

(2010) 03 BOM CK 0062

In the Bombay High Court

Case No : Criminal Writ Petition No. 3158 of 2009

Mrs. Preetha S. Babu

APPELLANT

Vs

Voltas Limited and State of Maharashtra

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 2, 3, 72

Citation : (2010) 112 BOMLR 1314 : (2010) 2 CivCC 645 : (2010) CriLJ 2709 :
(2010) 3 MhLj 234 : (2010) 7 RCR(Criminal) 1246

Hon'ble Judges : Ranjana Desai, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : Samir Vaidya, for the Appellant; S.A. Velkar, instructed by Mulla and Mulla and C.B.C. for respondent 1 and Rajesh More, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—In this petition filed under Articles 226 and 227 of the Constitution, the petitioner has prayed for quashing and setting aside of C.C. No. 848/SS/2009 pending on the file of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. The petitioner claims to belong to District Ernakulam, Kerala. Respondent 1 - Voltas Limited is a company incorporated under the provisions of the Companies Act, 1956. The said company, inter alia, is engaged in the business of providing premier air-conditioner and engineering services.

2. On 9/5/2007, respondent 1 filed the aforesaid complaint in the Court of Metropolitan Magistrate at Ballard Pier, Mumbai (for convenience, Mumbai court") against M/s. Aswathy Enterprises, Mr. Prabath G.K. and the petitioner as partners of M/s Aswathy Enterprises. In short, it is the case of respondent 1 as stated in the complaint that the accused placed order for supply of air- conditioners with them and pursuant to the said order air- conditioners were sold, supplied and delivered as required by the accused. The air-conditioners were duly received by

the accused. According to respondent 1, invoices were raised which were duly accepted by the accused. Towards the payment and discharge of their liability, the accused issued a cheque bearing No. 417680 dated 1/3/2007 for Rs. 3,51,551/- drawn on Syndicate Bank, Angamaly Branch, Ernakulam District, Kerala. Respondent 1 presented the cheque for clearing with their bankers - Citibank, D.N. Road, Fort, Mumbai on 7/3/2007. However, the said cheque was returned unpaid and dishonoured by the banker of the accused i.e. Syndicate Bank vide their memo dated 9/3/2007 with remark "account closed". Respondent 1 vide its notice dated 16/3/2007 addressed to the accused recorded the dishonour of the said cheque which was issued by the accused and called upon the accused to make payment of Rs. 3,51,551/- along with bank charges at their office at D.N. Road, Fort, Mumbai. This notice was received by the accused on or about 26/3/2007. Instead of making payment, the accused vide their reply dated 16/4/2007 denied their liability. On these facts, respondent 1 filed the aforementioned complaint stating inter alia that the accused had committed an offence u/s 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act") and requested that the process be issued.

3. In the complaint, respondent 1 stated that the Mumbai court has jurisdiction because its banker is situated at D.N. Road, Fort, Mumbai where the cheque was deposited and dishonoured.

4. In this petition, the primary contention of the petitioner is that the Mumbai court has no jurisdiction to entertain the said complaint. In fact, counsel for the petitioner has pressed only that point. In the petition, the petitioner has stated her case on merits. We are not concerned with the merits of the case and, therefore, we need not comment on it. We are only concerned with the question of jurisdiction.

5. So far as the question of jurisdiction is concerned, it is pertinent to note that in the title of the petition, the petitioner's address is shown as "Ambattu House, Kottappady P.O., Kothamangalam, Ernakulam District, Cochin, Kerala". The registered office of respondent 1 is shown as "Voltas House, B, 2nd floor, T.B. Kadam Marg, Chinchpokli, Mumbai - 400 033". Its Cochin address is shown as "Vidyanekethan Annexe, Providence Road, Cochin - 682 018". To canvass the point that Mumbai court has no jurisdiction, it is stated in the petition that the entire cause of action has arisen in District Ernakulam and no part of the cause of action has arisen in Mumbai; that the dealership agreement was entered into at District Ernakulam; that when the cheque was dishonoured, notice was issued by respondent 1's lawyer at Ernakulam and the cheque was handed over in Kerala. Another statement is made that it is admitted in the complaint that all the documents were signed and executed by the respective parties at Ernakulam. This is a wrong statement, because the complaint does not contain any such averment. That the cheque was dishonoured in Mumbai is also not stated in the petition, but it is so stated in the complaint and was not denied by Mr. Vaidya when we pointed this out to him. It is pertinent to note that Banker's Memo

