Bombay High Court Mr. Suresh Srinivasan Iyengar vs The State Of Maharashtra And ... on 31 March, 1998 Equivalent citations: 1999 (1) ALD Cri 386, 1998 BomCR Cri Author: S Nijjar Bench: S Nijjar ORDER S.S. Nijjar, J. 1. This order will dispose of Criminal Writ Petition Nos.12/98, 13/98, 14/98, 15/98, 16/98, 17/98, 18/98, 29/98, 30/98, 31/98, 32/98, 33/98, 34/98 and 35/98 as there is commonality of facts, parties and points of law in all the matters. For the sake of convenience, the facts have been taken from Criminal Writ Petition No.12 of 1998. 2. This petition under Section 482 of the Criminal Procedure Code has been filed for quashing and setting aside the order dated 16th May 1997 passed by the Additional Chief Metropolitan Magistrate's 4th Court, Girgaum, Bombay in C.C. No. 297/S/96 whereby the application filed by the petitioner for dropping the proceeding has been rejected. Briefly the relevant facts may be noted. 3. The petitioner claims to be the non-Executive Director of the Company known as M/s Jay Harsh Holding and Services Pvt. Ltd. having its registered office at Borivli (West), Mumbai, hereinafter referred to as "Respondent No.3". The Respondent No.2 is a businessman having its residential address at 801/A, Manish PArk, Pump House, Andheri, Mumbai-400 093, hereinafter referred to as "the Complainant". The petitioner states he is not in charge of or responsible for the affairs of the said Company. He is not involved in the day to day affairs of the management of Respondent No.3. The com- plainant has not lent and advanced a sum of Rs.5,00,000/- on 11-1-1996 and Rs.3,50,000/- on 26-2-1996 to the petitioner and Respondent No.3 for their business purposes. The aforesaid advances made by the complainant are evidences by bills of exchange duly executed by and on behalf of Respondent No.3 and the petitioner. The Respondent No.3 issued to the complainant two cheques bearing cheque Nos.847533 and 847536 drawn on Canara Bank both dated 12th August, 1996 in the sum of Rs.5,00,000/- and Rs.3,50,000/-. These cheques were presented for payment on 12th August, 1996 at Central Bank/Bank of India, K.D.Branch. The aforesaid cheques were returned/disho- noured on 16th August, 1996 by the Bankers of Respondent No.3 and the petitioner with the endorsement "Funds insufficient". Therefore, the com- plainant by his Advocate's notice dated 21st August, 1996 informed the accused i.e. Petitioner and Respondent No.3 of the fact of dishonour of the aforesaid cheques and called upon them to make payment in lieu of the said dishonoured cheques. This notice was replied by the petitioner and respond- ent No.3 on 27th August, 1996 stating therein that "We want to pay the entire dues of your clients as claimed in each of your notices, but because of liquidity problem, we require some time. We request your clients and also to you please do not proceed. We shall pay your dues accordingly to your notices dated 21-8-96 within some time." Since no payment was made separate complaints were filed in the Court of the Addl. Chief Metropolitan Magistrate's 4th Court, Girgaum, Bombay. The learned Magistrate was pleased to issue process in the said complaint. The petitioner preferred criminal writ petition No.403 of 1997 before this Court for quashing the process issued by the learned Magistrate. By order dated 26th March, 1997, this Court relying on the case of K.M. Mathew v/s. State of Kerala held that it is open to the petitioner to approach the learned Magistrate with an application to drop the proceedings.

