IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

Criminal Application No.2424 of 2008
In
Criminal Appeal No.390 of 2008,

Criminal Application No.2425 of 2008
In
Criminal Appeal No.391 of 2008,

Criminal Application No.2426 of 2008
In
Criminal Appeal No.392 of 2008,

Criminal Application No.2428 of 2008
In
Criminal Appeal No.393 of 2008,

Criminal Application No.2427 of 2008
In
Criminal Appeal No.399 of 2008,

Criminal Appeal No.390 of 2008,

Criminal Appeal No.391 of 2008,

Criminal Appeal No.392 of 2008,

Criminal Appeal No.393 of 2008,

And

Criminal Appeal No.399 of 2008

Criminal Application No.2424 of 2008
In
Criminal Appeal No.390 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
Office also at Jejani Sadan,
Itwari Bhaji Mandi, Nagpur,
through its Proprietor,
Jinraj s/o Ramkisan Jain. ... Applicant

Versus

1. M/s. Dinesh Associates,
   Proprietorship Concern,
   3796/2, Gali Lohe Wali,
   Behind Namkeen Shop,
   Charkhewalan, Chawari Bazar,
   Delhi-110 006.

2. Dinesh s/o Gopichand Gupta,
   Proprietor of M/s. Dinesh Associates,
   R/o D-145, “Priyadarshini Vihar”,
   Opp. Lovely Public School,
   Shahadara, Delhi. ...Respondent/
   Accused

Criminal Application No.2425 of 2008
In
Criminal Appeal No.391 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
Office also at Jejani Sadan,
Itwari Bhaji Mandi, Nagpur,
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   Proprietor of M/s. Dinesh Associates,
   R/o D-145, "Priyadarshini Vihar",
   Opp. Lovely Public School,
   Shahadara, Delhi. ...Respondent/
   Accused

Criminal Application No.2426 of 2008
In
Criminal Appeal No.392 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
Office also at Jejani Sadan,
Itwari Bhaji Mandi, Nagpur,
through its Proprietor,
Jinraj s/o Ramkisan Jain. ... Applicant

Versus

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   Proprietorship Concern,
   3796/2, Gali Lohe Wali,
   Behind Namkeen Shop,
   Charkhewalan, Chawari Bazar,
   Delhi-110 006.

2. Dinesh s/o Gopichand Gupta,
Proprietor of M/s. Dinesh Associates,
R/o D-145, "Priyadarshini Vihar",
Opp. Lovely Public School,
Shahadara, Delhi. ...Respondent/
Accused

Criminal Application No.2428 of 2008
In
Criminal Appeal No.393 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
Office also at Jejani Sadan,
Itwari Bhaji Mandi, Nagpur,
through its Proprietor,
Jinraj s/o Ramkisan Jain. ... Applicant

Versus

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Proprietorship Concern,
3796/2, Gali Lohe Wali,
Behind Namkeen Shop,
Charkhewalan, Chawari Bazar,
Delhi-110 006.

2. Dinesh s/o Gopichand Gupta,
Proprietor of M/s. Dinesh Associates,
R/o D-145, "Priyadarshini Vihar",
Opp. Lovely Public School,
Shahadara, Delhi. ...Respondent/
Accused

Criminal Application No.2427 of 2008
In
Criminal Appeal No.399 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
Office also at Jejani Sadan,
Itwari Bhaji Mandi, Nagpur,
through its Proprietor,
Jinraj s/o Ramkisan Jain. ... Applicant

Versus

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   3796/2, Gali Lohe Wali,
   Behind Namkeen Shop,
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   Delhi-110 006.

2. Dinesh s/o Gopichand Gupta,
   Proprietor of M/s. Dinesh Associates,
   R/o D-145, “Priyadarshini Vihar”,
   Opp. Lovely Public School,
   Shahadara, Delhi. ...Respondent/
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Criminal Appeal No.390 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
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Jinraj s/o Ramkisan Jain. ... Appellant

Versus

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Versus

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   R/o D-145, "Priyadarshini Vihar",
   Opp. Lovely Public School,

Shahadara, Delhi. ...Respondent/
Accused

Criminal Appeal No.392 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
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Itwari Bhaji Mandi, Nagpur,
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Versus

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Criminal Appeal No.399 of 2008

M/s. Jinraj Paper Udyog,
2/26, Ansari Road, Delhi,
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Opp. Lovely Public School,
Shahadara, Delhi. ...Respondent/
Accused

Shri R.P. Joshi, Advocate for Applicant/Appellant.
S/Shri Anand.S. Joshi, and Shri D.M. Gabhane, Advocates for Respondent.

Coram : R.C. Chavan, J.
Date of Reserving the Judgment : 23-10-2008

Date of Pronouncing the Judgment : 10-11-2008

JUDGMENT :

Criminal Application Nos.2424, 2425, 2426, 2427 and 2428 of 2008

By these applications under Section 378(4) of the Code of Criminal Procedure Code original complainant seeks leave to file appeals against the judgments of acquittal rendered by the learned Judicial Magistrate First Class, Nagpur in five Summary Criminal Cases relating to office punishable under Section 138 of the Negotiable Instruments Act. When the applications and appeals were first listed, notice of final disposal was directed to be issued. Thereafter R & P too was called and has been received. In view of this, leave to file appeals granted. The applications are allowed.

Criminal Appeal Nos.390, 391, 392, 393 and 399 of 2008

1. These five appeals are directed against the judgments of acquittal rendered by the learned Judicial Magistrate First Class, Nagpur in five criminal complaints in respect of offences punishable under Section 138 of the Negotiable Instruments Act.

2. Facts which occasioned filing of those complaints are identical. There is substantially no dispute about facts which are material for deciding these appeals. Between 24-5-2002 and 24-3-2003, the complainant supplied paper worth Rs.20,38,357/- to accused No.1, whose proprietor is accused No.2. Both the complainant and accused ordinarily do their business at Delhi and paper was supplied at Delhi. Five cheques of Rs.60,000/- each, drawn on Indian Overseas Bank, Delhi were delivered by the accused to complainant towards these dues. These cheques were lodged by the complainant for collection with his bank in Nagpur, where he claims to have an office. The bank on which the cheques were drawn, i.e. Indian Overseas Bank, Delhi, intimated to the complainant's bankers that the cheques were dishonoured, and the said bank, in turn, sent intimation of dishonour to complainant. The complainant sent notices of demand from

his Nagpur office to the accused, which were duly received by them. As the accused failed to pay, the complainant filed five complaint cases before the learned Judicial Magistrate First Class, Nagpur on 3-2-2004.

3. Upon issuance of process, accused appeared, pleaded not guilty, but did not raise any question about jurisdiction of the Courts at Nagpur to entertain the complaints. Complainant tendered affidavits in evidence on 26-7-2006 in these cases and was cross-examined.

4. On 4-9-2006, this Court (in fact, I) delivered a judgment in Ahuja S/o Nandkishore Dongre Vs. State of Maharashtra and another, reported at 2006 ALL MR (Cri) 3357, in respect of jurisdiction in cases of offence punishable under Section 138 of the Negotiable Instruments Act, holding that presentation of a cheque contemplated its presentation to the drawee bank. This judgment is reportedly challenged before the Hon'ble Supreme Court by filing a Special Leave Petition on 2-2-2007 in which the Apex Court is stated to have issued notice.

5. On 13-11-2007, the accused filed his own affidavits, and

examined himself in defence. By judgment dated 2-5-2008, the learned Magistrate proceeded to acquit the accused in all the five cases relying on my judgment in *Ahuja Nandkishore Dongre's* case.

6. The learned counsel for the appellant fairly concedes that the entire transaction had in fact taken place in Delhi. However, he states that since such cases take a longer time for decision in Courts in Delhi, his client chose to lodge the cheques for collection with a bank at Nagpur and also issued a notice from an office located at Nagpur in a business associate's premises, so that he could lodge a complaint in Nagpur Courts, where adjudication is comparatively faster. According to him, if law permitted this course, there was nothing wrong in choosing a forum.

7. His learned adversary submitted that in fact complainant does not have any office in Nagpur. No registration under the Shops and Establishments Act or other document is produced to show that there is such an office. He was informed that even the account in bank at Nagpur, in which the cheques were lodged, was opened just a day before the cheques were actually lodged, though, no document to that effect is produced. The

learned counsel for the respondent further submitted that in face of my judgment in *Ahuja Nandkishore Dongre's* case, which was binding on the learned Magistrate, the Magistrate could not have decided the case differently.

