

**(2013) 06 BOM CK 0107**

**In the Bombay High Court**

**Case No :** Criminal Writ Petition No. 1159 of 2012

Sharda Polycolours Private Limited and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

**Date of Decision :** 14-06-2013

**Acts Referred:**

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

**Citation :** (2013) ALLMR(Cri) 3256 : (2013) 1 BC 635 : (2013) 3 BomCR(Cri) 329

**Hon'ble Judges :** Thipsay Abhay M., J

**Bench :** Single Bench

**Advocate :** Amit Khare, for the Appellant; M.R. Tidke, Assistant Public Prosecutor, for State and Niranjan Mundargi instructed by . Yogesh Israni, for the Respondent

## Judgement

Thipsay Abhay M., J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioners who are the accused-accused Nos. 1, 2, 3 and 4 respectively-in Complaint Case No. 493/SS/2011, pending before the Metropolitan Magistrate, 6th Court, at Mazgaon, Mumbai, challenge the territorial jurisdiction of the learned Magistrate to entertain the said complaint and try the case. The petitioner No. 1 is a Private Limited Company, and the other petitioners are the Directors thereof. The said case is in respect of an offence punishable u/s 138 of the Negotiable Instruments Act (herein-after referred to as "N.I. Act" for the sake of brevity), and has been initiated on a complaint filed by the respondent No. 2 - also a Private Limited Company-herein.

For the sake of convenience and clarity, the respondent No. 2 shall hereinafter be referred to as the complainant" and the petitioners as "the accused".

2. The case of the complainant company is that, it had, as per the orders placed by the accused from time to time, supplied Titanium Dioxide to the accused

company, and that the accused issued eight cheques to the complainant towards the discharge of their liability. The complaint, however, has been lodged only with respect to six cheques, the particulars of which are mentioned at Sr. Nos. 3 to 8 in the table contained in paragraph No. 9 of the complaint. The cheques were deposited by the complainant company in their different bank accounts, held by them in Banks at Mumbai. The cheques were dishonored with the remark "payment stopped by the drawer". Since after a demand notice calling upon the accused to make payment of the amounts mentioned in the said cheques, the accused failed to pay the amounts, the complaint came to be lodged.

The learned Magistrate after examining the matter, formed an opinion that a prima facie case for proceeding against the accused persons had been made out, and as such, ordered process to be issued against the accused persons requiring them to appear and answer to the charge of an offence punishable u/s 138 of the Negotiable Instruments Act. Contending that the Magistrate lacked territorial jurisdiction to entertain the complaint and try the case, the accused persons approached the Court of Sessions for Brihan Mumbai by filing an application for revision. The learned Addl. Sessions Judge who heard the revision application, however, found no merit therein and dismissed the same.

3. It is under these circumstances, that the petitioners have approached this Court by filing the present petition under Articles 226 and 227 invoking its constitutional jurisdiction and also its inherent powers.

4. It was decided, by consent, that the petition would be heard finally at the admission stage itself. Accordingly, Rule was issued, made returnable forthwith by consent, and the petition was heard finally.

5. I have heard Mr. Amit Khare, learned Counsel for the petitioners. I have also heard Mr. Niranjan Mundary, learned Counsel for the accused.

6. Though a number of contentions have been raised in the petition, only the one relating to lack of territorial jurisdiction on the part of the learned Magistrate to entertain the complaint and try the case, was pressed in the course of oral arguments. The other, such as insufficiency of material to proceed against the other accused, except the accused company, were given up. What is contended by the petitioner is that the averments made in the complaint and the other material which was before the Magistrate clearly indicate that the courts at Mumbai would have no territorial jurisdiction to entertain and try the case.

7. According to Mr. Mundargi, the learned Counsel for the accused persons, the courts at Mumbai clearly had jurisdiction to entertain and try the case, and that the impugned orders being proper and legal, no interference therewith, is warranted.

8. It is not in dispute, and is even otherwise clear from reading of the complaint itself that the existence of territorial jurisdiction in the Court of the Magistrate at Mumbai has been claimed on the basis that the cheques in question were

deposited in the bank accounts of the complainant held in banks at Mumbai.

9. Paragraph No. 23 of the complaint which is the jurisdiction clause"-so to say-reads as under.-

The complainant states that the registered office of the complainant is situated at Samuel Street Mumbai, the cheques were deposited in the Bank Account of the complainant which is also located in Mandvi Mumbai and the amount due is payable in Mumbai by the accused and both the office of the Complainant and the bank where the cheques were deposited are within the jurisdiction of the Pydhonie Police Station and therefore, this Hon"ble Court has jurisdiction to try and entertain the present complaint.

