JURISDICTION OF THE COURT UNDER NEGOTIABLE INSTRUMENTS ACT, 1881 (ACT 26 OF 1881)

By

—VARAHAGIRI PRASADA RAO,
B.Sc., (Hon.) B.L., Advocate,
Bobili, Vizianagaram Dist., A.P.

It was held by Supreme Court in AIR 1999 SC 3762 at Page 3766, Paragraphs 11, 12, 13, 14, 15 and 16 as follows :

"11. ……Hence the difficulty to fix up any particular locality as the place of offence under Section 138 of the Act."

"12. Even otherwise, the rule that every offence shall be tried by a Court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 of Cr.P.C. itself has been framed by the Legislature thoughtfully by using the precautionary word, "ordinarily" to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that, if there is uncertainity as to where among different localities the offence could have been committed, the trial can be had in the Court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area, the Court in either of the localities can exercise jurisdiction. Further again Section 179 of the Code stretches its scope to a still wider horizon. It reads thus :

"Section 179 offence triable where the act is done or consequences ensues :—where an act is an offence by reason of anything which has been done and of a consequence, which has unsued, the offence may be enquired into or tried by a Court within whose jurisdiction such thing has been done or such "consequence has been ensued"

13. The above provisions in the Code should have been borne in mind, when the question regarding territorial jurisdiction of the Courts to try the offence was sought to be determined.

14. The offence, under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence : (1) Drawing 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 by 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 quo non* for the completion of the offences under Section 138 of the Act. In this connection a reference to Section 178(d) of Criminal Procedure 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 such local areas."

16. Thus, it is clear that if the five different acts were done in five different localities, any 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 of the five acts was done. As the amplitude stands so widened and so expansive, it is an idle exercise to raise jurisdiction question regarding the offence under Section 138 of the Act.

1. From an apparent reading of the above paragraphs from the above referred decision of the Apex Court reported in AIR 1999 SC 3762, it is clear that the Supreme Court relied upon various provisions of the Criminal Procedure Code, 1974, to come to a decision that the cause of action for an offence under Section 138 of Negotiable Instruments Act, 1881 arises at the five places referred to at Paragraph No.14 and hence the complaint can be filed in any of the Courts which has got jurisdiction over the local area where any one of those causes of action arise. It is also equally apparent that the Supreme Court did not refer to the provisions contained in the N.I. Act for jurisdiction of a Court, especially Section 142 of N.I. Act.

2. In this context, one has to see the relevant provisions in Negotiable Instruments Act, 1889, to come to a decision about the place of institution of a criminal case for the offence under Section 138 of the Act. Section 142 of the Act is as follows :

"*Section 142 – Cognizance of Offences :*

(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 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 as the case may be, the holder in due course of 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.

3. From a plain reading of Section 142, it is clear that it starts with a *non-obstante* clause mandating the Courts that for taking cognizance of an offence under Section 138 of N.I. Act, none of the provisions of Criminal Procedure Code, 1973 has to be referred to and none of the sections of Cr.P.C. shall have any application in taking cognizance of an offence under Section 138 of the Act. Accrual of a cause of action, in a given case, would depend on the provisions of substantive law, governing the rights of the parties. Procedural Law, such as CPC or Cr.P.C. would have almost no role to play, that too, where Section 142 of the Act clearly lays down that for a prosecution for an offence under Section 138 of the Act, certain prerequisites as mentioned in clause (a) and (b) of Section 142 only are necessary and not any other circumstances that may be brought from Cr.P.C., as such circumstances referable in Cr.P.C. cannot be looked into, as is clearly deducible from the opening words of Section 142, to wit, 'notwithstanding anything contained in the Code of Criminal Procedure, 1974'. The Negotiable Instruments Act, 1881, is a special enactment, giving rise to special rights, special liabilities, special obligations, special procedure, special times of limitation at various contexts and special trial in a summary way and special punishment in derogation of Cr.P.C. It is decided law of

the land that, where special rights, obligations, duties *etc.*, are created under a special enactment, the general law of procedure like CPC and Cr.P.C must give way to procedure prescribed under special enactment. The Negotiable Instruments Act, 1881 is a special enactment, defining a negotiable instrument, promissor or promissee, drawer, holder, holder in due course, offence under the Act, the recovery of the amounts covered under the Negotiable Instruments the place of presentment, the place where prosecution is to be launched, the prerequisites for prosecution, the manner in which trial is to be conducted *etc.* So, where there is a provision in the Act for a particular aspect, one need not look to any foreign aid from any other enactment, that too, in the teeth of the *non-obstante* clause in Section 142(1) of the N.I. Act.

