the Answering Respondent at any place in India can be deposited in any ICICI Bank Ltd. branch in India and the credit thereof is made available at the Central Pooling Account in Ahmedabad. Such a system has been worked out in order to simplify the banking transactions of large corporations and obviate delay in realizing payments. In the facts of the present case. the subject cheque, though deposited, the credit of dishonour cheque was to be given to the centralised pooling account of the Answering Respondent at Ahmedabad. On account of its dishonour, the intimation thereof was given by the ICICI Bank Limited, JMC House, Ahmedabad branch to the Answering Respondent at its Ahmedabad office. A certificate dated 26.12.2011 issued by the ICICI Bank Limited, Ahmedabad to this effect is annexed hereto and marked Annexure-B. I state that the notice u/s 138 of the Act was issued to the Petitioners from Ahmedabad. As such necessary ingredients for instituting proceedings u/s 138 of the Act at Ahmedabad are fulfilled and the Criminal Case No. 8758 of 2009 is rightly instituted before the court of Ld. Metropolitan Magistrate, Court No. 7 at Ahmedabad.

6. I, however, deny that the Answering Respondent is required to prove that the said cheque was issued in discharge of a legal liability, as alleged or at all. I submit that once a cheque is issued, it is presumed to be issued in discharge of a debt. The onus to prove to the contrary is on the issuer of the cheque. In any case, the Complainants have not denied the fact that they have purchased goods from the Answering Respondent and issued the subject cheque for payment of

the price of goods.

7. With reference to the contents of Grounds (A) to (H), I deny that the impugned FIR is an abuse of the process or an attempt to harass the Petitioners, as alleged or at all. It is not open to the Petitioners, having not paid the price of goods, to allege harassment. I deny that the impugned complaint is unsustainable or that the Ld. Magistrate did not have jurisdiction to try the case, as alleged or at all. I deny that the Petitioners' place of residence or business or place of handing over the cheque is relevant for deciding the territorial jurisdiction for a complaint under Section 138 of the Act. The Petitioners have admitted that one of the vital elements for deciding jurisdiction i.e. place from which notice is issued is at Ahmedabad. I deny that the case of Harman Electronics is applicable to the facts of the present case. In the facts of that case, it was not known where the intimation of dishonour of cheque is received. On the contrary, in the facts of the present case, it is clear that the notice of intimation of dishonour of cheque was received at Ahmedabad. It is denied that the complaint is general or vague or does not create an offence under Section 138 of the Act. The offence was created pursuant to non-payment of the amount of dishonoured cheque pursuant to the Notice dated 6.7.2009 issued under Section 138 of the Act. It is denied that the Complaint suffers from the vice of nondisclosure or is vitiated, as alleged or at all. I y that the complainant requires to plead or prove as to pursuant to which business deal or order is the dishonoured cheque issued, as alleged or at all. I deny that the impugned Complaint and Order dated 8.9.2009 issuing summons deserve to be quashed and set aside. I submit that the contentions "raised in the said Petition are nothing but an after thought, raised only to avoid the proceedings instituted under provisions of the Act."

11. Thus, it appears from the stance of the complainant that it had entered into a cash management service agreement with its banker i.e. ICICI Bank Limited. In the said system, a centralized pooling account is created at Ahmedabad. The cheques received by the complainant at any place in India could be deposited in any branch of the ICICI Bank Limited in India and the credit thereof would be given at the centralized pooling account in Ahmedabad.

12. Mr. Mathur, the learned counsel appearing for the complainant submitted that such system has been introduced with a view to simplify the banking transactions of large corporations. It would obviate the delay in realizing payments. He submitted that although the cheque was handed over by the accused in the State of Uttar Pradesh and deposited also in the ICICI Bank at Uttar Pradesh, yet the credit of the dishonoured cheque was to be given to the centralized pooling account of the company at Ahmedabad. He submitted that the intimation of dishonour was given by the ICICI Bank Limited having its office at the JMC House, Ahmedabad.

