Dashrath Rupsingh Rathod vs State Of Maharashtra & Anr on 1 August, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3519, 2014 (9) SCC 129, 2014 AIR SCW 4798, AIR 2014 SC(CRI) 1908, 2014 ACD 887 (SC), 2014 (3) CALCRILR 233, 2014 ALLMR(CRI) 3333, 2014 (3) ABR (CRI) 442, 2014 (9) SCALE 97, 2014 (4) RECCIVR 145 SN, (2014) 3 CURCRIR 428, (2014) 3 BANKCAS 513, (2014) 2 NIJ 227, (2014) 1 CPR 627, (2014) 4 CIVLJ 303, (2014) 3 GUJ LR 2700, (2014) 5 KANT LJ 499, (2014) 4 MPLJ 407, (2015) 1 MADLW(CRI) 1, (2014) 3 CRILR(RAJ) 842, (2014) 4 RECCIVR 145, (2014) 4 ICC 1, 2014 CALCRILR 3 233, (2014) 3 ALLCRIR 2914, 2014 CRILR(SC&MP) 842, (2014) 6 MAH LJ 404, (2014) 3 PAT LJR 509, (2014) 3 JLJR 594, 2014 CRILR(SC MAH GUJ) 842, (2014) 4 CAL HN 82, (2015) 2 ALLCRILR 763, (2015) 2 GAU LT 50, (2014) 141 ALLINDCAS 1 (SC), (2014) 4 MH LJ (CRI) 1, (2014) 7 ADJ 115 (SC), (2014) 4 PUN LR 77, (2014) 5 ANDHLD 1, (2014) 212 DLT 737, (2014) 3 CIVILCOURTC 814, (2014) 2 GUJ LH 689, (2014) 3 KER LJ 600, (2014) 3 KER LT 605, (2014) 3 MAD LJ(CRI) 475, (2014) 59 OCR 289, (2014) 3 RAJ LW 2494, (2014) 3 RECCRIR 904, (2014) 9 SCALE 97, (2014) 3 UC 1593, (2014) 4 MPHT 257, (2014) 3 BOMCR(CRI) 593, (2014) 3 KCCR 2313, (2014) 3 DLT(CRL) 972, (2014) 86 ALLCRIC 882, (2014) 3 CRIMES 162, (2014) 3 CURCC 164, (2014) 2 CPJ 350, 2014 (2) ALD(CRL) 190, 2014 (3) SCC (CRI) 673, (2014) 3 ALLCRILR 944, (2014) 5 BOM CR 243

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Bench: T.S. Thakur, Vikramajit Sen, C. Nagappan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2287 OF 2009

Dashrath Rupsingh Rathod …..Appellant

Versus

State of Maharashtra & Anr. …..Respondents

W I T H

CRIMINAL APPEAL NO. 1593 OF 2014
[Arising out of S.L.P.(Crl.)No.2077 of 2009];
CRIMINAL APPEAL NO. 1594 OF 2014
[Arising out of S.L.P.(Crl.)No.2112 of 2009];
CRIMINAL APPEAL NO. 1595 OF 2014
[Arising out of S.L.P.(Crl.)No.2117 of 2009];
CRIMINAL APPEAL NOS. 1596-1600 OF 2014
[Arising out of S.L.P.(Crl.)Nos.1308-1312 of 2009];
CRIMINAL APPEAL NO.1601 OF 2014
[Arising out of S.L.P.(Crl.)No.3762 of 2012];
CRIMINAL APPEAL NO. 1602 OF 2014
[Arising out of S.L.P.(Crl.)No.3943 of 2012];
CRIMINAL APPEAL NO.1603 OF 2014
[Arising out of S.L.P.(Crl.)No.3944 of 2012]; AND
CRIMINAL APPEAL NO. 1604 OF 2014
[Arising out of S.L.P.(Crl.)No.59 of 2013].

J U D G M E N T

VIKRAMAJIT SEN, J.

Leave granted in Special Leave Petitions. These Appeals raise a legal nodus of substantial public importance pertaining to Court's territorial jurisdiction concerning criminal complaints filed under Chapter XVII of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'). This is amply adumbrated by the Orders dated 3.11.2009 in I.A.No.1 in CC 15974/2009 of the three-Judge Bench presided over by the then Hon'ble the Chief Justice of India, Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Mr. Justice P. Sathasivam which SLP is also concerned with the interpretation of Section 138 of the NI Act, and wherein the Bench after issuing notice on the petition directed that it be posted before the three-Judge Bench.

PRECEDENTS The earliest and the most often quoted decision of this Court relevant to the present conundrum is K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510 wherein a two-Judge Bench has, inter alia, interpreted Section 138 of the NI Act to indicate that, "the offence under Section 138 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." The provisions of Sections 177 to 179 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') have also been dealt with in detail. Furthermore, Bhaskaran in terms draws a distinction between 'giving of notice' and 'receiving of notice'. This is for the reason that clause (b) of proviso to Section 138 of the NI Act postulates a demand being made by the payee or the holder in due course of the dishonoured cheque by giving a notice in writing to the drawer thereof. While doing so, the question of the receipt of the notice has also been cogitated upon.

The issuance and the receipt of the notice is significant because in a subsequent judgment of a Coordinate Bench, namely, Harman Electronics Pvt. Ltd. v. National Panasonic India Pvt. Ltd. (2009) 1 SCC 720 emphasis has been laid on the receipt of the notice, inter alia, holding that the cause of action cannot arise by any act of omission or commission on the part of the 'accused', which on a holistic reading has to be read as 'complainant'. It appears that Harman transacted business out of Chandigarh only, where the Complainant also maintained an office, although its Head Office was in Delhi. Harman issued the cheque to the Complainant at Chandigarh; Harman had its bank account in Chandigarh alone. It is unclear where the Complainant presented the cheque for encashment but it issued the Section 138 notice from Delhi. In those circumstances, this Court had observed that the only question for consideration was "whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the NI Act." It then went on to opine that the proviso to this Section "imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken." We respectfully agree with this statement of law and underscore that in criminal jurisprudence there is a discernibly demarcated difference between the commission of an offence and its cognizance leading to prosecution. The Harman approach is significant and sounds a discordant note to the Bhaskaran ratio. Harman also highlights the reality that Section 138 of the NI Act is being rampantly misused so far as territorial jurisdiction for trial of the Complaint is concerned. With the passage of time equities have therefore transferred from one end of the pendulum to the other. It is now not uncommon for the Courts to encounter the issuance of a notice in compliance with clause (b) of the proviso to Section 138 of the NI Act from a situs which bears no connection with the Accused or with any facet of the transaction between the parties, leave aside the place where the dishonour of the cheque has taken place. This is also the position as regards the presentation of the cheque, dishonour of which is then pleaded as the territorial platform of the Complaint under Section 138 of the NI Act. Harman, in fact, duly heeds the absurd and stressful situation, fast becoming common-place where several cheques signed by the same drawer are presented for encashment and requisite notices of demand are also despatched from different places. It appears to us that justifiably so at that time, the conclusion in Bhaskaran was influenced in large measure by curial compassion towards the unpaid payee/holder, whereas with the passage of two decades the manipulative abuse of territorial jurisdiction has become a recurring and piquant factor. The liberal approach preferred in Bhaskaran now calls for a stricter interpretation of the statute, precisely because of its misemployment so far as choice of place of suing is concerned. These are the circumstances which have propelled us to minutely consider the decisions rendered by two-Judge Benches of this Court. It is noteworthy that the interpretation to be imparted to Section 138 of the NI Act also arose before a three-Judge Bench in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. (2001) 3 SCC 609 close on the heels of Bhaskaran. So far as the factual matrix is concerned, the dishonoured cheque had been presented for encashment by the Complainant/holder in his bank within the statutory period of six months but by the time it reached the drawer's bank the aforementioned period of limitation had expired. The question before the Court was whether the bank within the postulation of Section 138 read with Sections 3 and 72 of the NI Act was the drawee bank or the collecting bank and this Court held that it was the former. It was observed that "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 under Section 138 of the NI Act, who otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 3, 72 and 138 of the NI 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." Clearly, and in our considered opinion rightly, the Section had been rendered 'accused-centric'. This decision clarifies that the place where a complainant may present the cheque for encashment would not confer or create territorial jurisdiction, and in this respect runs counter to the essence of Bhaskaran which paradoxically, in our opinion, makes actions of the Complainant an integral nay nuclear constituent of the crime itself.