It was ordered as follows: "As observed by the apex court in case K.M.Mathew v. State of Kerala, it is open to the petitioner to approach the learned Magistrate with an application to drop the proceedings. On such an application being filed, the learned Magistrate shall hear both the sides and pass orders according to law. Till the disposal of the application, the petitioner in these cases is exempted from personal appearance before the learned Magistrate. However, on such an application being filed, the learned Magistrate shall dispose of the same as expeditiously as possible within a period of three months from the date of application. All questions raised in these writ petitions on facts and in law, are left open. A copy of this order be forwarded to the learned Magistrate forthwith. With these observations, all the writ petitions are disposed of at the admission stage." 4. Accordingly an application was filed on 29th April, 1997 for dropping the proceedings before the learned Magistrate's Court. It was pleaded on behalf of the petitioner that he was not in charge of and responsible for the day to day affairs of Respondent No.3 Company. There is no averment made in this effect in the complaint. Respondent No.2 filed a reply to the aforesaid application before the learned Magistrate. After considering the arguments put forward by the Counsel for the parties, the learned Magis- trate has rejected the application by order dated 16th May, 1997. It is this order which is impugned in the present writ petition. 5. Mr.Hegde, learned Counsel appearing for the petitioner submits that the notice issued by Respondent No.2 is not in accordance with Section 138 of the Negotiable Instruments Act, 1881 (as amended) (hereinafter referred to as "the Act"). The interest has not been specified and, therefore, the notice is vague and no prosecution can continue on the basis of the said notice. Learned Counsel also submits that the complaint filed by the Re- spondent No.2 is filed as a duly Constituted Attorney of the payee/holder in due course of the cheque but the complaint does not disclose that Re- spondent No.2 is the duly constituted attorney of the payee. Learned Coun- sel further submits that the Court of learned Magistrate at Girgaum had no territorial Jurisdiction to entertain the complaint and the proceedings. 6. Mr.Mohite, appearing for Respondent No.2-complainant, submits that the impugned order passed by the learned Magistrate is not open to challenge on any of the grounds stated in the petition. Learned Counsel submits that so far as the submission about the notice being vague is concerned, the same is answered by Section 80 of the Act. No doubt the notice does not state the amount of interest claimed but it does state that the Petitioner and Respondent No.3 were called upon to pay the amounts of dishonoured cheques along with interest accrued thereon. It is submitted that the amount of cheque is very well known to the petitioner and Respondent No.3. It is further submitted that the proviso to Section 138 of the Act does not preclude the making of a demand over and above the amounts specified in the cheques which had been dishonoured. Even if there is no agreement about the interest the claims can be based on Section 80 of the Act which provides that when no rate of interest is specified in the instrument, interest shall be calculated at the rate of 18 per cent per annum from the date at which the same ought to have paid by the parties. With regard to the second submission about the power of Attorney Mr.Mohite submits that even

if the facts as narrated by the petitioner are accepted, it would only amount to a mere irregularity. This would not vitiate the proceedings in the trial Court. Mr.Mohite learned Counsel, further submits that the learned Metro- politan Magistrate's Court has the territorial jurisdiction to proceed with the case as the cheques which have been dishonoured were delivered to the Respondent No.2 within the territorial jurisdiction of the Court. 7. Mr.Hegde in support of his submissions relied on a number of authori- ties which may now be noticed. On the question of interest, learned Counsel relied on a judgement of the Calcutta High Court in the case of Gopa Debi Ozha v/s. Sujit Paul (1995 Cri.L.J. 3412). Therein the facts were that the petitioner and her husband held 620 shares of M/s. Nazareth Engineering Company Private Limited and they agreed to transfer 50 per cent of such shares of the said Company to the opposite party therein and her wife Suli Paul. The consideration was fixed at Rs.6,50,000/- for transfer of such shares and the opposite party paid Rs.5,00,000/- in cash and the balance of Rs.1,50,000/- by bank draft. The petitioner and her husband failed to transfer the said shares and did not refund the money also. On 11th June, 1994 the petitioner issued a cheque for an amount of Rs.5,79,000/-. This cheque was dishonoured with the endorsement "insufficiency of funds into the account". On 24th June, 1994 the opposite party therein sent a notice demanding payment of Rs.6,50,000/- within 15 days from the date of receipt of the said notice. The cheque amount was Rs.5,79,000/-. It was, therefore, argued that the notice was bad as the amount claimed was Rs.6,50,000/- whereas the cheque had been made only in the sum of Rs.5,79,000/-. It was on these facts that the learned Judge made the observations contained in paragraphs 28 and 29 of the Judgement which are as follows: "28. So the wording in clause (b) to the proviso of S. 138"a demand for payment of the said amount of money by giving a no- tice, in writing, to the drawer of the cheque' , refers to the cheque amount and not any other amount either smaller or higher than the amount mentioned in the cheque. So the notice need to be given demanding the cheque amount. If any bigger amount or small- er amount than the cheque amount is mentioned, in my view, that will create difficulty to the drawee to know how much amount he has to pay or she has to pay as the case may be and that makes the notice insufficient and vague and the notice will become illegal. This view has found support in a single bench decision of this Court in the case of Arcon Engineering Company Private Limited (supra). 