8. In this factual context, the rival contentions would have to be examined. The learned counsel for the appellant is correct in contending that if the learned Magistrate held that he had no jurisdiction, the only course open to him was to return the complaint under Section 201 of the Code of Criminal Procedure for presentation to proper Court. In fact, such is the direction in *Ahuja Nandkishore Dongre's* case. Therefore, acquittal of respondent by a Court professing lack of jurisdiction is unsustainable.

9. The learned counsel for the appellant next submitted that the judgment in *Ahuja Nandkishore Dongre's* case was delivered on 4-9-2006, long after the complaints were filed on 3-2-2004. No objection had been raised to the jurisdiction of the Court till practically the trial was over and, therefore, such objection could not have entertained by the learned Magistrate. He submitted that in *Ahuja Nandkishore Dongre's*

case, the accused had filed an application taking objection to jurisdiction of the Court immediately after process was issued and had approached this Court under Section 482 of the Code of Criminal Procedure upon rejection of his application. Such were not the facts in this bunch of cases. Therefore, the judgment in *Ahuja Nandkishore Dongre's* case was inapplicable. He pointed out that Section 462 of the Code of Criminal Procedure even leaves undisturbed judgments rendered by Courts which lacked territorial jurisdiction, unless it appears that such error has in fact occasioned a failure of justice. Here, according to the learned counsel for the appellant, far from there being any failure of justice, there is not even any prejudice shown to have been caused. He submitted that it was unfair on the part of the accused to participate in the trial without a demur and take advantage of a judgment which came much after the case was filed.

10. The learned counsel for the respondent submitted that law has not changed on account of judgment in *Ahuja Nandkishore Dongre's* case, which merely explained the ratio of judgment in the case of *K. Bhaskaran* Vs. *Sankaran Vaidhyan Balan*, reported at *1999 ALL MR (Cri) 1845 (S.C.)*. In any case, a judgment, declaratory of law, would apply even

on the date the appellant filed criminal complaints before the learned Magistrate. Further, according to the learned counsel, occasions for an accused to disclose his stand would arise first, only in course of cross-examination of complainant, which the accused had done by eliciting in the cross-examination that the lis had no causal connection with the forum. He further submitted that accused could undoubtedly have followed the course chosen by Ahuja Dongre, namely, applying for objecting to jurisdiction, but, failure to do so has no consequences, since accused was under no duty or obligation to follow only that course.

11. The learned counsel for the respondent submitted that in fact proper stage for raising jurisdictional question is the trial itself and this Court had discouraged application under Section 482 of the Code of Criminal Procedure for quashing a complaint on account of lack of jurisdiction in *A. Chinnaswami* Vs. *M/s. Bilakchand Gyanchand Company*, reported at *1998(3) Bom.C.R. 120*. In that case too, jurisdiction of Court of Judicial Magistrate First Class, Chopada was invoked because cheques were "presented" at Chopada branch of State Bank of India, though the transaction had allegedly taken place at Coimbatore. In this context, this

Court observed that the question of jurisdiction is a mixed question of fact and law and that the learned Magistrate would have to record evidence with respect to the fact as to the place where the transaction took place. In view of this, it has to be held that the accused in the present case had raised the objection at a proper stage.

12. It is indeed correct that accused was not obliged to raise an objection by specifically making an application and had sufficiently indicated his stance at appropriate stage. Therefore, the learned Magistrate was right in not shutting out this defence of the accused and rightly took it into account.

13. As for the argument based upon Section 462 of the Code of Criminal Procedure, the learned counsel for the respondent submitted, and rightly in my view, that a distinction has to be drawn in the case of one who allows a judgment to be delivered without demur, and one, who raises the defence at a stage of trial when he is obliged to do so. Therefore, the contention that if a judgment could not be questioned, proceedings at trial too were beyond reproach is fallacious.

14. The learned counsel for the appellant relied on judgment of Supreme Court in *State of M.P.* Vs. *Bhooraji and others*, reported at *(2001) 7 SCC 679*, where the Court held that a trial held before a competent Court would not be vitiated by a procedural lapse. The High Court of Madhya Pradesh in *Meerabai* Vs. *Bhujbal Singh*, reported at *1995 Cri LJ 2376 (MP),* had held that cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act needed to be committed to the Special Court of Session. This was overruled by a Full Bench of the same Court, which held that the Special Court could directly take cognizance without commitment. This in turn was overruled by the Apex Court in *Gangula Ashok* Vs. *State of A.P.*, reported in *(2000) 2 SCC 504*, making commitment necessary. *Bhooraji's case* was tried by appropriate Court, but without its having been committed. The High Court ordered a fresh trial. On appeal, the Supreme Court set aside the judgment, observing as under in para 21:

> *"21. The expression "a court of competent jurisdiction" envisaged in Section 465 is to denote a validly constituted court conferred with jurisdiction to try the offence or offences. Such a court will not get denuded of its competence to try the*

> *case on account of any procedural lapse and the competence would remain unaffected by the non-compliance with the procedural requirement. The inability to take cognizance of an offence without a committal order does not mean that a duly constituted court became an incompetent court for all purposes. If an objection was raised in that court at the earliest occasion on the ground that the case should have been committed by a Magistrate, the same specified court has to exercise a jurisdiction either for sending the records to a Magistrate for adopting committal proceedings or return the police report to the Public Prosecutor or the police for presentation before the Magistrate. Even this could be done only because the court has competence to deal with the case. Sometimes that court may have to hear arguments to decide that preliminary issue. Hence the argument advanced by the learned counsel on the strength of the aforesaid decisions is of no avail."*

15. It may be seen that in *Bhooraji's case*, it was not that the Court which tried the offenders had no jurisdiction. Upon commitment, the case would have been tried by the same Court. Such is not the present case. Here, the question whether Court at Nagpur has jurisdiction is very much in issue. The question here is not of procedural lapse, but of the very

competence of the Court to take cognizance for want of jurisdiction. The question here is not connected with procedural error covered by Section 465 of the Code of Criminal Procedure, dealing with irregular proceedings, and so Bhooraji's case has no application, as rightly contended by the learned counsel for the respondent.

16. In this view of the matter, it would be necessary to examine whether the learned Judicial Magistrate, First Class, was right in concluding that he lacked jurisdiction. The learned counsel for the respondent submitted that in the face of judgment of this Court in *Ahuja Dongre's case*, the learned Magistrate could not have held otherwise and, therefore, the judgment is unassailable.

17. The learned counsel for the appellant submitted that judgment in *Ahuja Dongre's case* is itself rendered *per incuriam* and it was impermissible for this Court to “distinguish” the ratio of judgment of the Apex Court in *K. Bhaskaran* Vs. *Sankaran Vaidhyan Balan*, reported at *(1999) 7 SCC 510=AIR 1999 SC 3762*. Therefore, according to the learned counsel, the judgment in *Ahuja Dongre's case* need not have been applied

and in any case, may not be applied, since it cannot stand with judgments of Supreme Court on which the learned counsel sought to rely.

18. Before going into the question whether *Ahuja Dongre's case* was decided *per incuriam*, it would be useful to recount as to what was decided by the Hon'ble Apex Court in the case of *K. Bhaskaran* and how this judgment was considered in *Ahuja Dongre's case*. The material part of observations of the Apex Court on the question of jurisdiction, contained in paras 14 to 16 of the judgment as reported at *AIR 1999 SC 3762* may be usefully reproduced as under :

> *"14. The offence under Section 138 of the Act can be completed only with the con-catenation of a number of acts. Following are the acts which are components of the said offence : (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice."*
>
> *"15. It is not necessary that all the above five acts should*

have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Act. In this context a reference to Section 178(d) of the Code is useful. It is extracted below :

"Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

"16. Thus it is clear, if the five different acts were done in five different localities any one of the Courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence 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."

The above observations were considered in paras 14, 15, 17 to 19, 22 and 23 in *Ahuja Dongre's case* as under :

"14. In Bhaskaran's case, as a matter of fact, it was held as proved that cheques in question have been issued at the shop of P.W.3 within territorial limits of trial Court's jurisdiction. The five ingredients enumerated by the Court in paragraph 14 of the judgment would undisputedly attract the provisions of Clause (d) of Section 178 of the Code of Criminal Procedure, since it can be said that the offence punishable under Section 138 of the Negotiable Instruments Act consists of the five acts, enumerated in paragraph 14 of the judgment. It may be seen that clauses (2) and (3) in paragraph 14 of the judgment refer to presentation of "the cheque" to "the Bank" and returning the cheque unpaid by "the drawee Bank". A reference to Section 138 of the Negotiable Instruments Act, would also show that the section begins, with reference to "a banker" and then goes on to refer to "the banker"..... "is returned by the bank", ... "by an agreement made with that bank"..... "the cheque has been presented to the bank within thirty days from information by him to the bank" etc. Thus, the reference to presentation of the cheque or return of the cheque dishonoured is in relation to the bank on which the cheque is drawn. Considering the usage of indefinite articles "a" and "an" and definite article "the" it would not be permissible to hold that reference to the bank extends to any bank where the cheque is presented, or any bank from which holder in due course eventually gets

information of dishonour. This is amply made clear by the Apex Court by prefixing the words "bank" and "drawee bank" in items (1) and (2) in paragraph 14 of the judgment with definite article "the"."