The principle of precedence should promptly and precisely be paraphrased. A co-ordinate Bench is bound to follow the previously published view; it is certainly competent to add to the precedent to make it logically and dialectically compelling. However, once a decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied; whereas a Co-ordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend the precedent for reconsideration by referring the case to the Chief Justice for constitution of a larger Bench. Indubitably, there are a number of decisions by two- Judge Benches on Section 138 of the NI Act, the majority of which apply Bhaskaran without noting or distinguishing on facts Ishar Alloy. In our opinion, it is imperative for the Court to diligently distill and then apply the ratio of a decision; and the view of a larger Bench ought not to be disregarded. Inasmuch as the three-Judge Bench in Ishar Alloy has categorically stated that for criminal liability to be attracted, the subject cheque has to be presented to the bank on which it is drawn within the prescribed period, Bhaskaran has been significantly whittled down if not overruled. Bhaskaran has also been drastically diluted by Harman inasmuch as it has given primacy to the service of a notice on the Accused instead of its mere issuance by the Complainant.

In Prem Chand Vijay Kumar v. Yashpal Singh (2005) 4 SCC 417, another two- Judge Bench held that upon a notice under Section 138 of the NI Act being issued, a subsequent presentation of a cheque and its dishonour would not create another 'cause of action' which could set the Section 138 machinery in motion. In that view, if the period of limitation had run out, a fresh notice of demand was bereft of any legal efficacy. SIL Import, USA v. Exim Aides Silk Exporters (1999) 4 SCC 567 was applied in which the determination was that since the requisite notice had been despatched by FAX on 26.6.1996 the limitation for filing the Section 138 Complaint expired on 26.7.1996. What is interesting is the observation that "four constituents of Section 138 are required to be proved to successfully prosecute the drawer of an offence under Section 138 of the NI Act" (emphasis supplied). It is also noteworthy that instead of the five Bhaskaran concomitants, only four have been spelt out in the subsequent judgment in Prem Chand. The commission of a crime was distinguished from its prosecution which, in our considered opinion, is the correct interpretation of the law. In other words, the four or five concomitants of the Section have to be in existence for the initiation as well as the successful prosecution of the offence, which offence however comes into existence as soon as subject cheque is dishonoured by the drawee bank. Another two-Judge Bench in Shamshad Begum v. B. Mohammed (2008) 13 SCC 77 speaking through Pasayat J this time around applied Bhaskaran and concluded that since the Section 138 notice was issued from and replied to Mangalore, Courts in that city possessed territorial jurisdiction. As already noted above, this view is not reconcilable with the later decision of Harman. The two-Judge Bench decision in Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006) 3 SCC 658 requires to be discussed in some detail. A Complaint under Section 138 of the NI Act was filed and cognizance was taken by the Chief

Judicial Magistrate, Birbhum at Suri, West Bengal for the dishonour of a number of cheques issued by the accused-company which had its headquarters in Ernakulam, Kerala where significantly the accused-company's bank on whom the dishonoured cheques had been drawn was located. Several judgments were referred to, but not Bhaskaran. The third ingredient in Bhaskaran, i.e. the returning of the cheque unpaid by the drawee bank, was not reflected upon. Inasmuch as Mosaraf Hossain refers copiously to the cause of action having arisen in West Bengal without adverting at all to Bhaskaran, leave aside the three-Judge Bench decision in Ishar Alloy, the decision may be seen as per incuriam. Moreover, the concept of forum non conveniens has no role to play under Section 138 of the NI Act, and furthermore that it can certainly be contended by the accused-company that it was justifiable/convenient for it to initiate litigation in Ernakulam. If Bhaskaran was followed, Courts in Ernakulam unquestionably possessed territorial jurisdiction. It is, however, important to italicize that there was an unequivocal endorsement of the Bench of a previously expressed view that, "where the territorial jurisdiction is concerned the main factor to be considered is the place where the alleged offence was committed". In similar vein, this Court has opined in Om Hemrajani v. State of U.P. (2005) 1 SCC 617, in the context of Sections 177 to 180 CrPC that "for jurisdiction emphasis is on the place where the offence is committed." The territorial jurisdiction conundrum which, candidly is currently in the cauldron owing to varying if not conflicting ratios, has been cogitated upon very recently by a two-Judge Bench in Criminal Appeal No.808 of 2013 titled Nishant Aggarwal v. Kailash Kumar Sharma decided on 1.7.2013 and again by the same Bench in Criminal Appeal No.1457 of 2013 titled Escorts Limited v. Rama Mukherjee decided on 17.09.2013. Bhaskaran was followed and Ishar Alloy and Harman were explained. In Nishant the Appellant issued a post-dated cheque drawn on Standard Chartered Bank, Guwahati in favour of complainant-respondent. It appears that the Appellant had endeavoured to create a case or rather a defence by reporting to his bank in Guwahati as well as to the local police station that 'one cheque (corresponding to the cheque in question) was missing and hence payment should be stopped.' The Respondent-drawer was a resident of District Bhiwani, Haryana; he presented the cheque for encashment at Canara Bank, Bhiwani but it was returned unpaid. The holder then issued a legal notice which failed to elicit the demanded sum of money corresponding to the cheque value, and thereupon followed it by the filing of a criminal complaint under Sections 138 and 141 of the NI Act at Bhiwani. The Judicial Magistrate, Bhiwani, vide order dated 5.3.2011, concluded that the court in Bhiwani did not possess territorial jurisdiction and he accordingly returned the complaint for presentation before the proper Court. The five concomitants of Section 138 extracted in Bhaskaran, were reiterated and various paragraphs from it were reproduced by this Court. Nishant also did not follow Ishar Alloy which, as already analysed, has concluded that the second Bhaskaran concomitant, namely, presentation of cheque to the bank refers to the drawee bank and not the holder's bank, is not primarily relevant for the determination of territorial jurisdiction. Nishant distinguished Ishar Alloy on the predication that the question of territorial jurisdiction had not been raised in that case. It is axiomatic that when a Court interprets any statutory provision, its opinion must apply to and be determinate in all factual and legal permutations and situations. We think that the dictum in Ishar Alloy is very relevant and conclusive to the discussion in hand. It also justifies emphasis that Ishar Alloy is the only case before us which was decided by a three-Judge Bench and, therefore, was binding on all smaller Benches. We ingeminate that it is the drawee Bank and not the Complainant's Bank which is postulated in the so-called second constituent of Section 138 of the NI Act, and it is this postulate that spurs us towards the conclusion that we have arrived at in the

present Appeals. There is also a discussion of Harman to reiterate that the offence under Section 138 is complete only when the five factors are present. It is our considered view, which we shall expound upon, that the offence in the contemplation of Section 138 of the NI Act is the dishonour of the cheque alone, and it is the concatenation of the five concomitants of that Section that enable the prosecution of the offence in contradistinction to the completion/commission of the offence.

We have also painstakingly perused Escorts Limited which was also decided by the Nishant two-Judge Bench. Previous decisions were considered, eventually leading to the conclusion that since the concerned cheque had been presented for encashment at New Delhi, its Metropolitan Magistrate possessed territorial jurisdiction to entertain and decide the subject Complaint under Section 138 of the NI Act. Importantly, in a subsequent order, in FIL Industries Ltd. v. Imtiyaz Ahmed Bhat passed on 12th August 2013, it was decided that the place from where the statutory notice had emanated would not of its own have the consequence of vesting jurisdiction upon that place. Accordingly, it bears repetition that the ratio in Bhaskaran has been drastically diluted in that the situs of the notice, one of the so-called five ingredients of Section 138, has now been held not to clothe that Court with territorial competency. The conflicting or incongruent opinions need to be resolved.