10. The learned Counsel for the petitioners contended that the entire transaction which resulted in giving of the cheques had taken place at Nagpur. That the cheques in question were drawn on an account maintained by the accused persons at Nagpur. That, except depositing the cheques at Mumbai and issuing of a demand notice from Mumbai, nothing else has taken place in Mumbai. That, since everything took place at Nagpur, it is only the courts at Nagpur that would have jurisdiction to entertain and try the case. Thus, the substance of contentions advanced on behalf of the petitioners is that merely because the complainant chose to deposit the cheques with their bankers in Mumbai, the courts in Mumbai would not get territorial jurisdiction to try the offences in question.

11. From the averments made in paragraph No. 23 of the complaint which are reproduced above, it is clear that jurisdiction of the courts at Mumbai is claimed only on the basis that the cheques in question were deposited by the complainant with their bankers in Mumbai. Though an assertion is also made that the amount was payable in Mumbai the basis therefore also seems to be that the cheques were deposited in Banks at Mumbai, and not a claim that there was any agreement to that effect. In any case, no such agreement is referred to in the complaint, and as a matter of fact, in the oral arguments, no such contention was taken. Similarly, though an assertion has been made to the effect that the registered office of the complainant is situate in Mumbai", thereby giving a faint suggestion that, that would also be a factor giving territorial jurisdiction to the courts in Mumbai, no such contention has actually been advanced. Thus, it has not been disputed that the existence of jurisdiction in the courts at Mumbai has been claimed on the basis that the cheques in question were deposited in the banks situate at Mumbai where the complainant holds an account." The question that arises therefore, is whether the cheques in question having been deposited by the complainant in banks at Mumbai, the Courts at Mumbai will have territorial jurisdiction to entertain the complaint and take cognizance of the alleged offence.

12. The Revisional Court answered this question in the affirmative only on the basis of the observations made by the Supreme Court of India in the case of K.

Bhaskaran Vs. Sankaran Vaidhyan Balan and Another,

13. Indeed, in K. Bhaskaran's case (supra), it was observed as follows:-

14. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. 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.

15. 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 5 different localities. But, concatenation of all the above five is a sine qua non for the completion of the offence u/s of the Act. In this context a reference to section 178(d) of the Code is useful. It is extracted below:

Where the offence 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.

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.

14. These observations have given rise to much discussion and debate as to their real meaning and interpretation in a number of decisions of various High Courts. Particularly, that the Court within whose local jurisdiction a cheque was deposited for realizing the payment thereof, would have jurisdiction to deal with the complaint in respect of an offence punishable u/s 138 of the N.I. Act is often contended in the light of the act No. 2, i.e. Presentation of the cheque to the Bank as mentioned in paragraph 14, reproduced above. That even the Court from whose local jurisdiction the notice of demand would be issued would have territorial jurisdiction to entertain a complaint in respect of the offence punishable u/s 138 of the N.I. Act is often contended on the strength of the act No. 4: i.e. Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.

15. Logically, it seems quite clear that a complainant cannot be allowed to confer jurisdictions on courts by his own acts. Therefore, whether the aforesaid observations in K. Bhaskaran's case indeed lay down anything which would support such contentions, needs to be carefully considered.

16. The crucial issue is where does the act of presentation of the cheque to the bank takes place; whether the "presentation" contemplated by the act No. 2,

mentioned in paragraph 14 of the reported judgment in K. Bhaskaran's case means lodging or depositing the cheque with his own banker by the payee or the holder, or, whether it means the presentation of the cheque to the drawee banks. The courts have consistently taken a-view that the "presentation of the cheque to the bank" takes place when the cheque is presented to the drawee bank for receiving the payment thereof, and not when it is deposited by the payee or holder with his own banker for collecting the payment of the amount from the drawee bank. For illustrating this, reference to a few decided cases may be made.

17. In Jinraj Paper Udyog Vs. Dinesh Associates and Another, a learned Single Judge of this Court (Shri R.C. Chavan, J.) had an occasion to deal with the question of the territorial jurisdiction of a Court with respect to an offence punishable u/s 138 of the N.I. Act. In that case, the existence of jurisdiction to try the offence in question in the courts at Nagpur was claimed on the basis that the cheques in question were lodged by the complainant for collection with his bank at Nagpur, though they had been drawn on a bank at Delhi, where the drawer had an account. The learned Single Judge did not accept this contention.