29. In the instant case the cheque amount was 5,79,000/- whereas a demand was made from the petitioner herein by the opposite party No.1 for a sum of Rs.6,50,000/-. That was not the cheque amount, and as such, the notice is vague and insufficient and the said notice cannot be sustained in law." I am unable to agree with the submissions of Mr.Hegde. Section 138 requires the making of a demand for payment of the said amount of money by giving a notice. In my view, so long as the notice claim payment of the amount mentioned in the dishonoured cheque no fault can be found with the same. All that is required under Section 138 of the Act is that the drawer of the dishonoured cheque should be put to notice that unless the amount mentioned in the dishonoured cheque is paid within 15 days, he is liable to criminal prosecution. Mention of such words "along with accrued

interest" would not make the notice vague. Even if there is any uncertainty that would be deemed to have been removed by operation of Section 80 of the Act. Section 80 of the Act makes certain what is uncertain. It is enacted to provide for interest where none is provided by the parties in the agree- ment. It provides that where no rate of interest is specified in the in- strument then the debtor is liable to pay interest at the rate of 18 per cent from the date the same become due. It may be that no criminal proceed- ings can continue with regard to the interest part. The drawer of the dishonoured cheques would certainly be amenable to civil proceedings for the said amount. So if the notice demands payment of the cheque amount together with accrued interest it would not have the effect of making the notice vague or not in conformity with proviso to Section 138 of the Act. Once the notice expresses in clear and unambiguous terms that the demand is being made for repayment of the cheque amount the statutory requirement is complied with. It is not necessary to separately mention in words and figures the amount of the dishonoured cheques. The amount of the disho- noured cheque can safely be presumed to be known by the drawer of the dishonoured cheque. It must be noticed that the observations made by the Calcutta High Court were in the peculiar facts and circumstances of that case. The facts of this case are wholly different from the facts in the case of Ozha (supra). Therein clearly the cheque amount was Rs.5,79,000/- whereas the demand was made for payment of Rs.6,50,000/-. Clearly, there- fore, the notice was not in accordance with Section 138 of the Act. The observations of the learned single Judge of the Calcutta High Court cannot be stretched to such an extent that it would also exclude the mention of statutory interest payable under Section 80 of the Act. The notice clearly calls upon the drawer of the dishonoured cheques to pay the cheque amount. Paras 3 and 5 of the notice makes the position crystal clear. There is no room for any vagueness or uncertainty. Those paras of the notice may be reproduced, for appreciation of the opinion expressed above. "3. On demand of our client, and in repayment of the principle amount only, due under the said bill of exchange you had issued in our client's favour a cheque bearing No. 847536 for Rs.3,50,000/- dated 12th August, 1996 which cheque when presented to the Bank on 12th August 1996 was returned unpaid by your bank with memo of dishonour showing the ground of dishonour as"FUNDS INSUFFICIENT". On verification from your bank it was discovered that in fact the balance in your bank account at the relevant time was not adequate to honour the said cheque. You have not paid any interest on the amount lent. 5. You are by this notice called upon to pay to our client the amounts of aforesaid dishonoured cheque alongwith interest ac- crued thereon within 15 days from the date of receipt of this notice, failing which, our client will be constrained to initiate Criminal Proceedings contemplated u/s 138 of Negotiable Instru- ments Act, which please note." Mr.Hegde thereafter relies on 1997 Cri.L.J. 1939, A.C. Rai v/s. M.Rajan. In this case the payments were demanded not only of the amount covered by the cheque, but also interest thereon without specifying the rate of interest. Thus the same submission was made to the effect that it would amount to an insufficient notice or a notice which cannot be treated legal under proviso (b) to Section 138 of