JUDICIAL APPROACH ON JURISDICTION We shall take a short digression in terms of brief discussion of the approach preferred by this Court in the context of Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC'), which inter alia, enjoins that a suit must be instituted in a court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides, or carries on business, or personally works for gain, or where the cause of action wholly or in part arises. The Explanation to that Section is important; it prescribes that a corporation shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Since this provision primarily keeps the Defendant in perspective, the corporation spoken of in the Explanation, obviously refers to the Defendant. A plain reading of Section 20 of the CPC arguably allows the Plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of Section 20 are to be interpreted disjunctively from sub-section (c), as the use of the word 'or' appears to permit the Plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, it has been held that the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a forum non conveniens. This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. Patel Roadways Limited, Bombay v. Prasad Trading Company, AIR 1992 SC 1514 = (1991) 4 SCC 270 prescribes that if the Defendant-corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 of the CPC. We need not dilate on this point beyond

making a reference to ONGC v. Utpal Kumar Basu (1994) 4 SCC 711 and South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. (1996) 3 SCC 443.

We are alive to the possible incongruities that are fraught in extrapolating decisions relating to civil law onto criminal law, which includes importing the civil law concept of "cause of action" to criminal law which essentially envisages the place where a crime has been committed empowers the Court at that place with jurisdiction. In Navinchandra N. Majithia v. State of Maharashtra (2000) 7 SCC 640 this Court had to consider the powers of High Courts under Article 226(2) of the Constitution of India. Noting the presence of the phrase "cause of action" therein it was clarified that since some events central to the investigation of the alleged crime asseverated in the Complaint had taken place in Mumbai and especially because the fundamental grievance was the falsity of the Complaint filed in Shillong, the writ jurisdiction of the Bombay High Court was unquestionably available. The infusion of the concept of 'cause of action' into the criminal dispensation has led to subsequent confusion countenanced in High Courts. It seems to us that Bhaskaran allows multiple venues to the Complainant which runs counter to this Court's preference for simplifying the law. Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned.

RELEVANT PROVISIONS The provisions which will have to be examined and analysed are reproduced for facility of reference :

> 1 Negotiable Instruments Act, 1881 "138. Dishonour of cheque for insufficiency, etc., of funds in the account.-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

> Provided that nothing contained in this section shall apply unless-
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
>
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from

the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

142. Cognizance of offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138." Code of Criminal Procedure, 1973 "177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.- (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) 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.

179. Offence triable where act is done or consequence ensues.- 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." PARLIAMENTARY DEBATES The XVIIth fasciculus of the Negotiable Instruments Act containing Sections 138 to 142 was introduced into the statute in 1988. The avowed

intendment of the amendment was to enhance the acceptability of cheques. It was based on the Report of the Committee on Banking Laws by Dr. Rajamannar, submitted in 1975, which suggested, inter alia, penalizing the issuance of cheque without sufficient funds. The Minister of Finance had assuaged apprehensions by arguing that safeguards for honest persons had been incorporated in the provisions, viz., (i) the cheque should have been issued in discharge of liability; (ii) the cheque should be presented within its validity period; (iii) a Notice had to be sent by the Payee demanding payment within 15 days of receiving notice of dishonour; (iv) the drawer was allowed to make payment within 15 days from the date of receipt of notice; (v) Complaint was to be made within one month of the cause of action arising; (vi) no Court inferior to that of MM or JMFC was to try the offence. The Finance Minister had also stated that the Court had discretion whether the Drawer would be imprisoned or/and fined. Detractors, however, pointed out that the IPC already envisioned criminal liability for cheque-bouncing where dishonest or fraudulent intention or mens rea on part of the Drawer was evident, namely, cheating, fraud, criminal breach of trust etc. Therefore, there was no justification to make the dishonour of cheques a criminal offence, ignoring factors like illiteracy, indispensable necessities, honest/innocent mistake, bank frauds, bona fide belief, and/or unexpected attachment or freezing of account in any judicial proceedings as it would bring even honest persons within the ambit of Section 138 NI Act. The possibility of abusing the provision as a tool of harassment could also not be ruled out. Critics also decried the punishment for being harsh; that civil liability can never be converted into criminal liability; that singling out cheques out of all other negotiable instruments would be violative of Article 14 of Constitution of India. Critics contended that there was insufficient empirical enquiry into statutes or legislation in foreign jurisdictions criminalizing the dishonour of cheques and statistics had not been made available bearing out that criminalization would increase the acceptability of cheque. The Minister of Finance was not entirely forthright when he stated in Parliament that the drawer was also allowed sufficient opportunity to say whether the dishonour was by mistake. It must be borne in mind that in the U.K. deception and dishonesty are key elements which require to be proved. In the USA, some States have their own laws, requiring fraudulent intent or knowledge of insufficient funds to be made good. France has criminalized and subsequently decriminalized the dishonour except in limited circumstances. Instead, it provides for disqualification from issuing cheques, a practice which had been adopted in Italy and Spain also. We have undertaken this succinct study mindful of the fact that Parliamentary debates have a limited part to play in interpretation of statutes, the presumption being that Legislators have the experience, expertise and language skills to draft laws which unambiguously convey their intentions and expectations for the enactments. What is palpably clear is that Parliament was aware that they were converting civil liability into criminal content inter alia by the deeming fiction of culpability in terms of the pandect comprising Section 138 and the succeeding Sections, which severely curtail defences to prosecution. Parliament was also aware that the offence of cheating etc., already envisaged in the IPC, continued to be available.

CIVIL LAW CONCEPTS NOT STRICTLY APPLICABLE We have already cautioned against the extrapolation of civil law concepts such as “cause of action” onto criminal law. Section 177 of the CrPC unambiguously states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. “Offence”, by virtue of the definition ascribed to the word by Section 2(n) of the CrPC means any act or omission made punishable by any law. Halsbury states that the venue for the trial of a crime is confined to the place of its occurrence.

Blackstone opines that crime is local and jurisdiction over it vests in the Court and Country where the crime is committed. This is obviously the raison d'etre for the CrPC making a departure from the CPC in not making the "cause of action" routinely relevant for the determination of territoriality of criminal courts. The word "action" has traditionally been understood to be synonymous to "suit", or as ordinary proceedings in a Court of justice for enforcement or protection of the rights of the initiator of the proceedings. "Action, generally means a litigation in a civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown" - [Bradlaugh v. Clarke 8 Appeal Cases 354 p.361]. Unlike civil actions, where the Plaintiff has the burden of filing and proving its case, the responsibility of investigating a crime, marshalling evidence and witnesses, rests with the State. Therefore, while the convenience of the Defendant in a civil action may be relevant, the convenience of the so called complainant/victim has little or no role to play in criminal prosecution. Keeping in perspective the presence of the word "ordinarily" in Section 177 of CrPC, we hasten to adumbrate that the exceptions to it are contained in the CrPC itself, that is, in the contents of the succeeding Section 178. The CrPC also contains an explication of "complaint" as any allegation to a Magistrate with a view to his taking action in respect of the commission of an offence; not being a police report. Prosecution ensues from a Complaint or police report for the purpose of determining the culpability of a person accused of the commission of a crime; and unlike a civil action or suit is carried out (or 'prosecuted') by the State or its nominated agency. The principal definition of "prosecution" imparted by Black's Law Dictionary 5th Edition is "a criminal action; the proceeding instituted and carried on by due process of law, before a competent Tribunal, for the purpose of determining the guilt or innocence of a person charged with crime." These reflections are necessary because Section 142(b) of the NI Act contains the words, "the cause of action arises under the proviso to Section 138", resulting arguably, but in our opinion irrelevantly, to the blind borrowing of essentially civil law attributes onto criminal proceedings. We reiterate that Section 178 admits of no debate that in criminal prosecution, the concept of "cause of action", being the bundle of facts required to be proved in a suit and accordingly also being relevant for the place of suing, is not pertinent or germane for determining territorial jurisdiction of criminal Trials. Section 178, CrPC explicitly states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 179 is of similar tenor. We are also unable to locate any provision of the NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the prosecution has to be conducted. In fact, since cognizance of the offence is subject to the five Bhaskaran components or concomitants the concatenation of which ripens the already committed offence under Section 138 NI Act into a prosecutable offence, the employment of the phrase "cause of action" in Section 142 of the NI Act is apposite for taking cognizance, but inappropriate and irrelevant for determining commission of the subject offence. There are myriad examples of the commission of a crime the prosecution of which is dependent on extraneous contingencies such as obtainment of sanction for prosecution under Section 19 of the Prevention of Corruption Act 1988. Similar situation is statutorily created by Section 19 of the Environmental Protection Act 1986, Section 11 of the Central Sales Tax Act 1956, Section 279 of the Income Tax Act, Sections 132 and 308, CrPC, Section 137 of the Customs Act etc. It would be idle to contend that the offence comes into existence only on the grant of permission for prosecution, or that this permission constitutes an integral part of the offence itself. It would also be futile to argue that the place where the permission is granted would provide the venue for the trial.