dated 9/3/2007 issued by the Syndicate Bank and Bankers Return Check Advice dated 15/3/2007 issued by the Citibank are annexed to the complaint at Ex-C and Ex-D. However, only a copy of the complaint is annexed to the petition without its annexures. It is stated in the petition that the cheques were deposited as and by way of security with respondent 1. But the place where the cheques were allegedly deposited is not stated. Mr. Vaidya, learned Counsel for the petitioner has reiterated the above facts and stated that the Mumbai court has no jurisdiction. In support of his case, learned Counsel has relied on the judgment of the Supreme Court in Harman Electronics Private Limited and Anr. v. National Panasonic India Limited, 2009 AIR SCW 410 and judgment of learned Single Judge of this Court in Ahuja Nandkishore Dongre Vs. State of Maharashtra and Another, and another judgment of learned Single Judge of this Court in Dipti Kumar Mohanty, (Proprietor - Monisha Agency) Vs. Videocon Industries Ltd.,

6. Learned Counsel for respondent 1 submitted that inasmuch as respondent 1's registered office is in Mumbai, the Mumbai court will have jurisdiction. Besides the cheque was dishonoured in Mumbai. Learned Counsel also pointed out that the purchase order was placed in Mumbai; the correspondence between the parties prior to as well as subsequent to depositing the cheque was from Mumbai and the statutory notice was issued from Mumbai. The accused defaulted to make the payment within 15 days from the date of receipt of the said notice at Mumbai and, therefore, the Mumbai court has jurisdiction. Written arguments submitted by him have been carefully perused by us. Learned Counsel relied on the Supreme Court judgments in K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr. 1999 (3) SCC 510; Shamshad Begum (Smt.) v. B. Mohammed (2008) 13 SCC 77 and Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others, .

7. In our opinion, in the facts of this case, it is difficult to hold that the Mumbai court has no jurisdiction. Admittedly, respondent 1's registered office is situated at Mumbai. According to respondent 1, purchase order was placed in Mumbai. We have noted that statutory notice was issued from Mumbai and the accused were called upon to pay the amount in Mumbai. Cheque was deposited in Citibank, Mumbai, which is respondent 1's banker. It was dishonoured in Mumbai. If all these facts are taken into consideration, it is difficult to hold that no part of the cause of action has arisen in Mumbai.

8. The above conclusion of ours is supported by the judgments of the Supreme Court in K. Bhaskaran; Shamshad Begum and in Harman. In K. Bhaskaran, the Supreme Court has in no uncertain terms stated that amplitude of the court which tries offence u/s 138 of the NI Act is very wide and expansive. In that case, the complainant presented a cheque bearing the signature of the appellant before the Syndicate Bank's branch office at Kayamkulam, Kerala for encashment. The cheque bounced due to insufficiency of funds. The notice issued by the complainant by registered post was returned with endorsement "Addressee absent". A complaint was filed by the complainant before the Court of Judicial Magistrate, First Class, Adoor in Pathanamthitta District in Kerala against

the accused u/s 138 of the NI Act. The appellant inter alia, contended that learned Magistrate has no jurisdiction to try the case as the cheque was dishonoured at Syndicate Bank's Branch office at Kayamkulam, which is another District in Kerala. Learned Magistrate repelled the defence contention on merits. However, he upheld the contention that his court had no territorial jurisdiction to try the case as the cheque was dishonoured by the Branch office of the bank situated in a different district. Learned Magistrate, therefore, acquitted the accused. The High Court of Kerala set aside the order of acquittal on the appeal preferred by the complainant and convicted him. The High Court accepted the complainant's case on merits and also held that the cheque was issued at the shop of PW-3 which is situated within the territorial limits of the trial court's jurisdiction and, hence, it had jurisdiction to deal with the case. The appellant approached the Supreme Court. It was urged before the Supreme Court that the trial court had no jurisdiction to try the case and, hence, the High Court should not have converted the acquittal into conviction. The Supreme Court expressed surprise as to how the trial court could have found that it had no jurisdiction to deal with the case.