the Act. Learned Counsel in the said case had relied on the judgment of the Calcutta High Court in the case of Gopa Devi Ozha (supra). In paragraph 11 of the judgement, the learned Judge of the Kerala High Court observed that "According to that Court, a notice claiming a higher amount or a lesser amount makes the notice insuf- ficient and vague, and such a notice will be illegal. I do not see any reason to disagree with the learned Judge who rendered the above said decision." Thereafter in Paragraph 12 it is observed as follows: "12. In the case at hand, the amount covered by the cheque is Rs.40,000/-. But in the notice, it was not the said amount which was claimed, but that amount together with interest without specifying the amount of interest or the rate of interest. That certainly makes the notice vague and insufficient. It cannot be treated as a notice as contemplated by proviso (b) to Section 138 of the Act. In the circumstances, for want of a proper and legal notice also, the acquittal is sustainable." With due respect, for the reasons already mentioned, I am unable to agree with the learned single Judge of the Kerala High Court. The question of claim for interest in the notice was not before the Calcutta High Court. As noticed above, therein the amount of the dishonoured cheque was Rs.5,79,000, but the amount claimed in the notice was Rs.6,50,000/-. The extra amount of Rs.71,000/- was not claimed by way of interest. Nor was any unspecified interest claimed. Thus there was no occasion for the Calcutta High Court to examine the impact of Section 80 of the Act in a situation where an unspecified claim for interest is made in the notice after specif- ically claiming payment for cheque amount. The Kerala High Court merely relied upon the observations of the Calcutta High Court. The learned Single Judge has not at all adverted to Section 80 of the Act. 8. The view I have taken above also finds support from a judgement of the learned single Judge of this Court given in Criminal Writ Petition No.903 of 1993. In that case, it was, inter alia, submitted that in the notice a demand was made regarding interest at the rate of 21 per cent per annum. Mr.Justice Patankar held that merely because interest is demanded neither the notice is invalid nor the criminal proceedings are illegal. Although the learned single Judge had not adverted to Section 80 of the Act, the view taken by Justice Patankar can well be supported by Reference to Sec- tion 80 of the Act as noticed above. Mr.Hegde had then submitted that Respondent No.2 being the Constituted Attorney of his wife the description given in the title is defective. The complaint is not signed by the com- plainant. There is no resolution of Board of Directors on record. Thus the complaint ought to have been returned. In support of this submission, learned Counsel relies upon judgement of the Madras High Court reported in the case of M/s.Ruby Leather Exports v/s. K.Venu Rep. Vandana Chemicals etc (1994) Vol.I Crimes 820. The learned Counsel relied on the observations made in paragraph 32 of the said judgement. "32.Cri.O.P.No.8731/92: The cause title in the complaint shows K.Venu as the complainant. He has stated even in the cause title that he was representing Vandhana Chemicals, Madras. It cannot be stated, that the complainant is the payee, Vandhana Chemicals, which stood represented by Venu, an authorised representative, who could be deemed as such in law. Further, as I have already stated, while narrating the facts, no authorization as

such was also produced before the trial Magistrate at the time of taking cognizance. On the peculiar facts of this case, it has to be held, that cognizance of the impugned complaint was barred under Section 142(a) of the Negotiable Instruments Act." In my view, the aforesaid observations are not applicable in the facts and circumstances of this case. In fact, the very same judgement clearly holds as follows: "30. The answer to the question posed, is that a Power of Attor- ney Agent of the payee or the holder in due course of the cheque, will be competent to make a complaint in writing under Section 142(a) of the Negotiable Instruments Act, to facilitate valid cognizance being taken by the Magistrate. It makes no difference, if the Power of Attorney is executed by one individual in favour of another or executed by a company in favour of a particular person. This verdict, of competency of a Power of Attorney, to prefer a complaint on behalf of the payee or holder in due course of the cheque, to be taken cognizance of, will not preclude the accused from raising any valid defence open to them under law including the validity of the Power of Attorney. I am not in these batch of cases, deciding whether a person authorised in writing by a payee or the holder in due course (individual or a company) would suffice to take cognizance, for that issue does not arise directly in these petitions. However, on that aspect, there is some indication available in the judgments of Janartha- nam, J. of this Court in M/s.Gopalakrishna Trading Co. ref. by its Manager P.Sivaram v. D.Baskaran (supra) and Ramakrishnan, J. of Kerala High Court C.B.S. Gramaphone Records and Tapes (India) Ltd. v. Noorudeen (supra)." Keeping the aforesaid observations in view it is to be seen that in the reply filed to the petition it is categorically stated that respondent No.2 is the Power of Attorney Holder for his wife and his father. It is further stated that after going through the Power of Attorney the verifica- tion was recorded by the learned Magistrate on 27th September, 1996 . In the verification it is stated as follows: "I am the constituted Attorney of my wife. I am fully aware of and I was present at all material times during the transactions while the monies were lent and bills of exchange and cheques were drawn, signed, issued and delivered and have full knowledge of this transaction. I am authorised to file this complaint and proceed with the matter and give evidence." Keeping the aforesaid facts and circumstances in view I am unable to hold that the proceedings are vitiated merely because it is not mentioned in the title of the complaint that Respondent No.2 is the Power of Attorney holder of the payee or the holder of the cheque in due course. Such techni- cal defects cannot be permitted to defeat the very purpose for which Sec- tions 138 to 142 of the Act were incorporated. The learned Magistrate has taken into consideration all the relevant material at the time of the issue of process and at the time of passing the order rejecting the application of Petitioner for recall of process. This is in consonance with the settled law that the summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence, both oral and documentary, in support thereof. The learned Magistrate has passed a well reasoned order, after dealing with the facts and the issues of law raised before him. For these views of mine I find support from the judgement of Supreme