If sanction is not granted the offence does not vanish. Equally, if sanction is granted from a place other than where the crime is committed, it is the latter which will remain the place for its prosecution.

SECTION 138 NI ACT The marginal note of Section 138 of the NI Act explicitly defines the offence as being the dishonour of cheques for insufficiency, etc., of funds in the account. Of course, the headings, captions or opening words of a piece of legislation are normally not strictly or comprehensively determinative of the sweep of the actual Section itself, but it does presage its intendment. See: Frick India Ltd. v. Union of India (1990) 1 SCC 400 and Forage & Co. v. Municipal Corporation of Greater Bombay (1999) 8 SCC 577. Accordingly, unless the provisions of the Section clearly point to the contrary, the offence is concerned with the dishonour of a cheque; and in the conundrum before us the body of this provision speaks in the same timbre since it refers to a cheque being "returned by the bank unpaid". None of the provisions of the IPC have been rendered nugatory by Section 138 of the NI Act and both operate on their own. It is trite that mens rea is the quintessential of every crime. The objective of Parliament was to strengthen the use of cheques, distinct from other negotiable instruments, as mercantile tender and therefore it became essential for the Section 138 NI Act offence to be freed from the requirement of proving mens rea. This has been achieved by deeming the commission of an offence de hors mens rea not only under Section 138 but also by virtue of the succeeding two Sections. Section 139 carves out the presumption that the holder of a cheque has received it for the discharge of any liability. Section 140 clarifies that it will not be available as a defence to the drawer that he had no reason to believe, when he issued the cheque, that it would be dishonoured. Section 138 unequivocally states that the offence is committed no sooner the drawee bank returns the cheque unpaid. Section 138 NI Act is structured in two parts – the primary and the provisory. It must be kept in mind that the Legislature does not ordain with one hand and immediately negate it with the other. The proviso often carves out a minor detraction or diminution of the main provision of which it is an appendix or addendum or auxiliary. Black Law Dictionary states in the context of a proviso that it is – "a limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided. .... A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent." It should also be kept in perspective that a proviso or a condition are synonymous. In our perception in the case in hand the contents of the proviso place conditions on the operation of the main provision, while it does form a constituent of the crime itself, it modulates or regulates the crime in circumstances where, unless its provisions are complied with, the already committed crime remains impervious to prosecution. The proviso to Section 138 of the NI Act features three factors which are additionally required for prosecution to be successful. In this aspect Section 142 correctly employs the term "cause of action" as compliance with the three factors contained in the proviso are essential for the cognizance of the offence, even though they are not part of the action constituting the crime. To this extent we respectfully concur with Bhaskaran in that the concatenation of all these concomitants, constituents or ingredients of Section 138 NI Act, is essential for the successful initiation or launch of the prosecution. We, however, are of the view that so far as the offence itself the proviso has no role to play. Accordingly a reading of Section 138 NI Act in conjunction with Section 177, CrPC leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission

of the offence and indicates the place where the offence is committed. In this analysis we hold that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank, is located. The law should not be warped for commercial exigencies. As it is Section 138 of the NI Act has introduced a deeming fiction of culpability, even though, Section 420 is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be imparted to Section 138 which will render it as a device of harassment i.e. by sending notices from a place which has no casual connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account. In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience. Today's reality is that the every Magistracy is inundated with prosecutions under Section 138 NI Act, so much so that the burden is becoming unbearable and detrimental to the disposal of other equally pressing litigation. We think that Courts are not required to twist the law to give relief to incautious or impetuous persons; beyond Section 138 of the NI Act.

We feel compelled to reiterate our empathy with a payee who has been duped or deluded by a swindler into accepting a cheque as consideration for delivery of any of his property; or because of the receipt of a cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in the IPC. It is still open to such a payee recipient of a dishonoured cheque to lodge a First Information Report with the Police or file a Complaint directly before the concerned Magistrate. If the payee succeeds in establishing that the inducement for accepting a cheque which subsequently bounced had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the cheque has been dishonoured. All remedies under the IPC and CrPC are available to such a payee if he chooses to pursue this course of action, rather than a Complaint under Section 138 of the NI Act. And of course, he can always file a suit for recovery wherever the cause of action arises dependent on his choosing. The interpretation of Section 138 of the NI Act which commends itself to us is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly the JMFC at the place where this occurs is ordinarily where the Complaint must be filed, entertained and tried. The cognizance of the crime by the JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the Section concatenate with each other. We clarify that the place of the issuance or delivery of the statutory notice or where the Complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the Complaints even though non-compliance thereof will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act. The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall decide by this Judgment. We clarify that the Complainant is statutorily bound to comply with Section 177 etc. of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank

on which it is drawn. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e. applicability to Complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred.

DISPOSAL OF PRESENT APPEALS

21. A learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench has, pursuant to a threadbare discussion of Bhaskaran concluded that since the concerned cheque was drawn on the Bank of India, Bhandara Branch, Maharashtra where it was dishonoured, the Judicial Magistrate First Class, Digras, District Yavatmal had no jurisdiction to entertain the Complaint. It is pertinent to note that the subject cheque was presented at Digras, District Yavatmal where the Complainant had a bank account although he was a resident of District Washim, Maharashtra. The learned Single Judge, in the impugned judgment, had rightly rejected the argument that the Complaint itself should be dismissed; instead he ordered that it be returned to the complainant for filing in the appropriate Court.

The Appeal is accordingly dismissed.

[Arising out of S.L.P.(Crl.)No.2077 of 2009

22. In this Appeal the Respondent-accused, having purchased electronic items from the Appellant-company, issued the cheque in question drawn on UCO Bank, Tangi, Orissa which was presented by the Complainant-company at State Bank of India, Ahmednagar Branch, Maharashtra as its branch office was located at Ahmednagar. The cheque was dishonoured by UCO Bank, Tangi, Orissa. A Complaint was filed before JMFC, Ahmednagar. An application was filed by the Respondent-accused under Section 177 CrPC questioning the jurisdiction of the JMFC Ahmednagar,

who held that since the demand notice was issued from and the payment was claimed at Ahmednagar, he possessed jurisdiction to try the Complaint. The High Court disagreed with the conclusion of the JMFC, Ahmednagar that the receipt of notice and non- payment of the demanded amount are factors which will have prominence over the place wherefrom the notice of demand was issued and held that JMFC, Ahmednagar did not have the territorial jurisdiction to entertain the Complaint. In view of the foregoing discussion on the issue above, the place where the concerned cheque had been dishonoured, which in the case in hand was Tangi, Orissa, the Appeal is allowed with the direction that the Complaint be returned to the Complainant for further action in accordance with law.

Crl. Appeal Nos. 1594, 1595 & 1601 to 1603 of 2014 [Arising out of S.L.P.(Crl.)Nos.2112 of 2009 and 2117 of 2009; 3762 of 2012; 3943 of 2012; 3944 of 2012]

23. The facts being identical to Criminal Appeal arising out of S.L.P.(Crl.)No.2077 of 2009, these Appeals stand dismissed.