4. In the above referred case, the Supreme Court had a full discussion of the provisions of Sections 177, 178, 179 of Criminal Procedure Code, 1974 and observing that those provisions of Cr.P.C. are applicable to decide the place of offence under the Negotiable Instruments Act, 1881, held that the complainant can prosecute in any of the five Courts within whose jurisdiction any of the five causes of action arises. In this context, it is apt to consider the application of Cr.P.C. to an offence under Section 138 of the N.I. Act from the view point of limitation. If the view of the Apex Court, to wit, that Cr.P.C. can be looked into for the purposes of jurisdiction into Sections 177, 178 and 179, then the other provisions of Cr.P.C., relating to limitation have also got to be necessarily applied.

Section 468 of Cr.P.C. is as follows :

"(1) Section 468. Bar to taking cognizance after lapse of the period of limitation - (1) Except as otherwise provided elsewhere in the Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with five only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

In this context, let us see what is provided under Section 138 of N.I. Act, which provides the term of punishment. Section 138 says that a drawee of the cheque for an offence of cheque-bounce shall be punished with imprisonment for a term which may extend to two years or with fine, which may extend to twice the amount of the cheque or with both.

So, if the provisions of Section 468(c) of Cr.P.C., are also made applicable for an offence under the N.I. Act, the limitation to launch prosecution under N.I. Act must be three years, as the punishment for an offence under Section 138 of the N.I. Act is, two years, but, under sub-clause (b) Clause 1 of Section 142 of N.I. Act, a complaint for the offence under Section 138 of N.I. Act, must be filed within a period of thirty days of the date on which the cause of action arises under clause (c) of the proviso to Section 138.

So, if the provisions of Cr.P.C. are applicable as per the decision of the Hon'ble Supreme Court in AIR 1999 SC 3762, the same reasoning must also apply for the application of Section 468 of Cr.P.C. in regard to limitation for an offence under Section 138 of the N.I. Act, which means, that the limitation for prosecution of any offence under Section 138 of N.I. Act, which is punishable upto two years, shall be three years from the date of offence, under sub-clause (c) of sub-section (2) of Section 468 of Cr.P.C. but N.I. Act says under Section 142(b) the limitation is thirty days only

from the date on which the cause of action arises under clause (c) of the proviso to Section 138; the decision of Apex Court cannot go against the law laid down under Section 142(b) of N.I. Act holding that provisions of Cr.P.C. are applicable to arrive at a conclusion to fix the jurisdiction of the Court, ignoring the *non-obstante* clause in Section 142(1) of the N.I. Act. From an entire reading of the judgment of the Apex Court in AIR 1999 SC 3762, it can be seen that the Apex Court did not at all consider the *non-obstante* clause in Section 142(1) of the N.I. Act but solely relied upon the provisions of Cr.P.C., to fix jurisdiction of the Court to try the offence under Section 138 of the Act.

5. The Supreme Court had occasion to once again deal with Sections 142 and 138 of NI Act in other contexts. In 2005 (4) SCC 417 (423), the Supreme Court at Page 423, Paragraph 10, held as follows :

"10. 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 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.

Proceeding on the basis of the generic meaning of the terms "cause of action" certainly, each of the above facts would constitute a part of 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 payment within 15 days from the date of 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 the cause of action within the meaning of Section 142(b) arises – and can arise only once."

In this decision, another earlier decision of the Supreme Court reported in (2001) 6 SCC 463 was referred, which held that "it is not the giving of the notice but its receipt by the drawer which culminates in the cause of action. Page No.468 referring to AIR 1999 SC 3762.

6. In another decision of the Apex Court reported in AIR 2006 SC 1288, it was held at Page 1292 Paragraph No.21 as follows : "In *State of Rajasthan and others v. M/s. Swaika Properties and another*, (1983) 3 SCC 217, this Court observed that service of notice was not an integral part of "cause of action" within the meaning of Article 226(2) of the Constitution of India. In the same decision at Paragraph 33, it was held as follows : "33. sending of cheques from Ernakulam or the respondents having an office at that place did not form the integral part of cause of action for which the complaint petition was filed by the appellant and cognizance of the offence under Section 138 of N.I. Act was taken by the Chief Judicial Magistrate, Suri……". In the said case cheques were dishonoured at Ernakulam in Kerala State. Cheques were issued from Ernakulam. The criminal case under Section 142 of the N.I. Act was filed in a Court at Suri in West Bengal. The Supreme Court negatived the contentions that the Court within whose jurisdiction cheques were issued or the Court where cheques were dishonoured has

jurisdiction to try an offence under Section 142 for an offence under Section 138 of N.I. Act.