9. It is necessary to see how the Supreme Court proceeded to deal with the question of jurisdiction. The Supreme Court referred to Chapter 13 of the Code of Criminal Procedure, 1973 (for short, "the Code") which pertains to jurisdiction of the criminal courts in inquiries and trials. The Supreme Court referred to Section 177 of the Code which says that "every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed." The Supreme Court observed that Section 177 has been framed by the legislature thoughtfully by using the precautionary word "ordinarily" to indicate that the rule is not invariable in all cases. The Supreme Court then referred to Section 178 of the Code which pertains to place of inquiry or trial. It was observed that Section 178 suggests that if there is uncertainty as to where, among different localities, the offence would have been committed, the trial can be had in a court having jurisdiction over any of those localities. The Supreme Court observed that this provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area, the court in either of the localities can exercise jurisdiction to try the case. The Supreme Court then turned to Section 179 of the Code and observed that Section 179 of the Code stretches its scope to a wider horizon. Section 179 of the Code states that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. Therefore, the court within whose local jurisdiction the consequences ensue can also have jurisdiction to try that offence. The Supreme Court cautioned that the above provisions of the Code must be borne in mind when the question regarding territorial jurisdiction of the court to try the offence is to be determined.

10. The Supreme Court then stated the components of offence u/s 138 of the NI

Act. Paragraph 14 of the said judgment needs to be quoted.

14. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence : (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

11. The Supreme Court then observed that it is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But, the concatenation of all the above five is a sine qua non for the completion of the offence u/s 138 of the NI Act. To emphasis these points, the Supreme Court referred to Section 178(d) of the Code which states that when it is uncertain in which of several local areas an offence was committed or where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas. After referring to Section 178(d) of the Code, the Supreme Court observed that the five different acts, which are the components of Section 138 of the NI Act as stated by it in paragraph 14, which we have quoted hereinabove, are done in five different localities, any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence u/s 138 of the NI Act. It is necessary to quote paragraph 16 because it has great relevance to this case.

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence u/s 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence u/s 138 of the Act.

12. It is pertinent to note that on the facts of the case before it, the Supreme Court observed that the locality where the bank which dishonoured the cheque is situated cannot be regarded as the sole criteria to determine the place of offence. Implicit in this observation of the Supreme Court is it's view that the place where the cheque is dishonoured can be a criterion to determine the place of offence. The Supreme Court further observed that offence u/s 138 of the NI Act would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in Clause (c) of the proviso to Section 138 of the NI Act. The Supreme Court further went on to say that it is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on

business. The Supreme Court held that the Kerala High Court was, therefore, right in holding that the trial court had jurisdiction to entertain the complaint.

13. In *Shamshad Begam*, a Single Judge of the Karnataka High Court had dismissed the petition u/s 482 of the Code where a prayer was made to quash the case pending on the file of learned Magistrate at Mangalore arising out of Section 138 of the NI Act. The appellant accused had filed the petition in the Karnataka High Court on the ground that the Mangalore court had no jurisdiction to try the case because the agreement was entered into at Bangalore and the cheques were returned by the banks at Bangalore. The respondent-complainant stated that before issuing the notice, he had shifted his residence to Mangalore and, therefore, he had issued the notice from Mangalore which was received by the appellant-accused and the reply was sent by her to the appellant-accused at Mangalore address. As the notice in writing to the drawer of the cheque demanding payment of cheque amount was sent from Mangalore, the court at Mangalore has jurisdiction to try the case. The High Court noted that one of the components of the offence was giving notice in writing to the drawee of the cheque by demanding payment of the cheque amount. The said action had taken place in Mangalore and, therefore, the petition was without merit. The Supreme Court referred to *K. Bhaskaran* and quoted extensively from it. The Supreme Court reaffirmed that offence u/s 138 of the NI Act has five components i.e. (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount and (5) failure of the drawer to make payment within 15 days of the receipt of the notice. The Supreme Court reiterated that it is not necessary that the above five acts should have been perpetrated at the same locality and it is possible that each of these five acts could be done at five different localities. The Supreme Court refused to interfere with the High Court's order. In our opinion, the law of jurisdiction has been succinctly stated in *K. Bhaskaran* followed by *Shamshad Begam* and we need to say nothing more on this aspect.