Crl. Appeal Nos.1596-1600 of 2014 [Arising out of S.L.P.(Crl.)Nos.1308-1312 of 2009]

24. The Appellant-complainant herein has its Registered Office in Delhi from where the Respondents-accused are also carrying on their business. The cheques in question were issued by the Respondent No.2-accused drawn on Indian Overseas Bank, Connaught Place, New Delhi. However, the same were presented and dishonoured at Nagpur, Maharashtra where the Complainant states it also has an office. There is no clarification why the cheques had not been presented in Delhi where the Complainant had its Registered Office, a choice which we think is capricious and perfidious, intended to cause harassment. Upon cheques having been dishonoured by the concerned bank at Delhi, five Complaints were filed before Judicial Magistrate First Class, Nagpur who heard the Complaints, and also recorded the evidence led by both the parties. However, the JMFC, Nagpur acquitted the Respondent No.2-accused on the ground of not having territorial jurisdiction. On appeals being filed before the High Court of Bombay, the judgment of the JMFC, Nagpur was partly set aside so far as the acquittal of the Respondent No.2-accused was concerned and it was ordered that the Complaints be returned for filing before the proper Court. In view of the conclusion arrived at by us above, these Appeals are also dismissed.

[Arising out of S.L.P.(Crl.)No.59 of 2013]

25. The cheque in question was drawn by the Respondent-accused on State Bank of Travancore, Delhi. However, it was presented by the Appellant- complainant at Aurangabad. A Complaint was filed before JMFC, Aurangabad who issued process. Respondent-accused filed an application under Section 203 of CrPC seeking dismissal of the Complaint. The application was dismissed on the predication that once process had been initiated, the Complaint could not be dismissed. On a writ petition being filed before the High Court of Bombay, Aurangabad Bench, the order of issuance of process was set aside and the Complaint was ordered to be returned for being presented before a competent court having jurisdiction to entertain the same. The High Court had correctly noted that the objection pertained to the territorial jurisdiction of the JMFC, Aurangabad, a feature which had

not been comprehensively grasped by the latter. The High Court noted that the Registered Office of the Complainant was at Chitegaon, Tehsil Paithan, District Aurangabad whereas the Accused was transacting business from Delhi. The High Court pithily underscored that in paragraph 4 of the Complaint it had been specifically contended that credit facility was given to the Accused in Delhi, where the Complainant-company also had its branch office. The statutory notice had also emanated from Aurangabad, and it had been demanded that payment should be made in that city within the specified time. It was also the Complainant's case that the Invoice, in case of disputes, restricted jurisdiction to Aurangabad courts; that intimation of the bouncing of the cheques was received at Aurangabad. It is however necessary to underscore that the Accused had clarified that the subject transaction took place at Delhi where the goods were supplied and the offending cheque was handed over to the Complainant. It appears that a Civil Suit in respect of the recovery of the cheque amount has already been filed in Delhi. We may immediately reiterate that the principles pertaining to the cause of action as perceived in civil law are not relevant in criminal prosecution. Whilst the clause restricting jurisdiction to courts at Aurangabad may have efficacy for civil proceedings, provided any part of the cause of action had arisen in Aurangabad, it has no bearing on the situs in criminal prosecutions. Since a Civil Suit is pending, we hasten to clarify that we are not expressing any opinion on the question of whether the courts at Delhi enjoy jurisdiction to try the Suit for recovery. In the impugned judgment, the High Court duly noted Bhaskaran and Harman. However, it committed an error in analyzing the cause of action as well as the covenant restricting jurisdiction to Aurangabad as these are relevant only for civil disputes. However, the impugned judgment is beyond interference inasmuch as it concludes that the JMFC, Aurangabad has no jurisdiction over the offence described in the Complaint. The Appeal is accordingly dismissed.

.....J. [T.S. THAKUR] .....J. [VIKRAMAJIT SEN] .....J. [C. NAGAPPAN] New Delhi August 1, 2014.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.2287 OF 2009

DASHRATH RUPSINGH RATHOD …Appellant
Versus
STATE OF MAHARASHTRA & ANR. …Respondents

WITH

CRIMINAL APPEAL NO. 1593 OF 2014
(Arising out of S.L.P. (Crl.) No.2077 of 2009)
CRIMINAL APPEAL NO. 1594 OF 2014
(Arising out of S.L.P. (Crl.) No.2112 of 2009)
CRIMINAL APPEAL NO. 1595 OF 2014
(Arising out of S.L.P. (Crl.) No.2117 of 2009)
CRIMINAL APPEAL NO. 1596-1600 OF 2014
(Arising out of S.L.P. (Crl.) Nos.1308-1312 of 2009)
CRIMINAL APPEAL NO. 1601 OF 2014
(Arising out of S.L.P. (Crl.) No.3762 of 2012)
CRIMINAL APPEAL NO. 1602 OF 2014

(Arising out of S.L.P. (Crl.) No.3943 of 2012)
CRIMINAL APPEAL NO. 1603 OF 2014
(Arising out of S.L.P. (Crl.) No.3944 of 2012)
AND
CRIMINAL APPEAL NO. 1604 OF 2014
(Arising out of S.L.P. (Crl.) No.59 of 2013)

J U D G M E N T

T.S. Thakur, J.

1. I have had the advantage of going through the draft order proposed by my esteemed brother Vikramajit Sen, J. I entirely agree with the conclusions which my erudite brother has drawn based on a remarkably articulate process of reasoning that illumines the draft judgment authored by him. I would all the same like to add a few lines of my own not because the order as proposed leaves any rough edges to be ironed out but only because the question of law that arises for determination is not only substantial but of considerable interest and importance for the commercial world. The fact that the view being taken by us strikes a discordant note on certain aspects which have for long been considered settled by earlier decisions of this Court being only an additional reason for the modest addition that I propose to make. Of these decisions Bhaskaran's case stands out as the earliest in which this Court examined the vexed question of territorial jurisdiction of the Courts to try offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called "NI Act"). Bhaskaran's case was heard by a two-judge Bench of this Court who took the view that the jurisdiction to try an offence under Section 138 could not be determined only by reference to the place where the cheque was dishonoured. That is because dishonour of the cheque was not by itself an offence under Section 138 of The Negotiable Instruments Act, 1881, observed the Court. The offence is complete only when the drawer fails to pay the cheque amount within the period of fifteen days stipulated under clause (c) of the proviso to Section 138 of the Act. Having said that the Court recognised the difficulty in fixing a place where such failure could be said to have taken place. It could, said the Court, be the place where the drawer resides or the place where the payee resides or the place where either of them carries on business. To resolve this uncertainty the Court turned to Sections 178 and 179 of the Cr.P.C. to hold that since an offence under Section 138 can be completed only with the concatenation of five acts that constituted the components of the offence any Court within whose jurisdiction any one of those acts was committed would have the jurisdiction to try the offence. The Court held:

> "The offence under Section 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.

> 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 a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:
>
> "178. (a)-(c) * * *
>
> (d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas." 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 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 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 under Section 138 of the Act."

2. Bhaskaran held the field for two years. The first blow to the view taken by this Court in Bhaskaran's case was dealt by a three-Judge Bench decision in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. (2001) 3 SCC 609. The question that arose in that case was whether the limitation of six months for presentation of a cheque for encashment was applicable viz-a- viz presentation to the bank of the payee or that of the drawer. High Courts in this country had expressed conflicting opinions on the subject. This Court resolved the cleavage in those pronouncements by holding that the cheque ought to be presented to the drawee bank for its dishonour to provide a basis for prosecution under Section 138. The Court observed:

> "The use of the words "a bank" and "the bank" in the section are an indicator of the intention of the legislature. "The bank" referred to in proviso (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.
>
> It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. However, a combined reading of Sections 3, 72 and 138 of the Act would clearly show 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."

3. Ishar Alloy's case (supra) did not deal with the question of jurisdiction of the Courts nor was Bhaskaran noticed by the Court while holding that the presentation of the cheque ought to be within six months to the drawee bank. But that does not, in our view, materially affect the logic underlying

the pronouncement, which pronouncement coming as it is from a bench of coordinate jurisdiction binds us. When logically extended to the question of jurisdiction of the Court to take cognizance, we find it difficult to appreciate how a payee of the cheque can by presentation of the cheque to his own bank confer jurisdiction upon the Court where such bank is situate. If presentation referred to in Section 138 means presentation to the "drawee bank", there is no gainsaying that dishonour would be localised and confined to the place where such bank is situated. The question is not whether or not the payee can deposit his cheque in any bank of his choice at any place. The question is whether by such deposit can the payee confer jurisdiction on a Court of his choice? Our answer is in the negative. The payee may and indeed can present the cheque to any bank for collection from the drawee bank, but such presentation will be valid only if the drawee bank receives the cheque for payment within the period of six months from the date of issue. Dishonour of the cheque would be localised at the place where the drawee bank is situated. Presentation of the cheque at any place, we have no manner of doubt, cannot confer jurisdiction upon the Court within whose territorial limits such presentation may have taken place.