Court in the case of M/s.Pepsi Foods Ltd. and another v/s. Special Judicial Magistrate and others (1998 Cri.L.J. 1). In para 28 of the judgement it is held as follows: "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summon- ing the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or other- wise and then examine if any offence is prima facie committed by all or any of the accused." 9. Thereafter the counsel relied upon a single Judge decision of the Andhra Pradesh High Court in Satish & Co. v/s S.R. Traders and Ors. (1997 (4) ALL M.R. 58). A perusal of this case shows that the complaint had been filed by M/s.Satish & Co. through its Manager Shri Naresh Kumar. Thus the trial Court had held that the complaint was not filed by the competent person. The authorisation in favour of the Manager to file the complaint was filed in Court after one year of the filing of the complaint. It was not filed along with the complaint. It was thus argued that filing of such authorisation after one year would not cure the legal infirmity. During the course of discussion, the learned Judge has held that the Manager cannot be construed to be a person holder in due course of the cheque in terms of the definition of "holder in due course" found under Section 9 of the Act. At the same time the Court held that the Company being a corporate body, any officer of the Company who is duly authorised by the Company to initiate proceedings can file a complaint for and on behalf of the Company. The learned Judge distinguishes the status of the Manager from that of the Managing Director of the Company. It is held that the Managing Director may derive his powers from the Articles of Association directly or for certain other acts he may be authorised to do so, but in the case of a Manager such powers may be traced either to his appointment order or to specific author- isation given to him regarding a particular aspect or aspects of the busi- ness. Thus it was held that the designation 'Manager' does not clothe a person with all the powers to file a suit and defend the suit or file a complaint for and on behalf of the Company. The facts of the aforesaid case are not para materia with the facts of the present case. Here, in the present case, the Power of Attorney was duly brought to the notice of the Magistrate. The complaint was only entertained after the learned Magistrate was satisfied that Respondent No.2 was the duly Constituted Attorney of the Complainant. 10. Learned Counsel thereafter submitted that the complaint merits out- right dismissal as it is nowhere mentioned that the Petitioner is in charge of the Company. In support of this submission, learned Counsel has relied upon Municipal

Corporation of Delhi v/s. Ram Kishan Rohta- gi and ors. In that case the averment in the complaint was to the effect that the accused No.3 was the Manager of accused No.3 and accused Nos. 4 to 7 were the Directors of accused No.2 and as such they were in charge of and responsible for the conduct of business of accused No.2 at the time of sampling. Interpreting the words 'as such' it is held by the Supreme Court that there is no clear averment of the fact that the Directors were really in charge of the manufacture and responsible for the conduct of business but the words 'as such' indicate that the complainant has merely presumed that the Directors of the Company must be guilty because they are holding a particular office. It is further observed as follows: "15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed." A perusal of the extract above will show that the Supreme Court was dealing with a case where there was not even a whisper nor a shred of evidence nor anything to show apart from the presumption drawn by the complainant that there is any act committed by the Directors from which reasonable inference can be drawn that they could also be vicariously liable. Such is not the case herein. As observed above, the petitioner had replied to the notice sent by Respondent No.2 assuring him of due payment. The petitioner had also accepted the notice in Company Petition No.573 of 1996 on behalf of the Company. The learned Magistrate was perfectly enti- tled to take these facts into consideration. In fact, in the impugned order, these facts are quite clearly mentioned. It is mentioned that the petitioner accepted all summons as there are in all 8 cases pending against him. Thus the learned Magistrate has come to the conclusion that there is enough material on record to show the involvement of the accused in the present transactions. Mr.Hegde then relied upon a judgement of the Allaha- bad High Court in the case of Smt.Sharda Aggarwal and ors. v/s Additional Chief Metropolitan Magistrate lI, Kanpur and Anr. (1992 Cri.L.J. 1442). In paragraph 8 of the said judgement it is hold as follows: "In this connection the appointment letter creating the relation- ship between the complainant and accused company was referred to by the learned Counsel. It is interesting to mention here that the said order is signed only by Managing Director. The other facts to be noted are that the cheques were issued by the Manag- ing Director and even the Bank Draft appears to have been pre- pared in the name of accused company. Thus, from the facts emerg- ing out of the complaint cannot be said that the applicants have got anything to do with the bouncing of the cheque. However, if evidence is led during trial about the applicants or any one of them being in charge of