14. In *Harman*, the complainant and the accused entered into a business transaction. The accused was a resident of Chandigarh. He carried on the business in Chandigarh. He issued the cheque in question at Chandigarh. The complainant had a Branch Office at Chandigarh although his Head Office was at Delhi. He presented the cheque given by the accused at Chandigarh. The cheque was dishonoured at Chandigarh. The complainant issued a notice upon the accused asking him to pay the amount from New Delhi. The said notice was served on the accused at Chandigarh. On failure on the part of the accused to pay the amount within fifteen days from the date of the communication of the said letter, the complainant filed a complaint at Delhi. In the complaint it was stated that the Delhi Court has jurisdiction to try the case because the complainant was carrying on business at Delhi; the demand notice was issued from Delhi; the amount of cheque was payable at Delhi and the accused failed to make the payment of the said cheque within statutory period of fifteen days from

the date of receipt of notice.

15. Cognizance of the offence was taken by learned Magistrate. The accused questioned the jurisdiction of the Magistrate at Delhi before the Additional Sessions Judge, New Delhi. Learned Sessions Judge held that the Magistrate at Delhi had jurisdiction to entertain the complaint as admittedly the notice was sent by the complainant to the accused from Delhi and the complainant was having its registered office at Delhi and was carrying on business at Delhi. Learned Judge also observed that the accused failed to make payment at Delhi as the demand was made from Delhi and the payment was to be made to the complainant at Delhi. The Delhi High Court dismissed the petition filed by the accused.

16. The accused approached the Supreme Court. The Supreme Court considered Section 138 of the NI Act. It referred to K. Bhaskaran and quoted the five components of offence u/s 138 of the NI Act which have been noted in K. Bhaskaran. The Supreme Court reiterated that if five different acts which are the components of offence u/s 138 of the NI Act were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence u/s 138 of the NI Act and the complainant would be at liberty to file a complaint/petition at any of those places.

17. The Supreme Court held that the Chandigarh court had jurisdiction to entertain the complaint because the parties were carrying on business at Chandigarh; branch office of the complainant was in Chandigarh; the transactions were carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. The Supreme Court observed that the complaint did not show that the cheque was presented at Delhi, it was absolutely silent in that regard and, therefore, there was no option but to presume that the cheque was presented at Chandigarh. Undisputedly the dishonour of the cheque also took place at Chandigarh and, therefore, according to the Supreme Court, the only question which arose for consideration was whether sending of notice from Delhi itself would give rise to a cause of action in taking cognizance under the NI Act.

18. Harman is, therefore, only an authority on the question whether a court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction and it does not deviate from the other principles laid down by the Supreme Court in K. Bhaskaran. The Supreme Court accepted that the place where the cheque was presented and dishonoured has jurisdiction to try the complaint. The Supreme Court concluded that issuance of notice would not by itself give rise to a cause of action but communication of the notice would. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, commission of an offence completes. The Supreme Court in effect affirmed what it had said in K. Bhaskaran that court within whose jurisdiction the cheque is presented and in whose jurisdiction there is failure to make payment within 15 days of the receipt

of the notice can have jurisdiction to try the offence u/s 138 of the NI Act.

19. It is pertinent to note that the Supreme Court has while holding that the Chandigarh court has jurisdiction, observed in Harman that in the case before it, the complaint was silent as to whether the said cheque was presented at Delhi. In the present case it is categorically stated that the cheque was presented at the Citibank in Mumbai. Whereas in Harman , the dishonour had taken place at Chandigarh and this fact was taken into account while holding that Chandigarh court has jurisdiction, in the present complaint it is categorically stated that the dishonour took place in Mumbai. Therefore, the present case would be covered by Harman where K. Bhaskaran is followed. The cheque was presented to the bank in Mumbai, cheque was dishonoured in Mumbai and, therefore, the Mumbai court has jurisdiction. Nothing said in Harnam has adverse impact on the complainant's case in the present petition. In fact he can draw support from it.