4. Then came Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd. (2009) 1 SCC 720. That was a case where the complaint under Section 138 was filed in a Delhi Court, only because the statutory notice required to be issued under the proviso to Section 138 was issued from Delhi. If Bhaskaran was correctly decided, Harman should not have interfered with the exercise of jurisdiction by the Delhi Court for issue of a notice was in terms of Bhaskaran, one of the factors that clothed the Court in Delhi to take cognizance and try the case. Harman did not do so. In Harman's case this Court, emphasized three distinct aspects. Firstly, it said that there was a world of difference between issue of a notice, on the one hand, and receipt, thereof, on the other. Issue of notice did not give rise to a cause of action while receipt did, declared the Court.

5. Secondly, the Court held that the main provision of Section 138 stated what would constitute an offence. The proviso appended thereto simply imposed certain further conditions which must be fulfilled for taking cognizance of the offence. The following passage deals with both these aspects:

> "It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act are intended to be applied in favour of the accused, there cannot be any doubt that receipt [pic]of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would."

6. Thirdly, the Court held that if presentation of the cheque or issue of notice was to constitute a good reason for vesting courts with jurisdiction to try offences under Section 138, it would lead to harassment of the drawer of the cheques thereby calling for the need to strike a balance between the rights of the parties to the transaction. The Court said:

> "We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure."

7. Bhaskaran was, in the wake of the above, considerably diluted and the logic behind vesting of jurisdiction based on the place from where the notice was issued questioned. Even presentation of the cheque as a reason for assumption of jurisdiction to take cognizance was doubted for a unilateral act of the complainant/payee of the cheque could without any further or supporting reason confer jurisdiction on a Court within whose territorial limits nothing except the presentation of the cheque had happened.

8. Three recent decisions need be mentioned at this stage which have followed Bhaskaran and attempted to reconcile the ratio of that case with the subsequent decisions in Ishar Alloy Steels and Harman Electronics. In Nishant Aggarwal v. Kailash Kumar Sharma (2013) 10 SCC 72 this Court was once again dealing with a case where the complaint had been filed in Court at Bhiwani in Haryana within whose territorial jurisdiction the complainant had presented the cheque for encashment, although the cheque was drawn on a bank at Gauhati in Assam. Relying upon the view taken in Bhaskaran this Court held that the Bhiwani Court had jurisdiction to deal with the matter. While saying so, the Court tried to distinguish the three-Judge Bench decision in Ishar Alloy Steels (supra) and that rendered in Harman Electronics case (supra) to hold that the ratio of those decisions did not dilute the principle stated in Bhaskaran case. That exercise was repeated by this Court in FIL Industries Ltd. v. Imtiyaz Ahmad Bhat (2014) 2 SCC 266 and in Escorts Ltd. v. Rama Mukherjee (2014) 2 SCC 255 which too followed Bhaskaran and held that complaint under Section 138 Negotiable Instrument Act could be instituted at any one of the five places referred to in Bhaskaran's case.

9. We have, with utmost respect to the Judges comprising the Bench that heard the above cases, found it difficult to follow suit and subscribe to the view stated in Bhasakaran. The reasons are not far too seek and may be stated right away.

10. Section 138 is a penal provision that prescribes imprisonment upto two years and fine upto twice the cheque amount. It must, therefore, be interpreted strictly, for it is one of the accepted rules of interpretation that in a penal statute, the Courts would hesitate to ascribe a meaning, broader than what the phrase would ordinarily bear. Section 138 is in two parts. The enacting part of the provision makes it abundantly clear that what constitutes an offence punishable with imprisonment

and/or fine is the dishonour of a cheque for insufficiency of funds etc. in the account maintained by the drawer with a bank for discharge of a debt or other liability whether in full or part. The language used in the provision is unambiguous and the ingredients of the offence clearly discernible viz. (a) Cheque is drawn by the accused on an account maintained by him with a banker. (b) The cheque amount is in discharge of a debt or liability and

(c) The cheque is returned unpaid for insufficiency of funds or that the amount exceeds the arrangement made with the bank. But for the proviso that comprises the second part of the provision, any dishonour falling within the four corners of the enacting provision would be punishable without much ado. The proviso, however, draws an exception to the generality of the enacting part of the provision, by stipulating two steps that ought to be taken by the complainant holder of the cheque before the failure of the drawer gives to the former the cause of action to file a complaint and the competent Court to take cognizance of the offence. These steps are distinct from the ingredients of the offence which the enacting provision creates and makes punishable. It follows that an offence within the contemplation of Section 138 is complete with the dishonour of the cheque but taking cognizance of the same by any Court is forbidden so long as the complainant does not have the cause of action to file a complaint in terms of clause

(c) of the proviso read with Section 142 which runs as under:

> ”Section 142:
>
> Cognizance of offences. —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
>
> (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.“

11. The following would constitute ‘cause of action’ referred to in sub clause (b) above:

> The complainant has presented the cheque for payment within the period of six months from the date of the issue thereof.
>
> The complainant has demanded the payment of the cheque amount from the drawer by issuing a written notice within thirty days of receipt of information by him from

the bank regarding the dishonour. The drawer has failed to pay the cheque amount within fifteen days of the receipt of the notice.

12. A proper understanding of the scheme underlying the provision would thus make it abundantly clear that while the offence is complete upon dishonour, prosecution for such offence is deferred till the time the cause of action for such prosecution accrues to the complainant. The proviso in that sense, simply postpones the actual prosecution of the offender till such time he fails to pay the amount within the statutory period prescribed for such payment. There is, in our opinion, a plausible reason why this was done. The Parliament in its wisdom considered it just and proper to give to the drawer of a dishonoured cheque an opportunity to pay up the amount, before permitting his prosecution no matter the offence is complete, the moment the cheque was dishonoured. The law has to that extent granted a concession and prescribed a scheme under which dishonour need not necessarily lead to penal consequence if the drawer makes amends by making payment within the time stipulated once the dishonour is notified to him. Payment of the cheque amount within the stipulated period will in such cases diffuse the element of criminality that Section 138 attributes to dishonour by way of a legal fiction implicit in the use of the words "shall be deemed to have committed an offence". The drawer would by such payment stand absolved by the penal consequences of dishonour. This scheme may be unique to Section 138 NI Act, but there is hardly any doubt that the Parliament is competent to legislate so to provide for situations where a cheque is dishonoured even without any criminal intention on the part of the drawer.

13. The scheme of Section 138 thus not only saves the honest drawer but gives a chance to even the dishonest ones to make amends and escape prosecution. Compliance with the provision is, in that view, a mandatory requirement. (See C.C. Alavi Haji v. Palapetty Muhammed and Another (2007) 6 SCC 555).

14. Harman in that view correctly held that "what would constitute an offence is stated in the main provision. The proviso appended thereto however imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken." If the Parliament intended to make the conditions stipulated in the proviso, also as ingredients of the offence, the provision would have read differently. It would then have specifically added the words "and the drawer has despite receipt of a notice demanding the payment of the amount, failed to pay the same within a period of fifteen days from the date of such demand made in writing by a notice". That, however, is not how the enacting provision of Section 138 reads. The legislature has, it is obvious, made a clear distinction between what would constitute an offence and what would give to the complainant the cause of action to file a complaint for the court competent to take cognizance. That a proviso is an exception to the general rule is well settled. A proviso is added to an enactment to qualify or create an exception to what is contained in the enactment. It does not by itself state a general rule. It simply qualifies the generality of the main enactment, a portion which but for the proviso would fall within the main enactment.

15. The P. Ramanatha Aiyar, Law Lexicon, 2nd Edition, Wadhwa & Co. at page 1552 defines proviso as follows:

> "The word "proviso" is used frequently to denote the clause the first words of which are "provided that" inserted in deeds and instruments generally. And containing a condition or stipulation on the performance or non- performance of which, as the case maybe. The effect of a proceeding clause or of the deed depends.
>
> A Clause inserted in a legal or formal document, making some condition, stipulation, exception or limitation or upon the observance of which the operation or validity of the instrument depends [S. 105, Indian Evidence Act].
>
> A proviso is generally intended to restrain the enacting clause and to except something which would have otherwise been within it or in some measure to modify the enacting clause..."