"15. The Apex Court must have chosen to prefix the word "bank" by definite article "the" in order to avoid the confusion and problems that would be created by using indefinite article "a". A cheque is negotiable instrument and by appropriate endorsement and delivery it can be negotiated. If instead of the Courts at the place where the bank on which the cheque was drawn, the Courts at the place where the cheque was presented were to have jurisdiction, drawers of the cheque would be exposed to an unforeseen risk. When a person issues a cheque to another, he intends to make payment to that another, for a consideration which he has received at the bank on which the cheque is drawn. That other, may, in turn, negotiate the cheque in favour of third person for a liability which that other may have to discharge towards such third person. The drawer of the cheque cannot be said to have foreseen that, by such negotiation, his cheque would land at place far away from the place at which it was meant to be paid, making him liable to be hauled up in a Court at a place where the cheque was presented by the holder in due course. Therefore, with utmost humility and with great respect to the

observations made by Andhra Pradesh High Court, it is difficult to deduce the ratio elicited by the Andhra Pradesh High Court, from the observations of the Supreme Court from K. Bhaskaran's case. It must be held that the observations in Bhaskaran's case do not support such a view of law."

"17. While creating an offence punishable under Section 138 of the Negotiable Instruments Act, the parliament has not changed the whole scheme of the Act. Under Section 6 of the Act, a cheque is still defined at a bill of exchange, drawn on a specified banker. The "drawee" is the person directed to pay under Section 7, and Section 61 requires that a bill of exchange has to be presented to "the drawee" (& not to any banker), and if the bill is directed to a drawee at a particular place, it must be presented at that place. Section 72 makes the requirement in respect of a cheque clear and lays down as under :

"72. Presentment of cheque to charge drawer :-- (Subject to the provisions of Section 84) a cheque must, in order to charge the drawer, be presented at the bank upon which if is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer."

Since all these provisions are left intact a cheque has to be presented to the drawee bank at the place mentioned on the cheque."

"19. The choice of definite article "the" by the Apex Court in items (1) and (2) in paragraph 14 of Bhaskaran's judgment merely gives effect to these statutory requirements."

"22. The words in paragraph 16 of the judgment regarding widened amplitude have to be read in this background. The Apex Court must not be understood to have held that question of jurisdiction in a proceeding for offence punishable under Section 138 of N.I. Act is utterly irrelevant, or that there is absolutely no restriction on the choice of place of suing. These observations have to be read in the context of what is held in paragraph 14 and therefore the amplitude must be taken to have widened to the extent indicated in paragraph 14."

"23. Same holds good about observations in paragraph 12 of Bhaskaran's judgment in respect of the word "ordinarily" appearing in Section 177, Cr.P.C. The Apex Court must be understood to have held that ordinarily the place of suing must have a nexus to the lis, but upon making out a case for deviating from this rule, action could be initiated even at some other place. It is not the word "Ordinarily" gives an unbridled freedom to a complainant to choose his forum for hauling up an accused." ***(Emphasis supplied)***

It may thus be seen that this Court had neither "distinguished" judgment of the Apex Court in *K. Bhaskaran's case*, nor had held that any part of the observations were not applicable. At the cost of repetition, it may be useful to re-state as to how the judgment in *K. Bhaskaran's case* was understood by this Court.

19. In *K. Bhaskaran's case*, the Apex Court held that "presentation of the cheque to the bank" was a component of the said offence. In *Ahuja Dongre's case* too, this dictum is followed. The Hon'ble Apex Court had chosen the word "presentation" and had also added article "the" before the word "bank". In para 17 of the judgment in *Ahuja Dongre's case* quoted above, the scheme of the Negotiable Instruments Act is considered and what amounts to "presentation" is discussed. It is impossible to even contend that the Hon'ble Apex Court would have in contemplation some meaning of the word "presentation" different than one warranted by the provisions of the Negotiable Instruments Act.

20. When a payee of a cheque lodges (and not "presents") a cheque to his banker for collection, his banker, as his agent, "presents" it to

the drawee bank. Question of dishonour would arise only after it is "presented" to the drawee bank. If colloquially people believe that they "present" a cheque drawn on a different bank to their banker, it does neither alter law nor banking practice. Therefore, the signifance of article "the" prefixed by the Apex Court to the word "bank" was emphasized.

21. The fourth component enumerated in *K. Bhaskaran's case*, namely, *"(4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount",* had been applied and it was observed in para 27 of the judgment in *Ahuja Dongre's case* that since payment was demanded to be made to the client, whose address in the notice showed that he was residing outside the jurisdiction of the concerned Court, the Court had no jurisdiction. The other three components were not attracted to the facts of that case.

22. As to the following observations in para 16 in *K. Bhaskaran's case,* "As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding offence under Section 138 of the Act", in *Ahuja Dongre's case* in para 22 quoted above, it has been held

that the observations must be read in the context of five components of the offence enumerated in para 14 of *K. Bhaskaran's* judgment. To contend that jurisdictional question has become irrelevant and that irrespective of the fact that none of the five components occurred within the jurisdiction of a Court, it could entertain a complaint, would amount to reading sentences out of context.

23. That in spite of "wide amplitude", jurisdictional question is still relevant is clear from a later judgment of the Hon'ble Apex Court in *Mosaraf Hossain Khan* Vs. *Bhagheeratha Engg. Ltd. and others*, reported at *AIR 2006 SC 1288= (2006) 3 SCC 658*. Complainant in that case had filed complaints in the Court of Chief Judicial Magistrate, Birbhum at Suri in respect of several cheques that had been dishonoured. The respondent (accused Company) had undertaken work of construction of major bridges in West Bengal. The complainant was supplying crushed stone aggregates. In respect of the amount outstanding towards supply of raw material, the accused Company had issued post-dated cheques from the registered office of the Company in Kerala. The cheques were deposited by the complainant with Mayurakhi Gramin Bank, Suri Branch and were returned by the banker

stating "full cover not received". Upon service of notice of demand, a part of the sum was paid, leaving a big balance. The Chief Judicial Magistrate issued process on the complaints and summonses were served at Kolabhat, Midnapore, West Bengal. Instead of appearing before the Chief Judicial Magistrate, the accused filed a writ petition before the High Court of Kerala for quashing the complaints. The accused Company contended that since the cheques were issued from registered office of the Company in Kerala, a part of cause of action arose within the State of Kerala.

24. The High Court of Kerala entertained the petition and granted interim reliefs. After considering the question of jurisdiction of the High Court to entertain in such a petition, the Apex Court also considered the question as to which Magisterial Court would have jurisdiction to entertain the complaints. After considering decision in *OM Hemrajani* Vs. *State of U.P. and another*, reported at *(2005) 1 SCC 617*, about jurisdiction in cases of offences committed abroad, the Apex Court held as under :

> *"31. A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the District*

Court of Birbhum and in that view of the matter it is that court which will have jurisdiction to take cognisance of the offence. In fact the jurisdiction of the Court of CJM, Birbhum, Suri, is not in question. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 of the Code of Criminal Procedure is attracted, the Court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter."

"32. Sending of cheques from Erakulam or the respondents having an office at that place did not form an integral part of "cause of action" for which the complaint petition was filed by the appellant and cognisance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri. We may moreover notice that the situs of the accused wherefor jurisdiction of a court can be invoked and which is an exception to the aforementioned provisions as contained in Section 188 of the Code of Criminal Procedure recently came up for consideration by this Court in Om Hemrajani v. State of U.P. It was held that the said provisions may be interpreted widely. The law was laid down in the following terms: (SCC pp. 621-22, paras 8-9)

> *"8. Section 177 postulates that ordinarily offence shall be inquired into and tried by a court within whose local jurisdiction it was committed. Section 178, inter alia, deals with situations when it is uncertain in which of several local areas an offence is committed or partly committed in one area and partly in another. The section provides that the offence can be inquired into or tried by a court having jurisdiction over any of the local areas mentioned therein. ..."*
>
> *9. ...*

"33. In this case, the averments made in the writ petition filed by the respondent herein even if given face value and taken to be correct in their entirety would not confer any jurisdiction upon the Kerala High Court. The agreement was entered into within the jurisdiction of the Calcutta High Court. The project for which the supply of stone chips and transportation was being carried out was also within the State of West Bengal. Payments were obviously required to be made within the jurisdiction of the said Court where either the contract had been entered into or where payment was to be made"

"34. The appellant did not deny or dispute any of the averments made in the complaint petition. In the writ petition it merely wanted some time to make the payment. It is now well known that the object of the provision of Section 138 of the Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. It was also noticed in a number of decisions of this Court that dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. It was also found that the remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

"35. In Prem Chand Vijay Kumar v. Yashpal Singh [(2005) 4 SCC 417] we may, however, notice that it was held that for securing conviction under the Negotiable Instruments Act, 1881 the facts which are required to be proved are: (SCC p. 423, para 10)

"10. (a) that the cheque was drawn for payment of

an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice."

