Bombay High Court Ahuja Nandkishore Dongre vs State Of Maharashtra And Anr. on 4 September, 2006 Equivalent citations: 2007 CriLJ 115 Author: R Chavan Bench: R Chavan ORDER R.C. Chavan, J. 1. Accused Ahuja Nandkishore Dongre has filed this application under Section 482 of the Code of Criminal Procedure, taking exception to the order passed by learned Judicial Magistrate First Class, Digras in Criminal Case No. 856/2005, whereby the learned Magistrate rejected applicant's application at Exh. 51, challenging jurisdiction of the Court of the learned Magistrate to take cognizance of complaint filed by Non-applicant No. 2 Dashrath Rathod-original complainant. 2. The facts relevant for determination of questions raised in this application, as unfolded from the arguments advanced on behalf of both the learned Counsel for accused and the complainant, are as under: 3. Complainant Dashrath Rupsingh Rathod is resident of village Soyjana, Tah. Manora, District : Wasim. He was serving as driver in Maharashtra State Road Transport Corporation at Bhandara. The accused is resident of Bhandara. Since the complainant was serving at Bhandara and was on friendly relations with the accused, on a request by the accused for a hand loan, the complainant gave a sum of Rs. 35.000/- as hand loan to the accused. The accused issued three cheques of Rs. 15.000/-, Rs. 10,000/- and Rs. 10.000/- payable on 7th of August, September and October of the year 2004 towards repayment of this hand loan. These cheques were drawn on Bank of India, Bhandara Branch. The complainant presented these cheques for encashment on 27th January, 2005 at Digras Branch of Yavatmal Urban Co-operative Bank. Inquires by the complainant revealed that the cheques had been returned by Bank of India, Bhandara with the endorsement that the account was closed. The complainant, therefore, caused notice to be issued on 2nd March, 2005 through Adv. Ramesh N. Datir, resident of Digras, District : Yavatmal, Calling upon the accused to pay the amount of cheques. Notice was received by the accused on 10th March, 2005. The accused however, failed to pay amounts of cheques and did not even care to reply. The complainant therefore, filed complaint for the offence punishable under Section 138 of the Negotiable Instruments Act in the Court of Judicial Magistrate First Class. Digras, District : Yavatmal. 4. Process was issued and the accused appeared. Accused filed an application, praying for dismissal of the complaint for want of jurisdiction, on the grounds that (i) complainant was not residing in the territorial Jurisdiction of the Court, (ii) the complainant was not working for gain within territorial jurisdiction of the Court and (iii) the transaction had taken place at Bhandara. After considering the arguments advanced, the learned Judicial Magistrate First Class, by order dated 18th October, 2005. rejected the application. Aggrieved thereby, the accused has invoked jurisdiction of this Court by present application, which was admitted by an order dated 7th December, 2005. 5. I have heard Adv. Muley, learned Counsel for the applicant and Advocate. Nemade, learned Counsel for Non-applicant No. 2, as also the learned Additional Public Prosecutor. 6. The learned Counsel for the applicant submitted that since no part of cause of action had arisen within the jurisdiction of Court at Digras, the said Court had no jurisdiction to entertain the complaint. He submitted that the cheque were admittedly issued at Bhandara in respect of the trans-

action of loan which had taken place at Bhandara, and were drawn on bank of India, Bnandara Branch. The accused himself resides at Bhandara and the complainant is not shown to be resident within the jurisdiction of the Court of Magistrate at Digras. The Court at Digras thus had no causal connection with the lis. Therefore, according to the learned Counsel, the learned Magistrate was in error in entertaining the complaint and rejecting the application of the accused for dismissal of the complaint for want of Jurisdiction. 7. His learned adversary, on the other hand, submitted that Section 138 of the Negotiable Instruments Act which provides for punishment for dishonour of cheque, requires that the complainant must establish five facts for the purpose of making out an offence, namely that (i) the cheque was drawn, (ii) it was presented to a bank, (iii) it was returned dishonoured by the bank, (iv) a notice in writing was given to the drawer of the cheque demanding payment and (v) the drawer failed to make payment within 15 days of the receipt of the notice. According to the learned Counsel, proviso (c) to Section 138 specifically refers to failure of the drawer to make payment of the said amount to the holder in due course within 15 days of the receipt of the notice. 