7. In AIR 2007 (NOC) 95 Bom. (Nagpur Bench), the Bombay High Court explained AIR 1999 SC 3762 and held that a cheque as a negotiable instrument is required to be discharged at place mentioned therein and jurisdiction has to be gathered from place where money was intended to be paid and Court at another place within whose jurisdiction cheque was merely presented for realization cannot be said to have jurisdiction to try the offence. In this decision, the Bombay High Court (Nagpur Bench) dissented from a decision of the High Court of Andhra Pradesh reported in 2005 Crl. LJ 575, wherein A.P. High Court held that "Court at place, where dishonoured cheque was presented, has jurisdiction to entertain a complaint under Section 142 of N.I. Act for an offence under Section 138 of N.I. Act," following AIR 1999 SC 3762.

8. In this context, it may be not out of place to see that for realization of the amount covered by a dishonoured cheque, the payee has got two rights, to wit, filing a criminal case under Section 142 of N.I. Act and/or filing a suit for recovery of the money covered by the cheque in a civil Court. Section 68 of the N.I. Act says that a cheque drawn payable at a specified place and not else where must be presented for payment at that place. So, on dishonour by the drawee Bank, a cause of action arises at that place only and a suit is to be filed at that place only and not elsewhere. The A.P. High Court held in 2004 (5) ALD 57 at Paragraph No.30 that, "In the context of N.I. Act a cause of action can be said to have accrued to a person when he presents a negotiable instrument in accordance with Sections 68 to 70 of N.I. Act and the maker of it refuses to honour it. The place where the negotiable instrument is actually presented or is required to be presented under the said provisions, becomes significant from the point of view of Section 20(c) C.P.C."

9. So, from the above stated march of law, the apex Court, though not overruled the law laid down in AIR 1999 SC 3762, must be deemed to have considered AIR 1999 SC 3762 but did not follow it is not correctly laid, as the said decision was not brought to its notice when it delivered judgments reported in (1) (2001) 6 SCC 463, wherein it was held that "no cause of action would arise at the place where notice of dishonour of cheque is issued"; (2) (2005) 2 SCC 417, wherein it was held that "the combined reading of Section 138 and 142 leaves no room for doubt that the cause of action within the meaning of Section 142(b) arises and can arise only once"; and (3) AIR 2006 SC 1288, wherein it was held that "no cause of action arises at the place where cheque was drawn and where it was dishonoured for the purposes of an offence under Section 138 of NI Act but arises only under Section 142(b) read with Section 138 Proviso (c) and not elsewhere". So, it is clear that the Supreme Court subsequent to its decision of 1999 relied upon Section 142(b) read with Section 138 Proviso (c) of NI Act to fix jurisdiction of the Court, instead of relying on Sections 177, 178 and 179 of Cr.P.C.

10. The concept of "cause of action" can be visualized from another angle. If one refers to Sections 177 to 179 to Criminal Procedure Code 1973, it becomes apparently clear that the said sections refer to only "offence" being "committed" at a place which is within the local jurisdiction of a particular Court, but none of those sections refer to the phrase 'cause of action'. As a matter of fact, the phrase "cause of action" does not find place in any of the provisions of Cr.P.C. but we find reference to the word "offence" only at all relevant contexts in it. But, the N.I. Act speaks of the phrase "cause of action" for the first time in Section 142(b).

11. At Para 14 of the said judgment, the apex Court observed that the offence under Section 138 of the N.I. Act can be completed only with the completion of five acts mentioned therein, suggesting that at each stage of the said five acts, an offence is committed, or else, the Supreme Court would not have held at Paragraph 16, "Thus it is clear that if the five different acts were done in five different localities, any 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 N.I. Act. In other words, the complainant can choose any of those Courts having jurisdiction over, anyone of the local areas within the territorial limits of which anyone of the five acts was done….." From the observation of the Supreme Court, it has to be necessarily inferred that at each of the said five places, part of an "offence" had occurred or else, there can be no adjudication by a Court, if no offence is committed within its local area.

12. But, Section 138 defines the offence only as being the dishonouring of the cheque and there is no clue in that section about the local area where the offence was committed. At best, it can be argued that the Court, within whose local area the dishonour of the cheque took place, may clutch jurisdiction. So, instead of traversing in surmises about the jurisdiction of the Court, one has to necessarily scrupulously scrutinise word by word as to what is contained in Section 142 of N.I. Act about the jurisdiction aspect, as there is no other section in N.I. Act which deals with the said subject-matter and as the provisions of Cr.P.C. cannot be looked into for any purpose in the teeth of the *non-obstantate* clause in Section 142 of the N.I. Act.