"36. For the purpose of proving the aforementioned ingredients of the offence under Section 138 of the Act, the complainant appellant was required to prove the facts constituting the cause of action therefor none of which arose within the jurisdiction of the Kerala High Court. It is apt to mention that in Prem Chand Vijay Kumar this Court held that cause of action within the meaning of Section 142(b) of the Act can arise only once."

The Hon'ble Supreme Court then allowed the appeal, setting aside orders by the Kerala High Court. Had the question of jurisdiction become irrelevant the Hon'ble Supreme Court would not have said so. It may be recalled that the Supreme Court not only held that Courts at Birbhum, Suri had jurisdiction (because in any case some part of cause of action arose there),

but held that the entire cause of action arose within the jurisdiction of District Court of Birbhum, in spite of the fact that cheques were allegedly issued from Kerala. It ruled that sending cheques from Ernakulam did not form an integral part of cause of action. Para 33 of the judgment quoted above is decisive of what would be crucial in determining jurisdiction in such cases.

25. It is true that the Hon'ble Supreme Court had not considered judgment in *K. Bhaskaran's case* while making these observations. But it would be impermissible to even suggest that the Apex Court had not considered if "drawing of the cheque", enumerated as the first component in *K. Bhaskaran's case*, had a bearing on the question of jurisdiction in cases under Section 138 of the Negotiable Instruments Act or not. In fact, this aspect was considered and yet the Court held that it was not an integral part of cause of action.

26. In *Premchand Vijay Kumar* Vs. *Yashpal Singh*, reported at *2005(4) Mh.L.J. 100*, which had been referred to in *Mosaraf Hossain's* case, the question was not of jurisdiction, but that of cause of action to file a

complaint of offence punishable under Section 138 of the Negotiable Instrument Act. In that case, a notice making demand was made first on 17-2-1995. Cheque was presented again on 6-7-1995 and after it was dishonoured fresh notice of demand was sent on 24-7-1995 and, therefore, complaint was filed. In this context, the Court held as under in paras 9 and 10.

> *"9. In a generic and wide sense (as in section 20 of the Civil Procedure Code, 1908 (in short 'CPC') "cause of action" means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act :*
>
> *(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;*
>
> *(b) that the cheque was presented within the prescribed period;*
>
> *(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and*
>
> *(d) that the drawer failed to make the payment within*

15 days of the receipt of the notice."

> *"10. Proceeding on the basis of the generic meaning of the term cause of action, certainly each of the above facts would constitute a part of the cause of action but clause (b) of section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. A combined reading of sections 138 and 142 makes it clear that cause of action is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of section 142(c) arises – and can arise – only once."*

This is the observation which was referred to by the Apex Court in *Mosaraf Hossain's* case.

27. Judgment in *Mosaraf Hossain Khan's* case, in my humble view, would show that :-

(1) Jurisdictional question is very much relevant in cases under Section 138 of the Negotiable Instruments Act.

(2) Place where transaction took place and where

payment was intended to be made would be an important relevant consideration in deciding jurisdictional issue, and

(3) Place where the cheque in question was issued in itself is not decisive (and as a corollary, each of the five components enumerated in K. Bhaskaran, taken individually though relevant, may not be decisive of the matter)

28. The last aspect in *K. Bhaskaran's* judgment, which has been discussed in *Ahuja Dongre's* case is about the observations about the word "ordinarily" appearing in Section 177 of the Code of Criminal Procedure. It cannot be contended that use of word "Ordinarily" enables a party to approach any criminal Court anywhere irrespective of whether it has any nexus to the lis or to the parties.

29. This takes me to the questions whether it was impermissible for this Court to take such a course and whether the judgment is rendered *per incuriam*. Both the learned counsel for the parties painstakingly took me through all the relevant judgments on which they could lay hands on the question of "precedent", "stare decisis", "ratio decidendi" and "obiter dicta".

It is settled legal position that even obiter dicta of the Supreme Court are binding on all the Courts in India, in the absence of a direct pronouncement on the subject by the Supreme Court, as held in para 26 of the judgment in para 26 of the judgment in *Oriental Insurance* Vs. *Meena Variyal*, reported at *2007(5) SCC 428*. As the foregoing enumeration would show, it is clear that dicta of the Hon'ble Apex Court in *K. Bhaskaran's case* have been followed. If the judgment in *Ahuja Dongre's case* gives an impression that law laid down by the Hon'ble Apex Court has not been followed in letter and spirit, it may only be an regrettable lapse in articulation. The attempt, in fact, was to discern correctly as to what the Apex Court had ruled in order to accurately apply it to the facts of the said case.

30. In *Emkay Exports, Mumbai and another* Vs. *Madhusudan Shrikrishna*, reported at *2008(4) Mh.L.J. 843*, on which the learned counsel for the respondent placed reliance, a Full Bench of this Court, speaking through the Hon'ble the Chief Justice, considered the concepts of precedent, ratio, stare decisis in the following erudite words :

"6. The concept of precedent has attained important

role in administration of justice in the modern times. The case before the Court should be decided in accordance with law and the doctrines. The mind of the Court should be clearly reflecting on the material in issue with regard to the facts of the case. The reason and spirit of case make law and not the letter of a particular precedent. Halsbury's "The Laws of England", explained the word "ratio decidendi" as "It may be laid down as a general rule that that part alone of a decision by a Court of Law is binding upon Courts of coordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the ratio decidendi." It is by the choice of material facts that the Court create law. The law so created would be a good precedent for similar subsequent cases unless it falls within the exceptions hereinafter indicated."

"7. The doctrine of precedent relates to following of previous decisions within its limitations. It introduces the concept of finality and adherence to the previous decisions and while attaining it, it creates consistency in application of law. The later judgment should be similar to the earlier judgment, which on material facts are the same. Finding ratio decidendi is not a mechanical process but an art which one gradually

acquires through practice. What is really involved in finding the ratio decidendi of a case is the process of abstraction. Ratio decidendi is a term used in contrast to obiter dictum which is not necessarily binding in law. According to Sir John Salmond, "a precedent is a judicial decision, which contains in itself a principle. The only principle which forms its authoritative element is often termed the 'ratio decidendi'. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large". According to Austin, the general reasons or principles of judicial decisions abstracted from peculiarities of the case are commonly styled by writers on jurisprudence as 'ratio decidendi'."

"10 The Hon'ble Apex Court further observed that a caution need to be taken while applying the principle of judicial precedents as decision of the Court and its observations must be read in context in which they appear. In a judgment discussion is meant to explain and not to define. In this regard, reference can be made to the case of Haryana Financial Corporation and anr. vs. M/s. Jagdamba Oil Mills and anr., J.T. 2002(1) SC 484."

"12. In order to apply a judgment as a precedent, the relevant laws and earlier judgment should be brought to the

notice of the Court and they should be correctly applied. Mere observations in a previous judgment may not be binding on a subsequent Bench if they are not truly applicable to the facts and controversies in a subsequent case as per settled principle of "ratio decidendi". ..."

"13. In the case of Commissioner of Customs (Fort) vs. Toyota Kirloskar Motor (P) Ltd., (2007) 5 SCC 371, the Supreme Court stated the law relating to precedents and held that a decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom. The ratio of a decision must be culled out from the facts involved in a given case and need not be an authority in generality without reference to the reasons, discussions and facts of the case."

"15. Furthermore, ratio decidendi of a judgment has to be found out only on reading the entire judgment. The ratio of the judgment is what is set out in the judgment itself. Answer to the question necessarily would have to be read in the context what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons or principles, the other part of the judgment must be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the

judgment. The reasoning could be deciphered upon reading the judgment in its entirety and then applying these principles to the subsequent cases. (Reference : (i) Union of India vs. Godfrey Philips India Ltd., AIR 1996 SC 806, (ii) Union of India vs. Dhanwanti Devi, (1996) 6 SCC 44, (iii) State of Tripura vs. Tripura Bar Association, AIR 1999 SC 1494 and (iv) Islamic Academy of Education vs. State of Karnatake, (2003) 6 SCC 697)." ***(Emphasis Supplied)***

31. In *Ahuja Dongre's* case, an attempt to read the observations in *K. Bhaskaran's* case in the context of applicable law has been made and, therefore, it is not possible to accept the submission that the judgment is per incuriam.