8. The learned Counsel submitted that in view of the provision of Sections 177 and 178 of the Code of Criminal Procedure it cannot be said that the Jurisdiction of the Court of Judicial Magistrate at Digras is excluded. He relied particularly upon Clause (d) of Section 178 of the Code which lays down that when it is uncertain within which local areas the offence is committed, or when the offence consists of several acts done in different local areas, it may be inquired into and tried by a Court having jurisdiction over any of such local areas. According to the learned Counsel, his client had presented the cheque to Yavatmal Urban Co-operative Bank, Digras Branch on 27-1-2005 and had received intimation of dishonour at the said bank. Thus, a part of cause of action had arisen at Digras. For this purpose, he places reliance on judgment of Andhra Pradesh High Court in Vuppala Venkata Nageshwara Rao v. Tulluri Chit funds Pvt. Ltd. reported at 2005 Cri. L. J. 575. In that case, as can be gathered from the judgment, the transaction had taken place in Visakhapatnam district. The cheque was presented, in the first instance, at Hyderabad and was dishonoured. Thereafter it was presented at Nellore where too it was dishonoured and the complaint was filed in the Court at Nellore. The accused alleged that this course was adopted by the complainant mischievously, only in order to harass the accused. Relying on judgment of the Supreme Court in K. Bhaskaran v. Sankaran Vaidhyan Balan reported at 1999 (4) All MR 452 : AIR 1999 SC 3762 the Andhra Pradesh High Court held that Courts in whose jurisdiction dishonoured cheque was presented for payment, or the place where the cheque was returned unpaid by the drawee bank, would have jurisdiction to entertain complaint under Section 138 of the Negotiable Instruments Act. Therefore, the Andhra Pradesh High Court ruled that Court at Nellore had jurisdiction to entertain the complaint. 9. The learned Counsel submitted that it is not necessary that criminal complaint must be filed only at the place where the bank on which cheque was drawn is situated. For this purpose he relied on decision of Kerala High Court in Mattathil Ouseph Ittira v. State of Kerala reported at 2003 Cri LJ 514 where the cheque in question had been drawn on

M/s. Abudabi Commercial Bank Sharajah and had been presented to Tiruvalla Branch of Indian Overseas Bank. The cheque was dishonoured and the notice was sent to the drawer informing him of the dishonour eventually, the complaint was filed. Even in this case, relying on the observations of the Supreme Court in Bhaskaran's case, the Kerala High Court held that the fact that the drawee bank was outside India did not matter, and, since the cheque was presented for encashment within the jurisdiction of the Court, the complaint could be filed. 10. The learned Counsel for Non-applicant No. 2 has also referred to judgment of Delhi High Court in Prem Cashew Industries and Ors. v. Zen Pareo reported at 2001 All MR (Cri) Journal 33. It is not possible to deduce from the report, as to what were facts in that case. In that case too, relying on observations of the Supreme Court in K. Bhaskaran's case, the Delhi High Court observed that since the cheque had been presented at Delhi and also notice was issued from Delhi, the Court at Delhi had jurisdiction to entertain the complaint. 11. Since the learned Counsel for Non-applicant No. 2 had also relied on judgment of the Apex Court in K. Bhaskaran's case which was relied on by the High Courts of Andhra Pradesh, Delhi and Kerala, referred to above, it may be useful to understand as to what Apex Court had indeed ruled in K. Bhaskaran's case, and in the context of what facts. In that case, the cheques in question were issued on Kayamkulam Branch of Syndicate Bank which was not situated in the District in which the complaint was filed. As can be seen from paragraph 8 of the judgment of the Apex Court, it was held as proved as a fact, that the cheque was issued at the shop of witness No. 3, which was situated within the territorial jurisdiction of the Court where complaint was filed. In the context of these facts the Apex Court considered the objection to the jurisdiction which had been upheld by the Magistrate and overturned by the High Court. Since the judgment of the Apex Court in K. Bhaskaran's case is of great significance, it would be useful to extract relevant portions of the judgment to find out as to what Apex Court has exactly held. After analysing the provision of Section 138 of the Negotiable Instruments Act and Sections 177 and 179 of the Code of Criminal Procedure, the Court observed as under in paragraphs 14 to 16 of the judgment: 14. The offence under Section 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 under Section 138 of the Act. In this context a reference to Section 178 (d) of the Code is useful. It is extracted below: Whether 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 (by) one of the Courts

exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those Courts having jurisdiction over any one of the local area 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 under Section 138 of the Act. (Emphasis supplied). 12. The Court then upheld the order passed by the High Court convicting accused, though, it set aside sentence awarded by the High Court, for reasons which are not material for deciding the present controversy. 13. Unlike statutory provisions, which can be applied by analogy or by inductive or deductive logic to different situations, observations in the judgment have to be read in the context of facts in which the judgment was rendered. Lord Chancellor Halsbury's celebrated quote, that a 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. 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. Further, while making ah observation in the context of facts before it, a superior Court may not be aware of implications of applying the observations to situations which may not be foreseen. With this caution in mind, it may have to be found out whether the principles elicited by High Courts of Andhra Pradesh, Delhi or Kerala in the three decisions referred to above, could be supported by or derived from the decision of the Apex Court in Bhaskaran's case. 14. In Bhaskaran's case, as a matter of fact, it was held as proved that cheques in question have been issued at the shop of P. W. 3 within territorial limits of trial Court's jurisdiction. The five ingredients enumerated by the Court in paragraph 14 of the Judgment would undisputedly attract the provisions of Clause (d) of Section 178 of the Code of Criminal Procedure, since it can be said that the offence punishable under Section 138 of the Negotiable Instruments Act consists of the five acts, enumerated in paragraph 14 of the judgment. It may be seen that Clauses (2) and (3) in paragraph 14 of the judgment refer to presentation of "the cheque" to "the Bank" and returning the cheque unpaid by "the drawee Bank". A reference to Section 138 of the Negotiable Instruments Act, would also show 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" etc. Thus, 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. Considering the usage of indefinite articles "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. This is amply made clear by the Apex Court by prefixing the words "bank" and "drawee bank" in items (1) and (2) in paragraph 14 of the judgment with definite article "the". 15. The Apex Court must have chosen to prefix the word "hank" by

definite article "the" in order to avoid the confusion and problems that would be created by using indefinite article "a". A cheque is negotiable instrument and by appropriate endorsement and deliver 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 has 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. 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. Therefore, with utmost humility and with great respect to the observations made by Andhra Pradesh High Court, it is difficult to deduce the ratio elicited by the Andhra Pradesh High Court, from the observations of the Supreme Court from K. Bhaskaran's case. It must be held that the observations in Bhaskaran's case do not support such a view of law. 16. As can be seen from paragraph 2 of the judgment of Delhi High Court, the objection to jurisdiction was to the effect that jurisdiction would be restricted to the place where notice of demand was served. The Delhi High Court concluded that since cheque was presented at Delhi, Courts at Delhi would have jurisdiction. If the cheque was presented to "the" bank (i.e. the drawee bank) there would be no difficulty, but if cheque has been presented at "any" or "a" bank, it would be reading something which is not in the judgment in Bhaskaran's case and refusing to give effect to implication of use of definite article "the" in item (i) in paragraph 14 of the judgment of Apex Court in Bhaskaran's case. Therefore, if the Delhi High Court has held, that a place other than that at which the drawee bank is situated is referred to in paragraph 14 of Bhaskaran's judgment, I am in respectful disagreement. 17. While creating an offence punishable under Section 138 of the Negotiable Instruments Act, the parliament has not changed the whole scheme of the Act. Under Section 6 of the Act, a cheque is still defined at a bill of exchange, drawn on a Specified banker. The "drawee" is the per-son directed to pay under Section (sic) Section 61 requires that a bill of exchange has to be presented to "the drawee" (& not to any banker), and if the bill is directed to a drawee at a particular place, it must be presented at that place. Section 72 makes the requirement in respect of a cheque clear and lays down as under: 72. Presentment of cheque to charge drawer :- (Subject to the provisions of Section 84) a cheque must, in order to charge the drawer, be presented at the bank upon which if is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer. Since all these provisions are left intact a cheque has to be presented to the drawee bank at the place mentioned on the cheque. 18. Practice of presenting a cheque to payee's or holder's own banker does not make such banker "the drawee". Such a banker merely undertakes to present the cheque on behalf of the holder to the drawee bank for clearance. Such a banker acts as agent of