20. In Mattathil Ouseph Ittira Vs. State of Kerala and Manuel P.M., , the petitioner-accused obtained a loan of 3.8 lakh Dirhams from the complainant. The petitioner issued a cheque for 16000 Dirhams towards part payment of the amount borrowed from the complainant. The cheque was drawn on M/s. Abudabi Commercial Bank, Industrial Area Branch, Sharjah. The complainant presented at in M/s. Indian Overseas Bank, Thiruvalla Branch. The cheque was dishonoured for the reason that there was no sufficient amount in the account. The complainant gave intimation regarding the dishonour of cheque and notice was sent to the accused informing him about the dishonour of the cheque. The complainant alleged commission of offence punishable u/s 138 of the NI Act. He filed a complaint in the court of Judicial Magistrate, First Class, Thiruvalla. The accused denied the case of the complainant and also urged that no part of the transaction took place within India and no complaint can be filed u/s 138 of the NI Act. It was contended that the cheque was issued in Sharjah, it was drawn on M/s. Abudabi Commercial Bank, Industrial Area Branch, Sharjah and the entire transaction was in Sharjah and, hence, the complaint was not maintainable in the Court of Judicial Magistrate, First Class, Thiruvalla. The Kerala High Court relied on K. Bhaskaran and observed that since the presentation of the cheque for encashment was at a place within the jurisdiction of Thiruvalla court, the complaint can be maintained in that court.

21. In Prem Cashew Industries and Ors. v. Zen Pareo 2001 All MR (Cri) J. 33, the Delhi High Court also dealt with similar question. In that case, the cheque which was dishonoured had been presented at Delhi and notice was issued from Delhi. Relying on K. Bhaskaran, the Delhi High Court held that inasmuch as the cheque was presented in Delhi, the Delhi court had jurisdiction to entertain the complaint.

22. In Vuppala Venkata Nageshwara Rao Vs. Talluri Chit Funds Private Limited and Another, , the dishonoured cheque was issued in connection with a chit transaction which took place in Visakhapatnam District. Respondent 1 presented the cheque in the first instance at Hyderabad. According to the appellant, after its dishonour deliberately and with an intention to harass him, respondent 1

again presented the cheque for payment at Nellore. The complaint was filed at Nellore. The Andhra Pradesh High Court relied on K. Bhaskaran and observed that it is clear from that judgment that the court at the place where the cheque is presented for payment also, has jurisdiction to entertain the application and so the court at Nellore has jurisdiction to entertain the complaint.

23. In Ahuja Dongre, learned Single Judge of this Court (R.C. Chavan, J.), however, referred to the above judgments and dissented from the above view. He expressed that he did not agree with the view taken by Delhi, Kerala and Karnataka High Courts. Learned Single Judge referred to K. Bhaskaran particularly to the five components of Section 138 of the NI Act, which the Supreme Court has noted in the said case. Learned Single Judge referred to Section 138 of the NI Act and observed that the section begins with reference to "a banker" and then goes on to refer to "the banker",..."is returned by the bank",..."by an agreement made with that bank",..."the cheque has been presented to the bank within thirty days from information by him to the bank". Learned Single Judge held that the reference to presentation of the cheque or return of the cheque dishonoured is in relation to the bank on which the cheque is drawn. Learned Single Judge further observed that considering the usage of indefinite article "a" and "an" and definite article "the", it would not be permissible to hold that reference to the bank extends to any bank where the cheque is presented, or any bank from which holder in due course eventually gets information of dishonour. Learned Single Judge further observed that in K. Bhaskaran in items (3) and (4) of paragraph 14, by prefixing the words "bank" and "drawee bank" with definite article "the", the Supreme Court has made it clear that the presentation of cheque has to be to "the drawee Bank". Learned Single Judge observed that the Supreme Court must have chosen to prefix the word "bank" by definite article "the" in order to avoid the confusion and problems that would be created by using indefinite article "a". Learned Single Judge observed that a cheque is a negotiable instrument and by appropriate endorsement and delivery, it can be negotiated. If instead of the courts at the place where the bank on which the cheque was drawn, the courts at the place where the cheque was presented were to have jurisdiction, drawers of the cheque would be exposed to an unforeseen risk. When a person issues a cheque to another, he intends to make payment to that another, for a consideration which he was received at the bank on which the cheque is drawn. That other, may, in turn, negotiate the cheque in favour of third person for a liability which that other may have to discharge towards such third person for a liability which that other may have to discharge towards such third person. Learned Single Judge further observed that the drawer of the cheque cannot be said to have foreseen that, by such negotiation, his cheque would land at place far away from the place at which it was meant to be paid making him liable to be hauled up in a court at a place where the cheque was presented by the holder in due course. So far as K. Bhaskaran is concerned, learned Single Judge observed that the decision is only an authority for what it actually decides and what is of essence in