18. In Dipti Kumar Mohanty, (Proprietor - Monisha Agency) Vs. Videocon Industries Ltd., another Single Judge of this Court (Shri V.R. Kingaonkar, J.) extensively dealt with the question of territorial jurisdiction of a Court with respect to an offence punishable u/s 138 of the N.I. Act. In that case, the petitioners before this Court was the original accused and the respondent was the original complainant. The cheque in question was drawn on UCO Bank, Branch at Tangi, Orissa, where the original accused had maintained an account. The complaint had been filed in the Court at Ahmednagar. The learned Judge referred to a number of other decisions of the Apex Court and of the Bombay High Court and came to the following conclusions, as can be spelt out from the judgment:

(i) Mere depositing of the cheque by the complainant in a particular bank where he holds account for realizing the payment thereof would not give the Court, in whose local limits such bank would be situated, jurisdiction to try the offence punishable u/s 138 of the Negotiable Instruments Act.

(ii) The fact that the notice of demand was also issued from a particular place would not clothe the Court, within whose local limits the notice was issued, with the jurisdiction to try the case.

19. It must be observed that the decision of the Apex Court in K. Bhaskaran's case was pointed out to the learned Single Judge, who decided Jinraj Paper Udyog's case [supra] as well as to the learned Judge who decided Dipti Kumar Mohanty's case (supra) but none of them interpreted the same, as laying down that the deposit of the cheque by the complainant in a bank where he holds accounts would confer jurisdiction upon the Court in whose local limits such bank would be situated, to try the offence. A perusal of the aforesaid decisions makes it clear that the act No. (2) viz. Presentation of the cheque to the bank as

mentioned in paragraph No. 14 of the reported decision in K. Bhaskaran's case has not been construed as depositing the cheque by the complainant or payee in his own account, and with his own banker for collecting the payment thereof. After considering the provisions of sections 2 and 72 of the N.I. Act, it was held that the "presentation of the cheque" would necessarily mean the presentation to the drawee bank for realizing fee payment thereof.

20. Mr. Khare has placed reliance on the decision of this Court in Crompton Greaves Limited Vs. Shri Kantibhai, Prop. Mahavir Sales and State of Goa, in which case, a Division Bench of this Court had an occasion to consider the observations made in K. Bhaskaran's case. The Division Bench specially noted the controversy to be as follows:-

The controversy is whether the cheque is presented where the concerned branch of the drawee bank is situate or where the concerned branch of the collecting branch is situate.

The Division Bench noted that in view of the pronouncements of the Supreme Court of India in Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd., : Vasantrao Annasaheb Ubale and Others Vs. State of Maharashtra and Others, it was clear that the bank" referred to in Clause (a) to the proviso to section 138, would mean the drawee bank on which the cheque is drawn, and not the bank where the cheque would be presented for collection including the bank of the holder. Though there were several other issues in the said case, what is relevant in the context of the present controversy is that the presentation of the cheque to the bank as a factor giving the territorial jurisdiction to the Court concerned as mentioned in paragraph No. 14 of K. Bhaskaran's case, was construed as the presentation to the drawee bank at its branch on which it is drawn.

21. Mr. Khare also referred to the case of Shri Prabhu Dayal Modi Vs. Euro Developers Pvt. Ltd. and The State of Maharashtra, Mh.L.J. 77, in which a learned Single Judge of this Court had an occasion to examine and decide a similar issue regarding territorial jurisdiction. In that case, the cheque in question had been drawn upon Bombay Mercantile Co-operative Bank, Jaipur Branch, where the petitioner before the High Court-the original accused-had an account. The cheque was deposited by the original complainant-respondent No. 1 before the High Court-in HDFC Bank, Juhu Branch, Mumbai and when it was dishonored, a complaint was filed before the Metropolitan Magistrate, 44th Court claiming jurisdiction on the basis that the cheque was presented to the HDFC bank at Juhu and was dishonored. The learned Single Judge after considering the law laid down in K. Bhaskaran's case (supra), and after noticing the decisions of the Supreme Court in Shri Ishar Alloys Steel Limited [supra], and also after referring to the case of [Ahuja Nandkishore Dongre Vs. State of Maharashtra & Anr.], 2007 (1) Bom. C.R. (Cri.) 1031 (N.B.), came to the conclusion that the "presentation of the cheque" has to be before the drawee bank, and not before any other bank. It was held that the Metropolitan Magistrate, 44th Court, Andheri had no jurisdiction to try the case.