13. In such circumstances referred to above, according to Mr. Mathur, since the intimation of the dishonour of the cheque was received by the complainant from

the ICICI Bank Limited situated in Ahmedabad, the complaint is maintainable in the Court of the learned Metropolitan Magistrate, Ahmedabad.

14. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the Court of the learned Metropolitan Magistrate, Ahmedabad, has the territorial jurisdiction to try the offence of dishonour of cheque, punishable under Section 138 of the Act.

15. This matter is of the year 2011. The same will have to be now considered keeping in mind the Negotiable Instruments (Amendment) Act, 2015.

16. The President of India promulgated an Ordinance called, the "Negotiable Instruments (Amendment) Ordinance, 2015", on 15th June 2015, effecting certain amendments in the Negotiable Instruments Act, 1881. The jurisdiction to file complaints of dishonour of cheques has now been changed by virtue of the said Ordinance, superseding the judgment of the Supreme Court in the case of *Dashrath Rupsingh Rathod v. State of Maharashtra*, , (2014) 9 SCC 129. A complaint for the dishonour of cheque under Section 138 of the Act needs to be now filed in a Court at a place in accordance with the provisions of Section 142(2) of the Act, which has been inserted by the new Ordinance referred to above. According to the new Ordinance, even the pending cases would stand transferred to the Courts.

17. In *Dashrath Rupsingh Rathod* (supra), a three Judge bench of the Supreme Court took the view that a complaint for dishonour of cheque can be filed only in a Court which has the territorial jurisdiction over the place where the cheque is dishonoured by the bank on which it is drawn. Thus, if a cheque is drawn by a person of the account maintained with his bank at Ahmedabad, the complaint for dishonour in respect of such cheque could be filed only in a Court at Ahmedabad within whose territorial jurisdiction the said bank is located. According to the decision of the Supreme Court, such a case cannot be filed in any other Court at any other place. For example, if "X" is the payee of the cheque and if he presents a cheque for clearing at Vadodara, it cannot be filed at Vadodara. The judgment of the Supreme Court proceeded on the footing that the payee of a cheque should not necessarily harass the drawer of the cheque by filing complaint for dishonour at the place of his choice by deliberately choosing a different place for presenting the cheque or for sending the notice, etc. The above was the position according to the decision of the Supreme Court.

18. It appears that the Legislature took notice of the difficulties experienced by the people at large and, therefore, thought fit to introduce the amendment by way of an Ordinance in the Act itself.

19. The Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) was promulgated by the President of India further to amend the Negotiable Instruments Act. The Ordinance was published in the Gazette, dated 15th June 2015. As per the Ordinance, sub-section (2) of Section 142 of the Negotiable

Instruments Act was inserted, which reads as follows:

"(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."

20. By the said Ordinance, Section 142A was inserted in the Principal Act. Section 142A reads as follows:

"142A.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 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.

(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 subsection (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) Ordinance, 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 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

21. The Negotiable Instruments (Amendment) Ordinance, 2015 (Ordinance 6 of 2015) came to be replaced with the Negotiable Instruments (Amendment) Bill, 2015. The Negotiable Instruments (Amendment) Bill, 2015, inter alia, provides for the following, namely:

"(i) cases relating to dishonor of cheques under section 138 of the said Act to be inquired and tried only by a court within whose local jurisdiction the branch of the bank, where the payee or the holder in due course maintains the account, is situated;

(ii) cases under section 138 pending in any court before the commencement of the proposed legislation to be transferred to the court in accordance with the new scheme of jurisdiction for such cases as proposed under sub-section (2) of section 142;

(iii) where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of section 138 of the said Act against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court;

(iv) where, if more than one prosecution filed by the same payee or holder in due course against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case of the court having jurisdiction as per the new scheme of jurisdiction proposed under sub-section (2) of section 142; and

(v) amending Explanation I under section 6 of the said Act which relates to the meaning of expression "a cheque in the electronic form", as the said meaning is found to be deficient because it presumes drawing of a physical cheque, which is not the objective in preparing "a cheque in the electronic form" and therefore, inserting a new Explanation III in the said section giving reference of the expressions contained in the Information Technology Act, 2000."