32. The learned counsel for the appellant submitted that interpreting a judgment of the Supreme Court is itself impermissible and for this purpose cited judgment of the Supreme Court in *G.K. Dudani and others* Vs. *S.D. Sharma and others*, reported at *AIR 1986 SC 1455*. In that case, a Division Bench of Gujarat High Court had sought to interpret the words "promotees regularly appointed" in a judgment of Supreme Court in *N.K. Chauhan* v. *State of Gujarat*, reported at *AIR 1977 SC 251*. The Supreme

Court observed as under in para 19 :

> *"19. Even apart from the question of res judicata, the Division Bench was not right in its approach to Chauhan's Case. The interpretation placed by the Division Bench upon the words "promotees regularly appointed" in direction (d) in Chauhan's case was wholly erroneous. Under the guise of interpreting the judgment in that case, the Division Bench of the High Court virtually sat in appeal over the judgment of this Court and modified it. The High Court ought to have taken the words in that judgment in the sense in which they were used and ought to have applied them to the facts before it instead of trying to put words in the mouth of this Court. ..."*

It is not clear as to how the judgment could be an authority for the proposition that a High Court cannot attribute to the words in an Apex Court judgment, meaning assigned in the relevant enactment. True, High Court should not put words in the mouth of the Apex Court. But if an attempt is made to put a strained meaning on words in a judgment without considering the context, a High Court would be duty bound to repel such attempt and read the words in the context of the relevant enactment. This is what was done in *Ahuja Dongre's case*.

33. In *Ballabhdas Mathuradas Lakhani and others* Vs. *Municipal Committee, Malkapur*, reported at *AIR 1970 SC 1002,* the Supreme Court held that its earlier decision on the question of validity of levy of tax by Municipality was binding on the High Court and the High Court could not ignore it because they thought that relevant provisions were not brought to the notice of the Supreme Court. Such is not the present case.

34. The learned counsel for the appellant next relied on a judgment of High Court of Rajasthan in *M/s. Bhanwar Lal Brij Gopal and etc. etc.* v. *State of Rajasthan and others*, reported at *AIR 1983 Rajasthan 104,* to contend that even if same aspect of a matter was not considered by the Apex Court, it would not enable a High Court to re-agitate the issue. In that case, validity of a notification dated 23-5-1981 was challenged before the High Court, when the very same notification had been held valid by the Apex Court in a judgment in *Surajmal Kailash Chand* Vs. *Union of India*, reported at *AIR 1982 SC 130*. The Court made the following observations in para 22 :

"22. This raises a serious question as to what would be

the effect of the decision of the Hon'ble Supreme Court, more so when the same Notification being declared valid by the Hon'ble the Supreme Court and the High Court has declared invalid on the same day. Undoubtedly Art. 141 makes it explicit and beyond doubt that the law laid down by the Hon'ble the Supreme Court is to be obeyed by all concerned. Even otherwise so far as the High Court is concerned the Supreme Court is of a superior jurisdiction and law laid down by the Hon'ble Supreme Court is binding, even if Article 41 and Article 144 would not be there."

It then quoted from a judgment of Supreme Court in *Ambica Prasad Mishra* Vs. *State of U.P.*, reported at *AIR 1980 SC 1762*, in para 23 as under :

"23. ... The answer to this problem need not be given by me but in Ambica Prasad Mishra v. State of U.P. (AIR 1980 SC 1762), the Supreme Court have taken pains to answer what would be the effect of raising additional points or such points later. It was observed as under :--

"Constitution of India, art. 141--

reconsideration of binding precedent – when permissible. Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. It is fundamental that the nation's constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action, on vital issues deterred by the brooding threat of forensic blow-up. This, if permitted, may well be a kind of judicial destabilisation of State action too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake-up.

It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously "reasoned" "

35. The judgment in *Ahuja Dongre's* case does not even hint that *K. Bhaskaran's* case was badly argued, inadequately considered or fallaciously reasoned. Far from this, *K. Bhaskaran's* case, being the first authoritative pronouncement, which not only comprehensively considered all aspects but also ruled in expression aptly chosen for defining the five

components, in *Ahuja Dongre's* case, it is followed strictly. *Ahuja Dongre's* case merely repels an attempt to put colloquial or loose meaning on the expression used in *K. Bhaskaran's* case.

36. Same holds good about reliance by the learned counsel for the appellant on the judgment of the Supreme Court in *Suganthi Suresh Kumar* v. *Jagdeeshan*, reported at *(2002) 2 SCC 420*, where the Supreme Court had disapproved High Courts overruling decisions of the Apex Court on the ground that it had laid down the legal position without considering any other point. This objection cannot be raised in respect of judgment in *Ahuja Dongre's* case since the Supreme Court in *K. Bhaskaran's* case chose to use the expression “presented” and “the bank” and the Supreme Court did not rule that depositing the cheque with drawer's bank was also a relevant component. Judicial discipline to abide by the declaration of law by the Supreme Court is the foremost consideration for a High Court, as held in *Suga Ram alias Chhugaram* Vs. *State of Rajasthan and others*, reported at *(2006) 8 SCC 641*, and judgment in *Ahuja Dongre's* case strictly follows *K. Bhaskaran's* case.

37. It is not clear as to why the learned counsel for the appellant chose to cite judgment in *Smt. Kausalya Devi Bogra and others* Vs. *Land Acquisition Officer, Aurangabad and another*, reported at *(1984) 2 SCC 324*. In that case, while allowing earlier appeals by judgment dated 23-3-1979, the Supreme Court had directed the High Court to re-hear the appeals in the light of directions given. Yet the High Court observed that they had not heard the parties on merits at all and re-confirmed the view taken by earlier Division Bench, which had been expressly set aside by the Supreme Court. In this context, the Supreme Court held as under :

> *"5. Having read the judgment of the High Court and considering the manner in which the first appeals have been disposed of, we have no doubts in our mind that the High Court exceeded its jurisdiction in dealing with the first appeals. This Court in exercise of appellate powers vested in it under Article 136 (sic Article 133) of the Constitution had set aside the Bench decision of the High Court delivered in 1971 and that judgment for all intents and purposes had become non-existent. The present Division Bench of the High Court was not entitled, by any process known to law, to resurrect that judgment into life."*

The judgment would have applied only if this Court in *Ahuja Dongre's* case had come to express any doubts over the observations of the Supreme Court in *K. Bhaskaran's* case. On the contrary, this Court merely warded off an attempt to put a gloss over the words in the judgment, which was necessary to avoid stretching the ratio therein to an illogical extreme.

38. Since in *Ahuja Dongre's* case this Court had not taken a view contrary to that of any co-ordinate Bench or Bench of a higher strength, there was no occasion to make a reference. Hence, ratio in *Sundarjas Kanyalal Bhatija and others* v. *Collector, Thane, Maharashtra and others*, reported at *(1989) 3 SCC 396*, on which the learned counsel for the appellant relied, would not be attracted.

39. Repeated reliance on the judgments to show that the observations in the judgments of the Supreme Court cannot be disregarded cannot lead to an inference that factually there has been any such disregard. The position that an earlier decision of the Supreme Court cannot be overruled by even a co-equal bench of that Court reported in *(1995) 4 SCC 96* (*Indian Oil Corporation Ltd.* Vs. *Municipal Corporation and another*),

referred to by the learned counsel for the appellant is so clear that an authority was really not necessary.

40. **To recapitulate :-**

(1) The judgment in *Ahuja Dongre's* case does not contain even a whisper that *K. Bhaskaran's* case was decided without considering any provision of law or any legal aspect.

(2) On the contrary, the judgment in *Ahuja Dongre's* case enforces in letter and spirit the observations of the Supreme Court in *K. Bhaskaran's* case, by reading the expression used contextually, and refusing to read the explanatory expression out of context, as is required to be done (Para 10 of Full Bench judgment in *Emkay Exports, Mumbai and another* Vs. *Madhusudan Shrikrishna – 2008(4) Mh.L.J. 843*).

(3) What is now being attempted by the appellants is to put an unwarranted colloquial meaning on the expression used, stretching the ratio of *K. Bhaskaran's* case to illogical extent, and then alleging deviation in *Ahuja Dongre's* case from such strained interpretation put on the judgment which is not proper.