22. My attention has been drawn also to a decision of the Delhi High Court in *Mahalaxmi Embroidery Vs. Shivam Devansh Fab. Pvt. Ltd. and Others* . There also, while dealing with the issue of territorial jurisdiction of the Court trying the case of an offence punishable u/s 138 of the N.I. Act, the learned Single Judge noticed the observations made in *K. Bhaskaran's* case (supra), and considered the same in the light of the observations made in the case of *Shri Ishar Alloys Steel Limited* (supra). The learned Judge also referred to the case of *Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd.*, and concluded that mere deposit of the cheque by the complainant in an account held by him, would not confer territorial Jurisdiction upon the Court within whose local limits such bank is situate. It was held that since the cheque in that case had been drawn on a bank at Faridabad, it is deemed to have been presented at Faridabad.

23. Lastly, a reference be made to a decision of the High Court of Delhi in (*Raj Travels and Tours Ltd. Vs. Destination of the World (Sub-Continent) Private Ltd*), WS(DLH)-2011-9-79/ILRDLH-2011-21-4170 relied upon by Mr. Khare. In that case also, the learned Single Judge noted the observations made in *K. Bhaskaran's* case and more particularly the five acts which are mentioned in paragraph No. 14 of the reported judgment in *K. Bhaskaran's* case (supra), as the components of the offence punishable u/s 138 of the N.I. Act." The learned Judge after referring to the decision of the Supreme Court in *Shri Ishar Alloys* case (supra) and after noting that it was a decision of a Three Judge Bench where one of the members was the author of the judgment in *K. Bhaskaran's* case, observed that the said decision makes it clear that the second act to which the Supreme Court referred to paragraph No. 14 of the *Bhaskaran's* case (supra) was presentation of the cheque to the drawee bank.

24. Thus, there is a clear and consistent view taken by various Courts to the effect that the act No. 2 mentioned in *K. Bhaskaran's* case viz. "Presentation of the cheque to the bank". means the presentation of the cheque to the drawee bank. and not the act of "lodging or depositing of the cheque by the payee in his own account". Such deposit does not amount to "presentation of the cheque to the bank" as the bank of the payee, merely acts as an agent of the payee and forwards the cheque to the drawee bank, which amounts to the presenting the cheque. As such, the presentation of the cheque takes place at a place where the drawee bank is situated. Such bank in the instant case, being the bank situate at Nagpur, the presentation of the cheque has taken place at Nagpur. There is nothing in the judgment in *K. Bhaskaran's* case to support the proposition that mere lodging of a cheque with his own banker by the complainant would give jurisdiction to the Court in whose local jurisdiction such Bank would be situated. As such, the Court at Mumbai would have no jurisdiction to entertain and try the complaint.

25. It may be observed that, that "the Metropolitan Magistrate at Mumbai has jurisdiction to entertain the complaint and try the case because the notice of payment was issued from Mumbai" has not been claimed. However, it is not

uncommon to make such a claim by placing emphasis on the act No. 4 viz:-

(4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque

amount mentioned in paragraph 14 of the reported judgment in K. Bhaskaran's case (reproduced earlier). No claim that the notice was given from Mumbai has been made, but even assuming it to be so, that also would not confer territorial jurisdiction on courts at Mumbai. That, giving of notice relates to a notice received by the drawer of the cheque (or deemed to have been received, under certain circumstances) has been made clear by the Supreme Court of India in M/s. Harmon Electronics (P) Ltd. (supra). The act No. 4 has been construed as an act which results in receipt of the notice by the drawer, and therefore, the place where such act would take place would be the one where the notice so given is received by the drawer. Anyway, since no claim about the existence of jurisdiction in the Court at Mumbai has been made on that basis, further discussion on this is not necessary.

26. There is also one more aspect, which has not been discussed in any of the above decisions, but which would further establish the correctness of the conclusions arrived at therein with respect to how the act No. 2 & act No. 4 mentioned in paragraph 14 of the judgment in Bhaskaran's case are to be construed. For ready reference, the five acts said to be the components of the offence punishable u/s 138 of the Negotiable Instruments Act, as mentioned by the Supreme Court in K. Bhaskaran's case (supra), may be reproduced here:

(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.

27. It may be recalled that it is by reference to section 178(d) of the Code that it was mentioned that the offence could be tried by a Court having jurisdiction over any of the local areas in which any of the aforesaid five acts would be committed. Undoubtedly, Clause (d) of section 178 of the Code lays down that where an offence 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.