16. To quote "Craies on Statute Law", 7th Edn., Sweet & Maxwell at page 220 "If the principal object of the Act can be accomplished and stand under the restriction of the saving clause or proviso, the same is not to be held void for repugnancy."

17. One of the earliest judgments on the subject is a three Judge Bench decision in Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, Calcutta and Ors. AIR 1966 SC 12. The Court was in that case examining the effect of a proviso which imposed a condition on getting exemption from tax and observed:

> "... The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect the proviso says that part of the turnover of the selling dealer covered by the terms of sub-cl. (ii) will be exempted provided a declaration in the from prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form. It is well settled that "the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it" : see "Craies on Statute Law", 6th Edn., p. 217."

18. Also pertinent is a four-Judge Bench decision of this Court in Dwarka Prasad v. Dwarka Das Saraf (1976) 1 SCC 128 where this Court was examining whether a cinema theatre equipped with projectors and other fittings ready to be launched as entertainment house was covered under the definition of 'accommodation' as defined in Section 2 (1) (d) of Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947. The proviso provided for some exception for factories and business carried in a building. It was held that sometimes draftsmen include proviso by way of over caution to remove any doubts and accommodation would include this cinema hall:

> "18. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to

> which they are tacked as a proviso. They cannot be read as divorced from their context' 1912 A.C. 544. If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.
>
> The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.
>
> The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (Maxwell on Interpretation of Statutes, 10th Edn. p. 162)" (emphasis supplied)

19. In Sreenivasa General Traders & Ors. v. State of Andhra Pradesh & Ors. (1983) 4 SCC 353 another three- Judge bench of this Court examined the role of a proviso while interpreting Rule 74(1) of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969. "The normal function of a proviso is to except something out of the main enacting part or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. Proviso to Rule 74(1) is added to qualify or create an exception."

20. Reference may also be made to Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and others (1991) 3 SCC 442 wherein this Court clearly held that when the language of the main enactment is clear, the proviso can have no effect on the interpretation of the main clause. "7. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect." (emphasis supplied)

21. The same line of reasoning was followed in A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors. 1992 Supp (1) SCC 304 while interpreting a proviso in the Haryana Service of Engineers Rules, 1960 where the Court held that the proviso to Rule 5(2)(a) cannot be applied to confer the benefit of regular appointment on every promotee appointed in excess of 50% quota. This Court harmoniously read the main provision and the proviso and gave effect to the rule.

22. In Kerala State Housing Board and Ors. v. Ramapriya Hotels (P) Ltd. and Ors. 1994 (5) SCC 672 this Court was examining whether the period of 4 years envisaged in proviso to Section 16(i) under Kerala Land Acquisition Act, 1961 could be reckoned from date when agreement was executed or from date of publication of notification under Section 3(1) of the Act after the agreement was executed. After relying on Tribhovandas Haribhai Tamboli (supra) and A.N. Sehgal (supra) this Court held that the proviso should be harmoniously read with the section. To quote Tribhovandas (supra) as followed in this judgment:

> "In Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal this Court held that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is to be confined to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says, nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect. In that case it was held that by reading the proviso consistent with the provisions of Section 88 of the Bombay Tenancy and Agricultural Act, the object of the main provision was sustained." (emphasis supplied)

23. In Kush Sahgal & Ors. v. M.C. Mitter & Ors. (2000) 4 SCC 526 a landlady made an application for eviction of the tenant on the basis that she wanted the place for business purposes which was not allowed as per the proviso to Section 21(2) U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The Court examined the role and purport of the proviso and observed :

> "This we say because the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. (See : Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Office [1965]3SCR626). Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso, the enacting part has to be given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (See: Justice G. P. Singh's "Principles of Statutory Interpretation" Seventh

> Edition 1999, p-163). This principle has been deduced from the decision of the Privy Council in Govt. of the Province of Bombay v. Hormusji Manekji (AIR 1947 PC 200) as also the decision of this Court in Durga Dutt Sharma v.Navaratna Pharmaceutical Laboratories (AIR 1965 SC 980)."

24. To the same effect are the decisions of this Court in Ali M.K. and Ors. v. State of Kerala and Ors. (2003) 11 SCC 632, Nagar Palika (supra) and in Steel Authority of India Ltd. v. S.U.T.N.I Sangam & Ors. (2009) 16 SCC 1.

25. In conclusion, we may refer to Maxwell, "Interpretation of Statutes" Edn. 12, 1969, on P. 189-190 which states that it is a general finding and practice "that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken "absolutely in their strict literal sense" [R v. Dimbdin (1910)] but that a proviso is "of necessity ... limited in its operation to the ambit of the section which it qualifies" [Lloyds and Scottish Finance Ltd v. Modern Cars and Canavans (Kingston) Ltd.(1966)]. And, so far as that section itself is concerned, the proviso receives a restricted construction: where the section confers powers, "it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary." [Re Tabrisky v. Board of Trade (1947)]"

26. Bhaskaran, in our view, reads the proviso as prescribing the ingredients of the offence instead of treating it as an exception to the generality of the enacting part by stipulating further conditions before a competent Court may take cognizance of the same. Seen in the light of the provisions of Section 142 of the Act, the proviso simply defers prosecution of the offender till the conditions prescribed therein are satisfied. Bhaskaran does not view the matter in that perspective while Harman (supra) does. We find ourselves in respectful agreement with the view in Harman's case on this aspect.

27. In Bhaskaran, this Court resolved the confusion as to the place of commission of the offence by relying upon Sections 177 to 179 of the Cr.P.C. But the confusion arises only if one were to treat the proviso as stipulating the ingredients of the offence. Once it is held that the conditions precedent for taking cognizance are not the ingredients constituting the offence of dishonour of the cheque, there is no room for any such confusion or vagueness about the place where the offence is committed. Applying the general rule recognised under Section 177 of the Cr.P.C. that all offences are local, the place where the dishonour occurs is the place for commission of the offence vesting the Court exercising territorial jurisdiction over the area with the power to try the offences. Having said that we must hasten to add, that in cases where the offence under Section 138 is out of the offences committed in a single transaction within the meaning of Section 220 (1) of the Cr.P.C. then the offender may be charged with and tried at one trial for every such offence and any such inquiry or trial may be conducted by any Court competent to enquire into or try any of the offences as provided by Section 184 of the Code. So also, if an offence punishable under Section 138 of the Act is committed as a part of single transaction with the offence of cheating and dishonestly inducing delivery of property then in terms of Section 182 (1) read with Sections 184 and 220 of the Cr.P.C. such offence may be tried either at the place where the inducement took place or where the cheque forming part of the same transaction was dishonoured or at the place where the property which the

person cheated was dishonestly induced to deliver or at the place where the accused received such property. These provisions make it clear that in the commercial world a party who is cheated and induced to deliver property on the basis of a cheque which is dishonoured has the remedy of instituting prosecution not only at the place where the cheque was dishonoured which at times may be a place other than the place where the inducement or cheating takes place but also at the place where the offence of cheating was committed. To that extent the provisions of Chapter XIII of the Code will bear relevance and help determine the place where the offences can be tried.

28. We may at this stage refer to two other decisions of this Court which bear some relevance to the question that falls for our determination. In Sadanandan Bhadran v. Madhavan Sunil Kumar (1998) 6 SCC 514 a two-judge bench of this Court held that clause (a) of proviso to Section 138 does not disentitle the payee to successively present cheque for payment during the period of its validity. On each such presentation of the cheque and its dishonour a fresh right - and not cause of action – accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of such right under clause (b) of Section 138 go on presenting the cheque so long as the cheque is valid for payment. But once he gives a notice under clause

(b) of Section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for prosecution will arise. The correctness of this view was questioned in MSR Leathers v. S. Palaniappan & Anr. (2013) 1 SCC 177 before a bench comprising of Markandey Katju and B. Sudershan Reddy, J.J. who referred the issue to a larger bench. The larger bench in MSR Leathers's case (supra) overruled Sadanandan Bhadran (supra) holding that there was no reason why a fresh cause of action within the meaning of Section 142 (b) read with section 138 should not be deemed to have arisen to the complainant every time the cheque was presented but dishonoured and the drawer of cheque failed to pay the amount within the stipulated period in terms of proviso to 138. This Court said:

> "In the result, we overrule the decision in Sadanandan Bhadran's case (supra) and hold that prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in light of the observations made above."