41. The learned counsel for the appellant next submitted that in *Ahuja Dongre's* case, this Court had suggested that principally the Court within whose jurisdiction cheque was issued would have jurisdiction, and that such a conclusion runs counter to the judgment of the Hon'ble Supreme Court in *Mosaraf Hossain Khan's* case. It has to be humbly pointed out that in *Ahuja Dongre's* case, the question was about place of presentation, since the concerned Court was sought to be clothed with jurisdiction on the foundation that the cheque was allegedly presented within such jurisdiction. It was pointed out that the cheque was merely lodged in payee's bank and it was eventually presented to the bank on which it was drawn, which was outside the jurisdiction of the said Court.

42. While the place where the cheque is issued and the place where the cheque is presented (i.e. place where drawee bank is situated) may in a given case be the same, as held in *K. Bhaskaran's* case, these places could be different. Drawer of a cheque may not necessarily draw a cheque at the place where the drawee bank is situated and issue it. He may as well draw it at his place/payee's place, etc. In a metro, such places could be in a different jurisdictions, though in the same city. If jurisdiction is excluded by

applying observations in *Mosaraf Hossain's* case, and holding that one component, namely place of issuance of cheque is not relevant, it does not automatically exclude jurisdiction if the second component of presentation and dishonour have occurred at the same place where cheque was issued. Therefore, *Ahuja Dongre's* case is not in conflict with *Mosaraf Hossain's* case, and so it cannot be said that *Ahuja Dongre's* case is rendered *per incuriam*. There is yet another component of the place where payment was intended to be made, which place could be different from the place where cheque was issued or delivered. To find out where the payment was to be made, one has to simply took at the cheque to find out where the drawee bank is situated. Had the cheque been honoured, which could have been the place where payment could be said to have been made to the payee? -- obviously the drawee bank, since there the account of drawer would be debited and amount transmitted to the payee's agent – his bank – for being credited to his account. Such inference about intended place of payment could, however, be rebutted by tendering evidence to show that payment was to be made elsewhere.

43. The learned counsel for the appellant submitted that a

Special Leave Petition is already filed before the Supreme Court challenging judgment in *Ahuja Dongre's* case. Also another Hon'ble Single Judge has referred the matter to a larger Bench. He submitted that the appeals could be kept pending till the Special Leave Petition or reference to larger Bench are decided, and that the appellant would not mind waiting for the decision of the lis. He drew my attention to an order of the Supreme Court in *Umesh Korga Bhandari* Vs. *Mahanagar Telephone Nigam Ltd. and another*, reported at *(2005) 13 SCC 691*, to suggest such a course. In that case, the Supreme Court observed that since decision in Bangalore Water Supply Board's case had been referred in 2005 to a larger Bench in *State of U.P.* Vs. *Jai Bir Singh*, it would be appropriate to await the decision of larger Bench.

44. This submission could have been made when the matters first came up before Hon'ble Shri Justice A.H. Joshi for admission on 4-9-2008, when notice of final disposal was issued. After a matter is heard at length, no useful purpose would be served by keeping it pending, since there is no way to know when the Special Leave Petition or the reference to larger Bench would be decided, as Courts have other pressing work as well.

45. In Criminal Writ Petition No.7 of 2008 before the High Court of Bombay at Goa, by an order dated 7-2-2008, an Hon'ble Single Judge referred the matter to a larger Bench. Copy of that order was made available by the Registry, in order to enable me to ascertain as to what part of judgment in *Ahuja Dongre's* case was found to be incorrect. In para 2, the Hon'ble Single Judge observes as under :

> *"2. I have perused both the decisions delivered by the learned Single Judges of this Court. In* ***Ahuja Dongre's case****, the learned Single Judge has held that a cheque as a negotiable instrument is statutorily required to be discharged at the place mentioned therein and a reference is made in that regard to Section 72 of the Negotiable Instruments Act. Referring to the decision of the Apex Court in* ***K. Bhasaran v. Sankaran Vaidhyan Balan****, reported in AIR 1999 SC 3762, it was held that in* ***K. Bhasaran's*** *case as a matter of fact it was held as proved that the cheques in question had been issued at the shop of P.W.3 with the territorial limits of the trial Court's jurisdiction. Having so observed, it was further held by the learned Single Judge that the five ingredients enumerated by the Court in para 14 of the Judgment would undisputedly attract the provisions of clause (d) of Section 178*

> *of the Code of Criminal Procedure, since it could* ***not*** *be said that the offence punishable under Section 138 of the Negotiable Instruments Act consists of the five acts, enumerated in paragraph 14 of the judgment."*
>
> ***(Emphasis supplied)***

The learned Single Judge then paraphrases interpretation put by me on the expressions "presented" and "the drawee bank". In para 3, the Hon'ble Judge quotes from *K. Bhaskaran's* case, and in paras 5 and 6 observes as to what the Apex Court has held in *K. Bhaskaran's* case. The sentence in para 6 wherein the Hon'ble Judge refers to judgment in *Ahuja Dongre's* case reads as under :

> *"... The decision of the Apex Court therefore is very clear to the effect that the jurisdiction for initiating action under Section 138 of the Negotiable Instruments Act is not restricted to the place where the drawee bank is situated and, hence, in my considered opinion, and with utmost respect to the learned Judge in* ***Ahuja Dongre's case****, the view therein is directly contrary to the law laid down by the Apex Court in* ***K. Bhaskaran's case****."*

The portion underlined in para 2 of the order would show that the Hon'ble Single Judge correctly concluded that it was held in *Ahuja Dongre's* case that the five ingredients enumerated by the Court in para 14 of the judgment would undisputedly attract the provisions of clause (d) of Section 178 of the Code of Criminal Procedure. But reading by the Hon'ble Single Judge of the remaining part of same sentence in *Ahuja Dongre's* case is, however different from that in the report of the judgment at *2006(6) All Bom R 201*, which the Hon'ble Single Judge had referred to (as may be seen from para 1 of his order). The sentence in para 14 of the judgment in *Ahuja Dongre's* case reads as under :

> *"The five ingredients enumerated by the Court in paragraph 14 of the judgment would undisputedly attract the oprovisions of Clause (d) of Section 178 of the Code of Criminal Procedure, since it can be said that the offence punishable under Section 138 of the Negotiable Instruments Act consists of the five acts, enumerated in paragraph 14 of the judgment."*

It seems that ingenious advocacy led to reading "not", when it did not exist in the sentence referred to. And it made a world of difference. The sentence quoted above should be enough to dispel the notion that it was

sought to be suggested in *Ahuja Dongre's* case that jurisdiction is restricted to the place where drawee bank is situated. It should also have been noted that component (4), giving of notice, was discussed in paras 25 to 27 of the judgment in *Ahuja Dongre's* case, and as a fact it was held that notice was issued demanding payment for the payee residing in adjacent district, outside the jurisdiction of the Court concerned.

46. The learned counsel for the appellant next submitted that even the High Court of Jammu and Kashmir in *Sunil Somnath Ghumare* Vs. *FIL Industries and another*, reported at *2007(4) Crimes 566 (J&K)*, relied on *K. Bhaskaran's case*, had held that Court in Srinagar (J&K) had jurisdiction to try a case of dishonour of a cheque drawn on a bank at Kopergaon (Maharashtra) as the cheque was presented by complainant to his bank at Srinagar. It was not urged before the High Court of Jammu and Kashmir that lodging a cheque for collection did not amount to its presentation. Secondly, the signifance or article “the” prefixed to word “bank” in the second component of *K. Bhaskaran's* case enumeration was also not argued, and, therefore, there is no pronouncement on this aspect. Had the High Court of Jammu and Kashmir considered these aspects and taken a

different view, that could have been examined in order to find out if the logic in *Ahuja Dongre's* case was wrong. Hence, this judgment is unhelpful to the appellant.