28. It is not difficult to observe that the acts mentioned at serial No. 1 and at serial No. 5 are the acts performed by the offender. Interestingly, if the act at Serial No. 2 is to be treated as "depositing the cheque by the payee/complainant in an amount held by him with his own banker" it would be the "act" of the victim of the offence and not of the offender. The act mentioned at serial No. 3 is

an act performed by the Drawee bank, who can be treated as the agent of the drawer i.e. the offender. Similarly, if the act at Sr. No. 4 is to be considered as mere "giving" of notice (without reference to the act of "receiving" the same, it would also be the "act of the victim of the offence and not of the offender. It needs serious thinking whether the Clause (d) of section 178 of the Code, when it speaks of "several acts done in different local area of which the offence in question consists", speaks of, or contemplates, the acts of the victim or the complainant. In my opinion, in the scheme of the relevant provisions, it cannot be doubted that the phrase "several acts done in different local areas" refers to the acts of the offender and not of the victim or the complainant. An offence consists of acts or illegal omissions of the offender and not of the victim (though effect on victim may be relevant in respect of some offences). It is, therefore, not possible to hold that Their Lordships of the Supreme Court of India contemplated the act No. 2 viz:- Presentation of the cheque to the Bank as the lodging or depositing of the cheque by payee with his own account, which would only be the act of the victim. Similarly, the act No. 4 contemplated by Their Lordships could not have been mere giving of notice (which remains the act of victim) but must be understood as the "giving of notice received by the drawer of the cheque" (without which the act No. 5 - which is the act of the offender - cannot take place and the offence would not be complete). Thus, the five "acts" having been mentioned in the context of section 178(d) of the Code, must be construed as referring to the "acts" of the offender; and therefore, the interpretation of the act No. 2 and act No. 4, as done in the aforesaid judgments must be held as the only correct interpretation of the observations in K. Bhaskaran's case.

29. In the instant case, it is clear that the jurisdiction in Mumbai Courts has been claimed only on the basis that the cheques in question were deposited in the banks situated at Mumbai (recall the averments made in paragraph No. 23 of the complaint which are reproduced earlier) It is not in dispute that the cheques had been drawn on a bank situated at Nagpur. That the cheques were deposited in banks situate in Mumbai, cannot, under the circumstances, confer any territorial jurisdiction upon the courts at Mumbai.

30. The learned Magistrate while issuing process did not take the aspect of territorial jurisdiction into consideration. The Revisional Court simply relied upon the observations made by the Supreme Court of India in K. Bhaskaran's case, but did not comprehend the meaning of "presentation of the cheque to the Bank." The Revisional Court confused this aspect with the deposit of the cheque with the collecting banker.

31. As a result of the aforesaid discussion, it is clear that the learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai, has no territorial jurisdiction to entertain the complaint and try the offence in question. The impugned orders are therefore, clearly contrary to law.

32. Before parting, a novel submission made by Mr. Mundargi, at the conclusion

of the arguments, must be mentioned. He submitted that with electronic banking system, and the facility provided by the banks to make payment of the cheques at par, at all the branches of the bank situated in various different cities, the drawee bank cannot be said to be situate at a particular place. In other words, his argument is that since the payment of the cheques in question would be possible at Mumbai itself, the drawee bank cannot be said to be located or situated at Nagpur. According to him, in view of the modern technology, which may not actually require the forwarding of the cheque to that branch of the drawee bank, where the drawer holds an account, and the facility of getting the amount of the cheque at Mumbai, (even if the account is held in a branch located at Nagpur), the drawee bank should be deemed to be situated at Mumbai also. I am not impressed by this contention, though it is certainly an innovative one, for at least two reasons. In the first place, that is not the basis on which the jurisdiction in the courts at Mumbai has been claimed. Secondly, whether in this case, the cheque had not actually been sent to the drawee bank for realizing the payment is not clear at all from the complaint.

33. The learned Magistrate has acted beyond the scope of his jurisdiction. The Court of Sessions has committed an error in holding that the learned Magistrate had jurisdiction to entertain the complaint. The impugned orders therefore, need to be interfered with. The complaint should be directed to be returned to the complainant for filing before the proper Court at Nagpur.

34. The petition is allowed.

35. The order issuing process is quashed.

36. The learned Magistrate is directed to return the complaint to the complainant for filing the same before the proper Court having territorial jurisdiction at Nagpur.

37. The learned Magistrate shall, after hearing the complainant, fix a date on or before which the complaint must be filed by the complainant before the proper Court. In the event of the complaint being filed before the proper Court within the time so stipulated by the learned Magistrate, the concerned Court shall entertain the complaint, and proceed further in the matter in accordance with law.

38. Petition is allowed in the aforesaid terms and to the aforesaid extent. Rule is made absolute accordingly.