22. The (Amendment) Act, 2015, provides as under:

"5. (1) The Negotiable Instruments (Amendment) Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act."

23. In view of the amendment, a complaint for dishonour of cheque under Section 138 of the Act can be now filed only in the Court situated at the place where the bank, in which the payee has account, is located.

24. Let me give an example to understand the jurisdiction according to the amendment:

"(1) "A" holds an account with the Navrangpura Branch, Ahmedabad, of "XYZ" Bank, issues a cheque payable at par in favour of "B". "B" holds an account with the M.S. University Road Branch, Vadodara, of the "PQR" Bank, deposits the said cheque at the Surat Branch of the "PQR" Bank and the cheque is dishonoured. The complaint will have to be filed before the Court having the local jurisdiction where the M.S. University Road Branch, Vadodara, of the "PQR" Bank is situated.

(2) "A" holds an account with the Navranpura Branch, Ahmedabad, of "XYZ" Bank, issues a cheque payable at par in favour of "B". "B" presents the said cheque at the Vadodara Branch of the "XYZ" Bank (but "B" does not hold account in any branch of the "XYZ" Bank) and the cheque is dishonoured. The complaint will have to be filed before the Court having the local jurisdiction where the Navrangpura Branch, Ahmedabad, of the "XYZ" Bank is situated."

25. Therefore, to summarise, first, when the cheque is delivered for collection through an account, the complaint is to be filed before the Court where the branch of the bank is situated, where the payee or the holder in due course maintains his account and, secondly, when the cheque is presented for payment over the counter, the complaint is to be filed before the Court where the drawer maintains his account.

26. Secondly, once a complaint for dishonour of the cheque is filed in one particular Court at a particular place, then later on if there is any other cheque of the same party (drawer) which has also dishonoured, then all such subsequent complaints for dishonour of the cheques against the same drawer will also have to be filed in the same Court (even if the person presents them in some bank in some other city or area). This would ensure that the drawer of the cheques is not harassed by filing multiple complaints for dishonour at different places. It necessarily implies that even multiple complaints for dishonour of cheques against the same party can be filed only in one Court even though the cheques might have been presented in different banks at different places.

27. Thirdly, all criminal complaints for dishonour of cheques pending as on 15th June 2015 in different Courts in India would be transferred to the Court which has the jurisdiction to try such case in the manner mentioned above, i.e. such pending cases will stand transferred to the Court having jurisdiction over the place where the bank of the payee is located. If there are multiple complaints of dishonour pending between the same parties as on 15th June 2015, then all such complaints would be transferred to the Court having jurisdiction to try the first case.

28. To put it briefly, the (Amendment) Act takes care of the interest of the payee of the cheque while, at the same time, also takes care to see that the drawer of the multiple cheques is not harassed by filing different complaints at different locations to harass him (if more than one cheque is bounced).

29. The (Amendment) Act virtually supersedes the decision of the Supreme Court in the case of Dashrath Rupsingh Rathod (supra).

30. It is not in dispute that the accused is a resident of Badalapur, State of Uttar Pradesh. The cheque in question was issued at Uttar Pradesh. It appears that the complainant deposited the cheque with the ICICI Bank Limited, Gorakhpur Branch, Gorakhpur, Uttar Pradesh. The same was accepted by the bank without there being any account of the complainant with the same. It was dishonoured with the intimation "funds insufficient". However, as explained by the complainant, the complainant was to receive the credit of the said cheque at the centralized pooling account in Ahmedabad. Since the cheque could not be cleared, the intimation regarding the same was given by the ICICI Bank Limited, JMC House, Ahmedabad Branch, to the complainant at its address of the registered office in Ahmedabad.