and responsible to the company for the conduct of the business of the company the Court below would be at liberty to proceed against them or him also in accordance with law. As it is, the complaint does not make out an offence in so far as the applicants Smt. Sharma, Smt.Kiran and Sri M.P.Agarwal are concerned." A perusal of the extract reproduced above clearly shows that the High Court had come to a categoric finding of fact to the effect that it cannot be said that applicants have got anything to do with the bouncing of the cheque. The High Court, however, further cautioned that if evidence is led during trial about the applicants or anyone of them being incharge of and responsible to the Company for the conduct of the business of the Company, the Court below would be at liberty proceed against them in accordance with law. In view of the above I am of the opinion that both these authorities do not support the case put forward by Mr.Hegde. 11. Mr.Hegde thereafter contended that the Girgaum Court had no territori- al jurisdiction to proceed with the trial. It is submitted by Mr.Hegde that the cheque was not dishonoured within the territorial jurisdiction of the Court. The proposition of law by Mr.Hegde has been answered against him by the Delhi High Court in the case of Canbank Financial Services Ltd. v/s Gitanjali Motors and Ors. (1995 Cri.L.J. 1272) wherein it is clearly held that the place where the cheque was given or handed over is relevant and the Courts within that area will have territorial jurisdiction. Referring to Sections 179 and 178(b) Cr.P.C., Arun Kumar, J. has held as follows in paragraph 14: "Then as per Section 179 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 those legal jurisdiction such thing has been done or such consequence has ensued. Payment of cheque against an account having sufficient funds to meet the liability under the cheque is one act while dishonour of the cheque is a consequence of such an act. Therefore as per Section 179 also the place where the cheque was given or handed over will have jurisdiction and the courts of that place will have jurisdiction to try the offence. Likewise for purposes of Section 178(b) payment of cheque may be one part of an offence and dishonour of the cheque may be another part and, therefore, both places i.e. place where the cheque was handed over and the place where it was dishonoured will have jurisdiction." I am in respectful agreement with aforesaid observation of Mr.Justice Arun Kumar. The learned Magistrate has also relied upon the said judgment quoted above. The same view is expressed by the Kerala High Court in the case of P.K. Muraleedharan v/s C.K.Pareed and Anr. (1992 Cri.L J 1965) In para 21 it is held as follows: "21. From the discussions in the foregoing paragraphs the posi- tion that emerges is that the venue of enquiry or trial has primarily to be determined by the averments contained in the complaint. If on the basis of such averments the court has juris- diction, it has to proceed with the complaint. The place where the creditors resides or the place where the debtor resides cannot be said to be the place of payment unless there is any indication to that effect either expressly or impliedly. The cause of action as contemplated in S. 142 of the Act arises at the place where the drawer of the cheque fails to make payment of the money. That can be the place where the Bank to which the cheque was issued is located. It can also be

the place where the cheque was issued or delivered. The Court within whose jurisdiction any of the above mentioned places falls has therefore got jurisdic- tion to try the offence under Section 138 of the Act." This view has been affirmed by a Division Bench of this Court in the case of Rakesh Nemkumar Porwal v/s Narayan Dhondu Joglekar and anr. (1993 Cri.L.J. 680). In para 15 it is held as follows: "15. ..... The anatomy of S. 138 comprises certain necessary components before the offence can be said to be complete, the last of them being the act of non-payment inspite of 15 days having elapsed after receipt of the final notice. It is true that the cheques may have been issued by the accused at his place of residence or business, the Bank on which it is drawn being often located at a second spot and inevitably the complainant or the payee has his place of residence or business at yet another loca tion. It was for this reason that the Kerala High Court in the case of P.K.Muralendharan v.C.K Pareed, reported in 1992 Cri.L.J. 1965 took the view that any of the three Courts could exercise jurisdiction. In our considered view, where undoubtedly each of the components constitute a stage in the commission of the of- fence, the final non-payment being the ultimate one, S. 178 Cr.P.C. would clearly apply to an offence of this type." In view of the above I find no merit in these writ petitions. The same are hereby dismissed with no order as to costs. Ad-interim order granted on 22-1-1998 in all the petitions stands vacated. Parties to appear before the trial Court on 18-4-98. C.C. expedited. 12. Petition dismissed.