a decision is the ratio and not every observation found therein nor what logically follows, defines the scope of a judicial precedent. Learned Single Judge further observed that the judgments cannot be read as creating new statutory rules and, therefore, the observations therein are not amenable to the same elasticity, which may apply to the provisions of the statute. Learned Single Judge further observed that while making an observation in the context of facts before it, a superior court may not be aware of implications of applying the observations to situation, which may not be foreseen.

24. We must mention that in a later judgment in Jinraj Paper Udyog Vs. Dinesh Associates and Another, , learned Single Judge (R.C. Chavan, J.) has again reiterated the same view.

25. Our attention is drawn to another judgment of learned Single Judge of this Court (V.R. Kingaonkar, J.) in Dipti Kumar Mohanty where Ahuja Dongre is followed.

26. In Smt. Nutan Damodar Prabhu and Shri Damodar S. Prabhu Vs. Ravindra Vasant Kenkre also known as Ravindra Kenkre and State Represented by the Public Prosecutor, , learned Single Judge of this Court has followed Ahuja Dongre. Similarly, in Criminal Writ Petition No. 464 of 2009 and companion writ petitions decided by another Single Judge of this Court (S.A. Bobde, J.), Ahuja Dongre has been followed.

27. We must mention that a learned Single Judge of this Court (R.M.S. Khandeparkar, J.) while dealing with Criminal Writ Petition No. 2 of 2008 (Shri Damodar S. Prabhu v. Balkrishna Naik and Anr.) observed in his order dated 7/2/2008 that the view taken in Ahuja Dongre is contrary to the view taken by the Supreme Court in K. Bhaskaran. He, therefore, by his order dated 7/2/2008 directed the Registry to place the matter before the Hon"ble the Chief Justice for appropriate order for referring the matter to the larger bench. However, it appears that as the dispute involved in the petition was settled, the reference did not materialize.

28. We agree with learned Single Judge's view in Ahuja Dongre to the extent that "the bank" referred to in Clause (a) to proviso to Section 138 of the NI Act would mean the drawee-bank on which the cheque was drawn. But with great respect, we feel that the view taken by learned Single Judge in that case in the context of jurisdiction of the court to entertain complaint u/s 138, that the cheque has to be presented to the drawee-bank at the place mentioned in the cheque and only the court within whose jurisdiction, the drawee bank is situated will have jurisdiction to entertain the complaint and not the court at another place where it is presented for realization needs to be reconsidered by a larger bench in an appropriate case.

29. In this connection, we may refer to the judgment of the Supreme Court in Shri Ishar Alloys Steel Slted. v. Jayaswals NECO Ltd. AIR 2001 SC 1161 where the Supreme Court has interpreted Section 138 of the NI Act. We must quote

paragraph 8 thereof. It reads thus:

8. The use of the words "a bank" and "the bank" in the section is indicator of the intention of the Legislature. The former is indirect article and the latter is pre-fixed by direct article. If the Legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented u/s 138 is prefixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying of particularising effect opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in Clause (a) to the proviso to Section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

30. Having observed that "the bank" referred to in Clause (b) would mean the drawee bank, in paragraph 9 the Supreme Court clarified that the above conclusion does not lead to a further conclusion that the cheque is always to be presented to the drawer's bank on which the cheque is issued. We must quote paragraph 9. It reads thus:

9. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words, a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability u/s 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be

presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee.