holder and not agent of the drawee bank. This can be clear from the fact that it is the holder who has to bear the expenses in clearing the cheque and not the drawee bank. Even between different branches of the same bank, branch at which holder has an account does not become agent of the drawee branch for accepting the cheque unless the cheque is one marked as payable "at par" at all branches of the bank. 19. The choice of definite article "the" by the Apex Court in items (1) and (2) in paragraph 14 of Bhaskaran's judgment merely gives effect to these statutory requirements. 20. Likewise if the High Court of Kerala has, relying on Bhaskaran's case, held that Court, within whose jurisdiction the cheque was presented could entertain such a complaint, I respectfully disagree. As already stated, in my humble view, the observations in Bhaskaran's case do not support such a conclusion. At the cost of repetition it has to be pointed out that the wording of Section 138 of the Negotiable Instruments Act too does not support such a view. If the Courts, within whose jurisdiction the cheque was merely presented for realisation, were to be allowed to entertain complaints, the result would be opening flood gates for harassment to persons who issued cheques. A person who issues a cheque on his bank indicates by his act that he intends to make payment at the drawee bank and not elsewhere. Therefore, for the reasons stated above, I am in respectful disagreement with the views taken by the Andhra Pradesh, Delhi and Kerala High Courts, because in all these judgments, significance of the word "the" in Clauses (2) and (3) in paragraph 14 of the Judgment in Bhaskaran's case has been lost sight of. 21. It has to be reiterated that expression used in a judgment cannot be read out of the context, and cannot be stretched beyond what is warranted by the factual context. If such was not the requirement, items (4) and (5) in paragraph 14 in Bhaskaran's judgment could likewise be stretched illogically, with oblique motives by unscrupulous litigants. For example, a holder, aware that the drawer who had, say drawn a cheque on a Nagpur branch is away on a holiday a Shimla and his Shimla address is known to the holder, and the holder causes a notice to be served at Shimla, which is neither the place of residence or business of the drawer, could a holder be allowed to invoke jurisdiction of Courts at Shimla because a notice was given to drawer when the drawer was at Shimla ? Or, could a holder, on a holiday at Shimla, sends a notice from Shimla and requires payment to be made at Shimla, prosecute the drawer at Shimla on his failure to do so ? A cheque as a negotiable instrument is statutorily required to be discharged at the place mentioned therein. Item (4) and (5) in paragraph 14 of Bhaskaran would only enable parties to sue at the places where they are ordinarily resident or carry on business. 22. The words in paragraph 16 of the judgment regarding widened amplitude have to be read in this background. The Apex Court must not be understood to have held that question of Jurisdiction in a proceeding for offence punishable under Section 138 of N. I. Act is utterly irrelevant, or that there is absolutely no restriction on the choice of place of suing. These observations have to be read in the context of what is held in paragraph 14 and therefore the amplitude must be taken to have widened to the extent indicated in paragraph 14. 23. Same holds good about observations in paragraph 12 of Bhaskaran's judgment in respect of the word "ordinarily" appearing in Section

177. Cr. P.C. The Apex Court must be understood to have held that ordinarily the place of suing must have a nexus to the Us, but upon making out a case for deviating from this rule, action could be initiated even at some other place. It is not that the word "ordinarily" gives an unbridled freedom to a complainant to choose his forum for hauling up an accused. 24. With the background, it would be appropriate to find out whether Non-applicant No. 2 has made out a case for showing that the Judicial Magistrate First Class at Digras had Jurisdiction to entertain the complaint. From the copy of the complaint it is clear that the cheque was drawn at Bhandara and was made payable at Bhandara Branch of Bank of India. Yavatmal Urban Co-operative Bank, Digras was merely an intermediary agent of the complainant for presenting the cheque to the Bank i.e. drawee bank. Likewise Yavatmal Urban Cooperative Bank was merely an intermediary to communicate to the complainant that the cheque was unpaid by the drawee bank. 25. Clauses (4) and (5) of observation of paragraph 14 of the judgment in Bhaskaran's case it would have to be examined whether the facts in the present case attract items (4) and (5) in paragraph 14 of Bhaskaran's case. The