13. Section 142 of the Act says (1) that the provisions of Cr.P.C. have no application, (2) that there must be a written but not oral complaint to the Court, (3) that the complaint must be filed by the payee or the holder in due course; (4) that the Court must be the Court of a Metropolitan Magistrate or a Judicial Magistrate of First Class; (5) that the complaint must be filed within one month of the date on which the cause of action arises under clause (c) of the Proviso to Section 138. Section 138 does not say anything about "cause of action". It speaks of the "offence"; so, if it is said that the Court at which the "offence" as contemplated under Section 138 is committed, has the jurisdiction, it means, that the provisions of Section 177 of Cr.P.C. *etc.*, should not be borrowed, as the said provisions are strictly prohibited under Section 142 of the Act. So, it cannot be legally concluded that the Court, where dishonour of cheque took place, has jurisdiction. Likewise, if the proviso (a) of Section 138 is pierced through, nothing which can be said as cause of action arises except saying as a prerequisite that the cheque shall be presented for payment within six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Even if it is said that presentation of a cheque gives rise to "a cause of action" in its generic sense, still this "cause of action" arising under clause (a) of the Proviso to Section 138 of the Act is not the cause of action referred in Section 142(b) of the Act. Likewise, if the provisions contained in proviso (b) to Section 138 are scanned, it comes to the forefront, as another prerequisite for filing a complaint under Section 142, that the payee must make a demand in writing for payment of the said amount covered by the dishonoured cheque 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. Viewed in the generic sense, it can be said that a cause of action may arise at the place where the payee received the information of the Bank regarding the bouncing of the cheque. But, this cause of action, is also not "the cause of action" as contemplated under Section 142 of the Act. Now, if one looks into Proviso (c) of Section 138 in the above context, it is crystal clear that the said proviso contains different types of causes of action.

They are firstly, the said demand notice, issued by the payee after he received the information from the Bank about bouncing of the cheque, to the drawer is to be received by the drawer, secondly the drawer can pay the amount within fifteen days from the date of receipt of the said notice *without committing any offence* and thirdly that if he fails to make payment within fifteen days of the receipt of the said notice, he shall be deemed to have committed the offence under Section 138. In the generic sense, it can be said that "a cause of action" arises at the place where the drawer receives the notice. It is this cause of action which is actually contemplated under Section 142(b) and not any other cause of action which may arise under provisos (a) or (b) of Section 138.

14. From a threadbare discussion as above, it is very clear that Section 142(b) has to be read in its ordinary generic way, which snowballs to the situations that the cause of action to file the complaint arises at the place where the drawer receives the notice and when he commits failure in payment. Thus Section 142(b) clearly speaks of jurisdiction of the Court as well as limitation, the jurisdiction being the Court where the drawer receives the notice of dishonour by the payee and the limitation being fifteen days within which period the drawer can pay the amount without committing any offence under Section 138 of the Act. The offence under Section 138 of the Act starts from the sixteen days of the receipt of notice by drawer and expires after one month thereof as contemplated under Section 142(b) of the Act.

15. So, I am of the honest opinion that the Court, in which a complaint for an offence under Section 138 of N.I. Act can be filed under Section 142 of the Act is the Court, within the local limits of which the drawer of the cheque received the notice of dishonour of the cheque issued by the payee and failed to pay within 15 days from the date of receipt of the said notice. As a matter of fact, issuing a cheque by itself is not a part of the offence, likewise depositing the same in the Bank of drawee for collection, the dishonouring of the said cheque by the drawer's Bank, issuing of notice of dishonour by the payee, receiving the same by the drawer do not form any part of offence, nay even before expiry of fifteen days from the date of receipt of the said notice by drawer, will constitute any offence, as, if the drawer pays the amount before expiry of 15 days, there is no offence at all and the offence starts from the 16th day only and prosecution has to be launched within 30 days from the 16th day of receipt of notice of dishonour by drawer. So, it is outside the scope of discussion relating to various causes of action as pointed out in AIR 1999 SC 3762, when the only cause of action for consideration is whether the notice of dishonour of cheque was received by drawer or not and whether he paid the said amount or not within 15 days from the date of receipt of the said notice.

16. So I am of the humble opinion that the law laid down in AIR 1999 SC 3762 is *per incuriam* as the Judges who decided the said case had no occasion to see and their attention was not brought to the *non-obstante* clause in Section 142(1) of N.I. Act and if the said *non-obstante* clause had been brought to the notice of the learned esteemed Judges who delivered the judgment reported in AIR 1999 SC 3762, the learned Judges would not have considered the application of the Sections 177, 178 and 179 Cr.P.C. and come to a decision that the said sections are applicable for disposal of an offence under Section 138 of N.I. Act, consequently resulting in the intention of the Legislature as explained in Section 142(b) and Section 138 proviso (c) being given a go-bye. At any rate, I am also of the honest opinion that the decision of the Apex Court in AIR 1999 SC 3762 has been impliedly overruled or not followed by the Supreme Court in its later decisions cited above.