31. Therefore, the cheque can be presented at the collecting bank of the payee. The collecting bank has to then send it to the drawee bank. That must be done within six months. If the cheque is dishonoured and money is not paid within 15 days of the notice, complaint can be filed at the place where the collecting bank is situated. The idea is that the cheque should reach the drawee bank within six months. It can be directly presented to it or it can be presented through the collecting bank.

32. Paragraph 14 of K. Bhaskaran will have to be read against the above background. When in paragraph 14, the Supreme Court says that "presentation of the cheque to the bank" is a component of the offence u/s 138 of the NI Act, it is possible to hold that it conveys presentation of the cheque at the drawee bank or the collecting bank of the payee. It is pertinent to note that in item (2) of paragraph 14, the Supreme Court has used the words "the bank" and in item (3) thereof the Supreme Court has used the words "drawee bank". Nothing prevented the Supreme Court from using the words "drawee bank" in item (2) instead of the words "the bank". It is possible to hold that the fact that it has not done so indicates that in the opinion of the Supreme Court, presentation of the cheque can be done either at the drawee bank or the collecting bank of the payee. The corollary may perhaps be that if the cheque is presented at the collecting bank of the payee and the collecting bank presents it to the drawee bank within the period of six months and if it is returned to the collecting bank unpaid and the cheque is dishonoured and the money is not paid within 15 days of the notice, the place where the collecting bank is situated will have jurisdiction to try the complaint u/s 138 of the NI Act. Such interpretation may be in consonance with law laid down in K. Bhaskaran. At the cost of repetition, we must note that in K. Bhaskaran, the Supreme Court has held that Section 178 of the Code has widened the scope of jurisdiction of a criminal court and Section 179 of the Code has stretched it to still a wider horizon. After considering Section 138 of the NI Act, the Supreme Court observed that the amplitude of the court trying cases u/s 138 of the NI Act is so wide and expansive that it is an idle exercise to raise jurisdictional question regarding offence u/s 138 of the NI Act. These observations may not permit the court to place restrictive meaning in the context of ascertaining jurisdiction of the court on the components of Section 138 of the NI Act which have been noted by the Supreme Court in K. Bhaskaran.

33. We respectfully agree with learned Single Judge when he states in Ahuja Dongre that if the courts at the place where the cheque was presented were to have jurisdiction drawer of the cheque would be harassed by unscrupulous litigants by presenting the cheque at a place far away from the place at which it was meant to be paid. But, we must refer to the Supreme Court's observation in

Harman that in such cases, it is necessary to strike a balance between the right of the complainant and the right of the accused vis-a-vis the provisions of the Code. It is possible to urge that whereas the accused can take exemptions from appearance in the court, the complainant runs the risk of his complaint being dismissed in his absence and, therefore, hardship caused to the complainant is more. Therefore, though we are not expressing a total voice of dissent, in our opinion, learned Single Judge's view that the words "the bank" in item 2 of paragraph 14 of K. Bhaskaran mean the "drawee bank" needs to be referred to a larger bench in an appropriate case so that it can be more advantageously heard and decided. With respect, we feel that learned Single Judge's view that practice of presenting a cheque to the payee's or holder's own banker does not make such banker "the drawee" needs to be considered by a larger bench in the context of K. Bhaskaran. We have not given necessary direction to the Registry because for the disposal of this petition, the decision on the said issue is not necessary.

34. This petition will have to be dismissed for reasons which we have already recorded in paragraph 7 hereinabove. Besides, in our opinion, if the complainant calls upon the accused to make payment at a place mentioned in the demand notice and the accused fails to make payment at that place, part of cause of action would undoubtedly arise at that place. We are supported in this view by judgment of learned Single Judge of this Court (A.S. Oka, J.) in Criminal Writ Petition No. 1778 of 2008 and other companion writ petitions decided on 13 th and 17 th of August, 2009 where learned Single Judge has drawn support from Ahuja Dongre because, in Ahuja Dongre, same view is taken on this aspect. Similar view has also been taken by N.J. Pandya, J. in Yashomala Engineering Pvt. Ltd. and Others Vs. Tata SSL Ltd. and Another, . If this test is applied to the present case, Mumbai court will have jurisdiction.

35. In view of the above, in our opinion, the Mumbai court has jurisdiction to entertain the complaint. There is no substance in the petition. The petition is dismissed.