learned Counsel for Non-applicant No. 2 submitted that complainant's Advocate Shri Ramesh Datir, resident of Barabhai Mohalla, Digras, District : Yavatmal had issued notice on 2-3-2005. Since the notice was issued from Digras, the Court at Digras has jurisdiction under item (4). The very first part of this notice is important. It reads as under: Under the instructions and power given to me by my client Shri Dashrath Rupsing Rathod R/o. Soyjana Tq. Manora, Dist. Washim, I hereby like to serve you as under. (Emphasis supplied) 26. The learned Counsel has graciously produced a copy of notice for my perusal. Perusal of the notice does not Indicate that payment of dishonoured cheque was claimed at Digras (and, as the foregoing discussion would show, such a claim would be untenable vide Sections 61 and 72 of N.I. Act). He however, contends that accused has the liberty to create his account in the Bank at Digras and pay the complainant at Digras. Question is not of the liberty of the accused but is of his liability. Since the accused was not, and could not have been, obliged by the notice to pay at Digras, and since the notice itself shows that the complainant was resident of Soyjana, Tah. Manora, District : Washim, it would be reasonable to infer that, at worst, the payment was demanded and was required to be made at the place of residence of the complainant. Crucial sentence in the notice may be reproduced as under: Therefore, I would like to call upon you to arrange the total cheques amount Rs. 35.000/- and pay it to my client.... 27. The Advocate had not demanded the payment to him but for the client, and since client's address is given in the notice, the payment was obviously not required to be made at Digras in Yavatmal district, even if the requirement of Sections 61 and 72 of Negotiable Instruments Act are ignored for the sake of argument. 28. The learned Counsel for Non-applicant No. 2 next submitted that the complainant's account is at Digras, the complainant works for gain at Digras, the complainant was born at Digras and though Soyjana is in different district, Digras is the market place for villagers of Soyjana. I am afraid that all these grounds are utterly Irrelevant from clothing the Court at Digras with Jurisdiction. Though complainant may have accounts at several places, it does

not follow that the complainant could file complaint at a place where he had account, because jurisdiction would have to be gathered from the place where money was intended to be paid. At the cost of repetition, it has to be pointed out that in Bhaskaran's case the cheque in question was held as having been delivered at the shop of witness No, 3 within territorial limits of the trial Court's jurisdiction. Such is not the present case. 29. As for complainant's working for gain at Digress, this is development in the year 2006, after present application was entertained by this Court, and therefore, this fact cannot now ex-post-facto clothe the Court at Digras with jurisdiction. The complainant being born at Digras is equally irrelevant and so is the fact of Digras being the market place for village Soyjana. Therefore, though the learned Counsel for the applicant vehemently, and to the best of his ability, tried to project the case of his client to support the impugned order, whereby the learned Judicial Magistrate First Class, Digras assumed jurisdiction to entertain the complaint, it would not be possible to uphold the said order. 30. All the same, it would not be appropriate to grant prayer seeking dismissal of the complaint for want of jurisdiction, since the complainant may, for reasons which may have struck to him as good, on the basis of the Judgment of three High Courts, have filed complaint at Digras. Therefore, while the order passed by the learned Magistrate at Exh. 51 in Criminal Complaint No. 856 of 2005 is quashed and set aside, the complainant would have a liberty to seek under Section 201 of the Code of Criminal Procedure that the complaint be returned for presentation to the Court of competent jurisdiction, if necessary, by explaining to the Court the delay that may have occasioned in preferring complaint in view of this intervening litigation. Since the Court of Judicial Magistrate First Class, Digras has no jurisdiction to entertain the complaint, the Judicial Magistrate First Class, Digras shall not take up further proceedings in the matter. 31. Shri Muley, learned Counsel for the applicant states that if the complainant applies to the Court of Magistrate for returning of the complaint, the Magistrate should decide the application after hearing the accused. This would be unnecessary. It is clarified that there is no question that the Magistrate granting permission to file complaint before a particular Court. The Magistrate may only permit return of the complaint, for being filed in appropriate Court. Obviously the accused would have liberty to challenge the jurisdiction of such Court should he have any valid objection.