29. What is important is that in Sadanandan Bhadran (supra) this Court had, on a careful analysis of Section 138, held that an offence is created when a cheque is returned by the bank unpaid for any reasons mentioned therein, although the proviso to Section 138 stipulates three conditions for the applicability of the section. It is only upon satisfaction of the three conditions that prosecution can be launched for an offence under Section 138. This Court observed:

> "On a careful analysis of the above section, it is seen that its main part creates an offence when a cheque is returned by the bank unpaid for any of the reasons mentioned therein. The significant fact, however, is that the proviso lays down three conditions precedent to the applicability of the above section and, for that matter,

> creation of such offence and the conditions are: (i) the cheque should have been presented to the bank within six months of its issue or within the period of its validity, whichever is earlier; (ii) the payee should have made a demand for payment by registered notice after the cheque is returned unpaid; and (iii) that the drawer should have failed to pay the amount within 15 days of the receipt of the notice. It is only when all the [pic]above three conditions are satisfied that a prosecution can be launched for the offence under Section 138. So far as the first condition is concerned, clause (a) of the proviso to Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transactions it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after sometime, on his own volition or at the request of the drawer, in expectation that it would be encashed. Needless to say, the primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. For the above reasons it must be held that a cheque can be presented any number of times during the period of its validity. Indeed that is also the consistent view of all the High Courts except that of the Division Bench of the Kerala High Court in Kumaresan1 which struck a discordant note with the observation that for the first dishonour of the cheque, only a prosecution can be launched for there cannot be more than one cause of action for prosecution." (emphasis supplied)

30. MSR Leathers (supra) also looked at Section 138 and held that a complaint could be filed under Section 138 after cause of action to do so had accrued in terms of clause (c) of the proviso to Section 138 which happens no sooner the drawer of the cheque fails to make the payment of the cheque amount to the payee within fifteen days in terms of clause (b) to proviso to Section 138. MSR Leathers was not so much concerned with the question whether the proviso stipulated ingredients of the offence or conditions precedent for filing a complaint. It was primarily concerned with the question whether the second or successive dishonour followed by statutory notices and failure of the drawer to make payment could be made a basis for launching prosecution against the drawer. That question, as noticed above, was answered in the affirmative holding that successive cause of action could arise if there were successive dishonours followed by statutory notices as required under the law and successive failure of the drawer to make the payment. MSR Leathers cannot, therefore, be taken as an authority for determining whether the proviso stipulates conditions precedent for launching a prosecution or ingredients of the offence punishable under Section 138. Sadanandan Bhadran may have been overruled to the extent it held that successive causes of action cannot be made a basis for prosecution, but the distinction between the ingredient of the offence, on the one hand, and conditions precedent for launching prosecution, on the other, drawn in the said judgement has not been faulted. That distinction permeates the pronouncements of this Court in Sadanandan Bhadran and MSR Leathers. High Court of Kerala has, in our view, correctly interpreted Section 138 of the Act in Kairali Marketing & Processing Cooperative Society Ltd. V. Pullengadi Service Cooperative Ltd. (2007) 1 KLT 287 when it said:

"It is evident from the language of Section 138 of the N.I. Act that the drawer is deemed to have committed the offence when a cheque issued by him of the variety contemplated under Section 138 is dishonoured for the reasons contemplated in the Section. The crucial words are "is returned by the bank unpaid". When that happens, such person shall be deemed to have committed the offence. With the deeming in the body of Section 138, the offence is already committed or deemed to have been committed. A careful reading of the body of Section 138 cannot lead to any other conclusion. Proviso to Section138 according to me only insists on certain conditions precedent which have to be satisfied if the person who is deemed to have committed the offence were to be prosecuted successfully. The offence is already committed when the cheque is returned by the bank. But the cause of action for prosecution will be available to the complainant not when the offence is committed but only after the conditions precedent enumerated in the proviso are satisfied. After the offence is committed, only if the option given to avoid the prosecution under the proviso is not availed of by the offender, can the aggrieved person get a right or course of action to prosecute the offender. The offence is already deemed and declared but the offender can be prosecuted only when the requirements of the proviso are satisfied. The cause of action for prosecution will arise only when the period stipulated in the proviso elapses without payment. Ingredients of the offence have got to be distinguished from the conditions precedent for valid initiation of prosecution." The stipulations in the proviso must also be proved certainly before the offender can be successfully prosecuted. But in the strict sense they are not ingredients of the deemed offence under the body of Section 138 of the N.I. Act, though the said stipulations; must also be proved to ensure and claim conviction. It is in this sense that it is said that the proviso does not make or unmake the offence under Section 138 of the N.I. Act. That is already done by the body of the Sections. This dispute as to whether the stipulations of the proviso are conditions precedent or ingredients/components of the offence under Section 138 of the N.I. Act may only be academic in most cases. Undoubtedly the ingredients stricto sensu as also the conditions precedent will have to be established satisfactorily in all cases. Of course in an appropriate case it may have to be considered whether substantial compliance of the conditions precedent can be reckoned to be sufficient to justify a conviction. Be that as it may, the distinction between the ingredients and conditions precedent is certainly real and existent. That distinction is certainly vital while ascertaining complicity of an indictee who faces indictment in a prosecution under Section 138 with the aid of Section 141 of the N.I. Act. That is how the question assumes such crucial significance here."

31. To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the

bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

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

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

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

(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

32. Before parting with this aspect of the matter, we need to remind ourselves that an avalanche of cases involving dishonour of cheques has come upon the Magistracy of this country. The number of such cases as of October 2008 were estimated to be more than 38 lakhs by the Law Commission of India in its 213th Report. The result is that cases involving dishonour of cheque is in all major cities

choking the criminal justice system at the Magistrate's level. Courts in the four metropolitan cities and other commercially important centres are particularly burdened as the filing of such cases is in very large numbers. More than five lakh such cases were pending in criminal courts in Delhi alone as of 1st June 2008. The position is no different in other cities where large number of complaints are filed under S.138 not necessarily because the offence is committed in such cities but because multinational and other companies and commercial entities and agencies choose these places for filing the complaints for no better reason than the fact that notices demanding payment of cheque amounts were issued from such cities or the cheques were deposited for collection in their banks in those cities. Reliance is often placed on Bhaskaran's case to justify institution of such cases far away from where the transaction forming basis of the dishonoured cheque had taken place. It is not uncommon to find complaints filed in different jurisdiction for cheques dishonoured in the same transaction and at the same place. This procedure is more often than not intended to use such oppressive litigation to achieve the collateral purpose of extracting money from the accused by denying him a fair opportunity to contest the claim by dragging him to a distant place. Bhaskaran's case could never have intended to give to the complainant/payee of the cheque such an advantage. Even so, experience has shown that the view taken in Bhaskaran's case permitting prosecution at any one of the five different places indicated therein has failed not only to meet the approval of other benches dealing with the question but also resulted in hardship, harassment and inconvenience to the accused persons. While anyone issuing a cheque is and ought to be made responsible if the same is dishonoured despite compliance with the provisions stipulated in the proviso, the Court ought to avoid an interpretation that can be used as an instrument of oppression by one of the parties. The unilateral acts of a complainant in presenting a cheque at a place of his choice or issuing a notice for payment of the dishonoured amount cannot in our view arm the complainant with the power to choose the place of trial. Suffice it to say, that not only on the Principles of Interpretation of Statutes but also the potential mischief which an erroneous interpretation can cause in terms of injustice and harassment to the accused the view taken in the Bhaskaran's case needs to be revisited as we have done in foregoing paragraphs.

33. With the above observations, I concur with the order proposed by my noble Brother, Vikramajit Sen, J.

.....J. (T.S. Thakur) New Delhi August 1, 2014