31. Whatever may be the arrangement of the complainant with its banker, could it be said that the cheque was deposited in the ICICI Bank Limited at Ahmedabad i.e. the branch which actually gave intimation to the complainant regarding the dishonour of the cheque. The argument canvassed on behalf of the complainant is that since the requisite cheque amount was to be credited in the account maintained by the company with the ICICI Bank Limited at Ahmedabad and the intimation of dishonour was also by the branch of the ICICI Bank Limited at Ahmedabad, his complaint at Ahmedabad in the Court of the learned Metropolitan Magistrate is maintainable.

32. Before advertng to the rival submissions canvassed on either side, let me look into the decision of the Supreme Court in the case of *Bridgestone India Pvt. Ltd. v. Inderpal Singh*, , 2016 (2) SCC 75.

33. In the case before the Supreme Court, a cheque drawn on the Union Bank of India, Chandigarh, was issued by the respondent to the appellant. The appellant presented the cheque at the IDBI Bank in Indore. The appellant received intimation of its being dishonoured on account of "exceeds arrangement" at Indore. The appellant issued a legal notice, which was served on the respondent, demanding the amount depicted in the cheque. Ultimately, proceedings were initiated by the appellant in the Court of the learned JMFC, Indore, under Section 138 of the Negotiable Instruments Act. The respondent preferred an application before the learned JMFC, Indore, Madhya Pradesh, under Section 177 of the Code of Criminal Procedure, contesting the territorial jurisdiction with respect to the cheque drawn on the Union Bank of India, Chandigarh. The prayer made by the respondent that the learned JMFC, Indore, did not have the jurisdiction to entertain the proceedings initiated by the appellant was declined on 2nd June 2009. The respondent being dissatisfied with the order passed by the learned JMFC, Indore, preferred a petition under Section 482 of the Code in the High Court of Madhya Pradesh before its Indore Bench. The High Court remitted the case to the learned JMFC, Indore, directing him to pass a fresh order after taking into consideration some additional documents relied upon and the judgments. The learned JMFC, Indore, once again passed an order, holding that he had the territorial jurisdiction to adjudicate the controversy raised by the appellant under

Section 138 of the Act. The matter again reached to the High Court and the High Court took the view that the jurisdiction lay only before the Court wherein the original drawee bank was located, namely, at Chandigarh. The appellant, being dissatisfied with the order passed by the High Court of Madhya Pradesh, approached the Supreme Court. The Supreme Court, while allowing the appeal of the appellant and set-aside the order passed by the High Court of Madhya Pradesh, observed thus:

"[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 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

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(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.

58.4 The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

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.

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.

58.7 The general rule stipulated under Section 177 Cr.P.C. 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 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."

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.

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:

"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:-

(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."

4. 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 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.

(2) Notwithstanding anything contained in subsection (2) of section 142 or subsection (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 subsection (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 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 subsection had been in force at all material times."

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.

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 Subsection (1) thereof leaves no room for any doubt, that insofar as the offence under Section 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."

34. Thus, the decision of the Supreme Court makes it clear that the offence under Section 138 of the Act can be inquired into and tried only by a Court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated. Indisputably, in the case in hand, the cheque was collected by the complainant at Uttar Pradesh and was presented in the ICICI Bank Limited, Gorakhpur Branch, Gorakhpur, Uttar Pradesh. Thereafter, the bank acted according to the cash management service agreement as explained by me earlier.

35. The new banking system provides that the payee can present the cheque for collection in any branch of the ICICI Bank anywhere in the country without there being any account being maintained in the said branch. The branch bank which accepts the cheques will thereafter process the same, and as explained above, the credit of the requisite amounts mentioned in the cheque would be given in the centralized pooling account, i.e. like in the present case, in the centralized pooling account maintained by the complainant at Ahmedabad.

36. At this stage, it is important to look into the explanation in Section 142(2). The explanation provides that for the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or the 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 the holder in due course, as the case may be, maintains the account. For example, like in the present case, the cheque was delivered for collection at the ICICI Bank, Gorakhpur branch, Uttar Pradesh, where the complainant has no account but, by virtue of the said explanation, it is deemed to have been delivered at the ICICI Bank, JMC House Branch, Ahmedabad, where the account is maintained.

37. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in "Interpretation of Statutes" while dwelling on the various aspect of an Explanation observes as follows:

"(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute."

38. Swarup in "Legislation and Interpretation" very aptly sums up the scope and effect of an Explanation thus:

"Sometimes an explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain..... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa."

39. Bindra in "Interpretation of Statutes" (5th Edn.) at page 67 states thus:

"An explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section.... The purpose of an

explanation is, however, not to limit the scope of the main provision.... The construction of the explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An "explanation" must be interpreted according to its own tenor."

40. The principles laid down by the aforesaid authors are fully supported by various authorities of the Supreme Court. In *Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Commercial Tax Officer* (, [(1961) 1 SCR 902 : AIR 1961 SC 315]), a Constitution Bench decision of the Supreme Court observed thus:

"Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain cl. (1)(a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles."

41. In *Bihar Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar* (, (1967) 1 SCR 848 : AIR 1967 SC 389), the Supreme Court observed thus:

"The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."

42. In *Hiralal Rattanlal etc. v. State of U.P.* [(, AIR 1973 SC 1034)], the Supreme Court observed thus:

"On the basis, of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. "

43. In *Dattatraya Govind Mahajan v. State of Maharashtra* (, [(1977) 2 SCR 790: AIR 1977 SC 915]), the Supreme Court observed thus:

"It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it..... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations."

44. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

45. A deeming fiction is a supposition of law that the thing is true without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with justice. A deeming provision is made to include what is obvious or what is uncertain or to impose, for the purpose of statute, an ordinary construction of a word or phrase that would not otherwise prevail but, in each case, it would be a separate question as to that what object the Legislature has made on such a deeming fiction.

46. The word deemed is used in various senses. Sometimes, it means generally regarded. At other time, it signifies "taken prima facie to be", while in other case, it means, "taken conclusively". Its various meanings are, - "to deem" is "to hold in belief, estimation or opinion"; to judge; adjudge; decide; considered to be; to have or to be of an opinion; to esteem; to suppose, to think, decide or believe on considerations; to account, to regard; to adjudge or decide; to conclude upon consideration. (see Major Law Lexicon by P. Ramanatha Aiyar, 4th Edition 2010 Vol.2).

47. I find it difficult to accept the argument of the learned counsel appearing for the accused that the case in hand is covered by Section 142(2)(b). The argument is that as the cheque was delivered for collection at the ICICI Bank, Gorakhpur branch, Uttar Pradesh, without any account maintained in the said branch, it could be said that the cheque was presented for payment by the complainant "otherwise through an account", and if that be so, the complaint for dishonour could be filed in a Court within whose local jurisdiction the branch of the drawee bank where the drawer maintains the account, is situated. In my view, the words "otherwise through an account" would mean that the cheque is presented for payment over the counter.

48. In the case in hand, there is no question of presenting the cheque for payment over the counter because the cheque is crossed. When a cheque is crossed, the holder cannot encash it at the counter of the bank. The payment of such cheque is only credited to the bank account of the payee. A cheque is either "open" or "crossed". An open cheque can be presented by the payee to the paying banker and is paid over the counter. A crossed cheque cannot be paid across the counter but must be collected through a banker. A crossing is a

direction to the paying banker to pay the money generally to a banker or to a particular banker, and not to pay otherwise. The object of crossing is to secure payment to a banker so that it could be traced to the person receiving the amount of the cheque. Crossing is a direction to the paying banker that the cheque should be paid only to a banker or a specified banker. To restrain negotiability, addition of words "Not Negotiable" or "Account Payee Only" is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. Crossing affords security and protection to the holder of the cheque.

49. Thus, in my view, the learned Metropolitan Magistrate at Ahmedabad has the jurisdiction to try the case instituted by the complainant for the dishonour of the cheque.

50. For the aforesaid reasons, this application fails and is hereby rejected. The ad-interim relief granted earlier stands vacated forthwith.

51. The trial Court shall now proceed further with the Criminal Case and dispose it off expeditiously.