47. The learned counsel for the appellant next submitted that the Supreme Court had held in *Harbans Lal* Vs. *State of Haryana and another*, reported at *1999 ALL MR (Cri) 390*, that when gold was transported from Pakistan to a place near Bahadurgarh in Haryana, each of the Courts, through whose jurisdiction the contraband passed, would have jurisdiction to try offence punishable under the Customs Act. Therefore, according to him, when notice demanding payment has been issued from Nagpur, jurisdiction of Nagpur Court could not be excluded. As regards significance of service of notice, apart from *K. Bhaskaran's* case, the learned counsel also relied on judgment of the Supreme Court in *M/s. Sarav Investment & Financial Consultants Pvt. Ltd. & Anr.* Vs. *Llyods Register of Shipping Indian Office Staff Provident Fund & Anr.*, reported at *2008 ALL MR (Cri) 300 (S.C.)*. There was no question of jurisdiction involved. The question was about service of notice by hand delivery, which the High Court had held to be sufficient. The Supreme Court, allowing the

appeal, and setting aside the judgment of the High Court, after quoting from *K. Bhaskaran*, observed in paras 16 and 19 as under :

> *"16. Section 138 of the Act contains a penal provision. It is a special statute. It creates a vicarious liability. Even the burden of proof to some extent is on the accused. Having regard to the purport of the said provision as also in view of the fact that it provides for a severe penalty, the provision warrants a strict construction. Proviso appended to Section 138 contains a non-obstante clause. It provides that nothing contained in the main provision shall apply unless the requirements prescribed therein are complied with. Service of notice is one of the statutory requirements for initiation of a criminal proceeding. Such notice is required to be given within 30 days of the receipt of the information by the complainant from the bank regarding the cheque as unpaid. Clause (c) provides that the holder of the cheque must be given an opportunity to pay the amount in question within 15 days of the receipt of the said notice. Complaint Petition, thus, can be filed for commission of an offence by a drawee of a cheque only 15 days after service of the notice. What are the requirements of service of a notice is no longer res-integra in view of the recent decision of this Court in* ***C.C. Alavi Haji Vs. Palapetty Muhammed & Anr. [JT 2007(7) SC 498 : 2007***

ALL MR (Cri) 2044 (S.C.)]."

"19. In ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Anr. [(1999)7 SCC 510 : 1999(4) ALL MR 452 (S.C.) : 1999 ALL MR (Cri) 1845 (S.C.)],*** *importance of service of notice has been pointed out stating :-*

"19. In Black's Law Dictionary 'giving of notice' is distinguished from 'receiving of the notice' (vide p.621) : 'A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it'. A person 'receives' a notice when it is duly delivered to him or at the place of his business.

21. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

22. In Maxwell's Interpretation of Statutes, the learned author has emphasized that 'provisions relating to

> *giving of notice often receive liberal interpretation' (vide p.99 of the 12th Ed.). The context envisaged in Section 138 of the act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in clause (b) of the proviso to Section 138 of the Act show that the payee has the statutory obligation to 'make a demand' by giving notice. The thrust in the clause is one the need to 'make a demand'. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does."*

This question too had never been in doubt, and the law laid down in *K. Bhaskaran's* case in this behalf had in fact been applied even in *Ahuja Dongre's* case.

48. The learned counsel for the respondent, however, submitted that the question of giving notice had also been considered by this Court in *M/s. Yashomala Engineering Pvt. Ltd. and others* Vs. *Tata SSL Ltd. and*

another, reported at *1998 Cri.L.J. 4350*. The following observations in paras 13 and 14 may have a bearing on the issue.

> *"13. The learned Advocate for the petitioner has strongly urged that if notice is held to be an integral part of offence it would give an unnecessary handle to the payee of the cheque to institute complaint in any part of the country where it happens to be an offence. Firstly, this is not possible because if one turns to that Section again and reads definition of the word "payee" as contained in Section 7 of the said Act, payment is to be made to the payee as defined. He is none else but the person named in the instrument to whom or to whose order, the money is by the instrument directed to be paid."*
>
> *"14. In the event of payee being a company, when the money is to be paid to the person named in the instrument, payment to the company would be sufficient compliance of the proviso. This would necessarily mean that the institution of complaint will be restricted to the place where the registered office of the company is situated. If this be the consequence of the provision of Section 138 read with its proviso, it could well be and that could not be a ground for interpreting the Section and to restrict the jurisdiction of the Court only where the cheque was issued and where it was returned unpaid."*

The learned counsel submitted that mere despatch of notice from a non-existant office at Nagpur would not do and since complainant's (payee's) registered office is at Delhi, demand for payment must be construed to have been made from Delhi. What the law prescribes is not mere "posting" of a notice or quoting an address on the notice. What is prescribed is "giving" of notice by the payee and, therefore, whatever may be the address quoted or wherever notice is posted, the place of giving notice would be the place where the payee ordinarily resides or works for gain.

49. Incidentally, by judgment dated 5-7-2006, i.e. a little before *Ahuja Dongre's* case was decided, a learned Single Judge of this Court had considered the significance of place from where notice of demand was issued. This judgment in *Laxmi Travels, Nagpur* Vs. *G.E. Countrywide Consumer and another*, reported at *2006(5) AIR Bom R 316* (in September 2006 issue), was not available to me while deciding *Ahuja Dongre's case*. In that case, the facts were as under :

> *"2. The basic transaction between the parties took place at Nagpur. The parties are residing at Nagpur. The cheques are also presented at Canara Bank at Nagpur. As it was bounced, the endorsement also made by the Canara Bank at Nagpur. However, the complainant had issued notice of demand from Aurangabad and as there was no compliance of the same, the present complaint has been filed at Aurangabad."*

The learned Single Judge then considered the contentions based upon pronouncement in *K. Bhaskaran, M/s. Prem Chand Vijaykumar* Vs. *Yashpal Singh*, and *Mosaraf Hossain Khan*, and concluded in para 7 as under :

> *"7. The contention as raised by the learned counsel in favour of complainant that the above judgment of the Apex Court in K. Bhaskaran (AIR 1999 SC 3762) (supra) supports his case to this extent that giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount and failure of the drawer to make payment within 15 days from the notice gives cause of action only at Aurangabad. This contention has no force. The Apex Court, nowhere dealt with this aspect. What has been decided by the Apex Court in K. Bhaskaran and M/s. Prem Chand (supra) refers to the*

basic ingredients which are necessary for an offence under S.138 of the Act. There is no dispute about this that all these ingredients are necessary. We are concerned with the cause of action in the present matters. The demand notice is a must. But a place of issuance of notice and no payment thereafter cannot sufficient to file complaint under S.138 of N.I. Act. The notice was though sent from Aurangabad, but received at Nagpur. The party failed to make the payment as per notice. Therefore, issuance of notice from Aurangabad itself cannot give cause of action to file complaint at Aurangabad. The object of issuing notice as observed by the Apex Court in Rajneesh Aggarwal v. Amit J. Bhalla, reported in (2001) 1 SCC 631 : (AIR 2001 SC 518) is as under :

"Mere dishonour of a cheque would not raise to a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheques."

The learned Single Judge then allowed the petition and dismissed the

complaint.

50. The learned counsel for the respondent also relied on a judgment of High Court of Kerala in *Harihara Puthra Sharma* Vs. *State of Kerala and another*, reported at *2007(1) DCR 440*, where a learned Single Judge of the Kerala High Court considered the directions of the Apex Court in *K. Bhaskaran's* case, as regards issuance of notice. The cheque in that case had been issued, presented and dishonoured within the limits of jurisdiction of Judicial Magistrate First Class, Adoor. Demand for payment was made by the complainant's counsel from his office at Pathnamthitta and so the complainant was filed at Pathanamthitta. In this factual context, the learned Single observed as under :

> *" 12. Undoubtedly, introduction of Chapter XVII in the Act has brought in a laudable and welcome change as far as efficacy of banking transactions is concerned. But at the same time, the havoc that can be created by unscrupulous money lenders and other elements who may try to misuse the penal provisions to harass innocent and gullible persons who happen to issue cheques in the court of honest and bonafide transactions has also to be borne in mind. If unbridled*

discretion is given to the complainants to choose the forum of litigation, it may create judicial havoc, to say the least."

"13. As mentioned earlier, instances galore where unscrupulous money lenders have misused the blank cheques extracted by them from their borrowers by inserting inflated amounts, claiming conscionable and unbelievable rates of interest. If the drawee of a cheque who is bent upon harassing his borrower is permitted to select the forum of his choice, a situation may arise where a complainant living in Trivandrum, at the southern end of the State will choose to file a complaint before the Court at Kasaragod situated at the northern extremity, after issuing a demand notice through a counsel at Kasaragod, though the entire transaction between the complainant and the accused had taken place at Trivandrum. It may be true that the complainant may also have to appear before the Court at Kasaragod in that eventuality. But in a case where the complainant is aware that the accused may not be in a position to undertake such frequent journeys from the southern most part of the State to the northern end, it may not be improbable that such an ingenious method would not be adopted by a complainant.The above instance may be hypothetical, but it may not be entirely improbable or impossible at all."

"16. It is true that in Bhaskaran's case (supra), their Lordships of the Supreme Court had held that "the offence under Section 138 of the Act can be completed only with the concatenation" of the following acts "

(1) Drawing of the cheque.

(2) 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 their receipt of the notice.

The court observed that it is not necessary that all the five acts should have been perpetrated at the same locality. While noticing the possibility that each of the five acts mentioned above could be done at five different localities, the court held that "any one of the courts exercising jurisdiction in one of the give local areas can become the place of trial for the offence under Section 138 of the Act." The Court went on to hold further that "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." "

"17. Learned counsel for the complainant has laid heavy emphasis on the above observation made by the Apex Court, in support of his case. But in the above decision, the factual

situation was totally different from the one available in the case on hand. In that case, the trial Court had held that it had no territorial jurisdiction to try the case since the cheque was dishonoured by the Branch Office of the Bank situated in a different district. But all other acts like drawing of the cheque, its presentation for encashment, its return after dishonour, and issuance of demand notice etc. had taken place within the territorial limits of the trial court at Adoor. The cheque was presented before the branch of the Syndicate Bank at Kayamkulam and it was returned due to insufficiency of funds in the accountof the accused. Apart from the above sole act of presentation of the cheque before a branch outside the jurisdiction of the trial court, all other acts as noticed by the Supreme Court had, occurred within the territorial limits of the trial court itself. Their Lordships had, in the above facts and circumstances of the case, held that the trial Court was not justified in refusing to exercise jurisdiction and deal with the case in accordance with law."

> *"19. I have referred to the above observations of the Apex Court to emphasis the fact that any one of the 5 conditions enumerated by their Lordships in Bhaskaran's case may not by itself invariably clinch the issue while deciding the question of jurisdiction. That question has to be decided keeping in view the entire sequence of events*

starting from issuance of the cheque in the ultimate culmination of refusal to pay."

"21. Having regard to the entire facts and circumstances of the case on hand, I am satisfied that the complainant is not entitled to institute the complaint before the court at Pathanamthitta. since the major part of the transaction like issuance of the cheque, its presentation and dishonour, having taken place at Adoor, it may not be just or proper to allow the complainant to prosecute the petitioner/accused before the Chief Judicial Magistrate's Court at Pathanamthitta solely for the reason that the complainant had engaged a counsel at Pathanamthitta to issue the statutory demand notice. In my view, the method adopted by the complainant is clear intended to harass the petitioner. This cannot be permitted.

51. Thus just as in Ahuja Dongre's case, notice by a lawyer from a different jurisdiction was held not enough to clothe the Court at that place with jurisdiction to try the offence.

52. What emerges from all these judgments, and more

particularly, K. Bhaskaran and Mosaraf Hossain's cases, could be summed up as under (in spite of risks inherent in such summing up) :

1. Jurisdiction to file a case of offence punishable under Section 138 of the Negotiable Instrument Act is not restricted only to the Court within whose jurisdiction the drawee bank is situated and where cheque is actually dishonoured upon presentation, though a complaint could be filed even at such place as payment was intended to be made there.

2. Five components of the offence enumerated in the judgment in K. Bhaskaran would be relevant for considering the question of jurisdiction.

3. Mere issuance of cheque may not be enough to confer jurisdiction to the Court within whose jurisdiction the cheque was issued.

4. More pertinent, or decisive component would be the place, where the transaction leading to debt or creation of legally enforceable

liability, for discharge whereof a cheque is issued, or, where payment was to be made.

5. Drawing a cheque on a particular bank would indicate intention to make payment at the place where such bank is situated and acceptance of such cheque by payee would indicate his consent to receive payment at such place.

6. Since “the payee” is required to issue a notice demanding payment, such place of giving notice would be where, if payee is a company (or other registered establishment) it has a registered office, and in other cases, normally, where the payee ordinarily resides or works for gain, and not any place from where the payee may choose to despatch a notice.

53. The facts of these cases, which may now be examined with reference to the above conclusions, are as under :

1. Both the parties have their shops/offices in Delhi.

2. The transactions which gave rise to the liability took place at

Delhi.

3. The cheques were issued/delivered at Delhi.

4. They were drawn on a bank at Delhi and accepted by the complainant.

5. They were presented to the bank at Delhi through payee's bank at Nagpur and were returned unpaid by the bank at Delhi.

6. The complainant does not have any registered office of Nagpur.

7. Notices of demand were issued showing address at the premises of a business associate at Nagpur, when the complainant has office at Delhi.

54. It is thus clear that the complainant had taken the detour of lodging cheques for clearing at a Nagpur bank and issued notices of demand showing address of a business associate in Nagpur only in order to have his lis tried at Nagpur, and admittedly so, since, according to the learned counsel for the appellant, the cases could not have been speedily disposed of at Delhi. The learned counsel for the appellant submitted that choosing a forum, which is convenient, is not impermissible and so the complainant was justified in filing complaint in the Court at Nagpur. He submitted that

there is nothing wrong about pre-trial harassment of the accused, and that it is nowhere held that such pre-trial harassment would be a criterion to decide jurisdictional issues.

55. The learned counsel for the appellant submitted that criminal law cannot be over concerned about the rights of accused alone, and victim's convenience and rights too are equally important. There can be no doubt that a victim cannot be subjected to harassment for the sake of securing justice. However, it does not follow that law sanctifies harassment of the accused, even before he is adjudged guilty. His being required to participate at trial is not in fact harassment, but an opportunity to defend himself. His participation at trial, held ordinarily at a place where he ought to be tried, cannot amount to harassment. But if he is dragged to a forum with which lis has no concern, it would amount to either pre-conviction punishment or a tactic of arm-twisting, which cannot be encouraged.

56. The learned counsel for the appellant referred to the following observations of the Supreme Court in *Mosaraf Hossain's* case in para 35 of the judgment reported at *AIR 2006 SC 1288*.

> *"35. The appellant did not deny or dispute any of the averments made in the complaint petition. In the writ petition it merely wanted some time to make the payment. It is now well known that the object of the provision of Section 138 of the Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. It was also noticed in a number of decisions of this Court that dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. It was also found that the remedy available in a civil court is a long drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."*

He submitted that bearing this object in view, an interpretation which supports the cause of payee has to be preferred. According to the learned counsel, a trader may have transactions with several others across the country and may receive payment for goods supplied at his business place in

form of cheques which may be drawn on banks at several places. If he was to be required to file cases at such places, he would be rather shuttling from one court at one place to another than being in his shop. The learned counsel submitted that this was not contemplated.

57. It is not clear as to how this argument factually favours the complainant. The complainant had to simply file cases in Delhi where he was supposed to be paid for goods sold by him. He has chosen to file cases in Nagpur for no rhyme or reason, except that Courts here would be able to deliver speedy justice. The concerns of traders aired by the learned counsel are in fact addressed by the Apex Court in para 34 of the judgment in *Mosaraf Hossain's* case by observing to the effect that jurisdiction would vest in the Court within whose territorial jurisdiction payment was to be made.

58. While in *K. Bhaskaran's* case, five components are enumerated, the wordings of Section 138 of the Negotiable Instruments Act would underline that the cheque is but a means of fulfilling the more basic obligation – namely, “for the discharge, in whole or in part, of any debt or other liability”. Therefore, the place where the debt or other liability was

required to be discharged is of crucial importance in deciding jurisdictional issue, as is held in *Mosaraf Hossain's* case. This should answer the appellant's apprehensions about difficulties of businessmen in realising outstation cheques for goods sold.

59. It has to be borne in mind that once a superior Court sets a precedent by allowing place of trial to be changed on such considerations, the place could as well be deliberately chosen so as to cause maximum inconvenience and harassment. Today, a Delhi trial is being sought to be shifted to Nagpur because trials here are speedy. Tomorrow, money lenders/financers may set up offices in remote areas where Courts have little work only in order to drag opponents to such Courts to coerce a settlement. While laying down a legal principle all the possible implications would have to be borne in mind. Substantive law is so drafted that no crook escapes punishment. But procedural law has to be so crafted that no innocent person is victimised, or made to surrender to *fait accompli,* upon being worn out by visits to Courts. In view of all this, no fault can be found with the learned Magistrate's conclusion that the Courts at Nagpur lacked jurisdiction to try the case. However, the learned Magistrate could not have recorded

acquittal of the accused. He should have directed return of complaints for being filed in appropriate Court.

60. The learned counsel for the appellant submitted that while ordering such return of complaints, the Courts at Delhi to whom the complaints would be presented may be directed to proceed on the basis of evidence already tendered and a *de novo* trial should not be ordered as held in *State of M.P.* Vs. *Bhooraji and others*, reported at *(2001) 7 SCC 679* (already discussed). There is no question of this Court ordering *de novo* trials, since these are summary criminal cases, evidence (excluding affidavits) is in form of notes taken by the Magistrate, and it may not be possible for the Magistrate at Delhi to proceed on those notes. However, this aspect is best left open for the parties and the concerned Court to be worked out in a manner which will ensure avoiding loss of scarce judicial time.

61. In view of the foregoing discussion, all these appeals are partly allowed. The impugned judgments and acquittal of the respondent are set aside and the complaints along with evidence recorded are directed

to be returned under Section 201 of the Code of Criminal Procedure Code for being presented to proper Court.

JUDGE

Lanjewar