

## Cheque Dishonor – SC Redefined Jurisdiction of Courts

### Introduction

The perplexity over jurisdiction of courts in cheque bouncing cases has finally been resolved by the three judge bench of the apex court in *Dasbrath Rupsingh Rathod v State of Maharashtra & Anr* (“**Dashrath**”).<sup>1</sup> The Supreme Court held that the complaints relating to dishonor of cheques must be filed only in the courts within whose territorial jurisdiction the drawee bank is situated. The judgment has taken a contrary view from the principle of territorial jurisdiction laid in *Bhaskaran v Sankaran Vaidhyan Balan* (“**Bhaskaran**”),<sup>2</sup> wherein the ruling was that complaints under section 138 of Negotiable Instruments Act, 1881 (“**NI**”), can be filed at any place other than the place of drawee bank. But, still confusion persists about the jurisdiction of courts on multi city cheques as the SC did not discuss or clarify its stance on such cheques payable at par at all branches of the bank.

This newsletter analyses the SC’s interpretation under section 138 NI in determining the jurisdiction of courts in cheque dishonor complaints, the alternate remedies available for the drawee of dishonored cheques and the contrary view of the Bombay High Court (“**BHC**”) on dishonor of multi city cheques.

### 1. Jurisprudential Position

As stated, the courts so far were following the principles of territorial jurisdiction laid in Bhaskaran’s case for section 138 complaints. In that case, a two-judge bench of the SC interpreted section 138 NI along with sections 177 to 179 of Criminal Procedure Code (“**CrPC**”) and indicated that the offence under section 138 can be completed only with the concatenation of the following acts: (i) Drawing a cheque; (ii) Presentation of the cheque to the bank; (iii) Return of the cheque unpaid by the drawee bank; (iv) Written notice to the drawer of the cheque demanding payment of the cheque amount; and (v) Failure of the drawer to make payment within 15 days of the receipt of notice. The SC held that the court, within whose jurisdiction any one of the aforesaid five acts takes place, will have the territorial jurisdiction to adjudicate the case.

The question is whether the liberal approach adopted by considering location of issue of notice of cheque bouncing tantamounts to commission of offence is legally correct? As per section 179 of CrPC,<sup>3</sup> the offence must be tried only by the courts within whose jurisdiction the offence has been committed. So, will a mere issuance of notice to the drawer demanding payment for dishonored cheque be considered as an offence?

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<sup>1</sup> AIR 2014 SC 3519

<sup>2</sup> (1999) 7 SCC 510

<sup>3</sup> Section 179 of CrPc states - When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued

In *Harman Electronics (P) Ltd (“Appellant”) v National Panasonic India Ltd (“Respondent”)*<sup>4</sup>, the apex court analyzed the question whether the cause of action for section 138 arises by issuing demand notice or when the drawer receives notice. In this case, the Appellant and Respondent entered into a business transaction in Chandigarh. Appellant resided and carried on business in Chandigarh and issued a cheque to the Respondent in Chandigarh which was presented for encashment in that city. It was dishonored by the Appellant’s bank in Chandigarh. The Respondent issued a legal notice under section 138 from Delhi. The question arose if a mere issue of notice from Delhi will constitute as cause of action? The case went all the way to the SC who took the view that if mere presentation of cheque or issue of notice bestows territorial jurisdiction upon the courts to try section 138 matters, then it would inevitably lead to harassment for a drawer. The SC held that only receipt of notice will give rise to cause of action for section 138 matters. A distinction must be made between the *ingredients* and *commission* of an offence. Issuance of notice under section 138 NI is an ingredient for maintaining the complaint and failure by the drawer to make payment within 15 days only give rise to cause of action.

The ratio held in Harman case sounds a discordant note to Bhaskaran’s view as in the former case the SC categorically held that mere issue of notice will not be considered as commission of offence and, thus section 138 complaints cannot be filed in courts by claiming that notice issued to the drawer demanding defaulted payments was within jurisdiction of a court. The Harman case has adopted a strict approach towards territorial jurisdictions of courts with a view to uphold the law enshrined under section 179 CrPC and to restrain the drawee from harassing the drawer.

## 2. Dashrath Ruling and its Impact

In Dashrath’s case, the SC analyzed the varied connotations laid in the above cases and the concept of cause of action to determine the place of cause of action and the principle for territorial jurisdictions. It held as follows:

**2.1 *Applicability of civil law:*** The SC took the view that unlike civil law, the phrase cause of action under section 138 NI must be construed in accordance with section 178 of CrPC. Under civil law, suits can be filed in courts within whose jurisdiction whole or part of cause of action arises i.e. a civil suit can be filed at the place where the drawer resides or where the transaction took place or where the drawer has its place of business. But, to initiate section 138 NI proceedings, the complaint must be filed only in the courts within whose jurisdiction the offence has been committed i.e. place where the drawer bank is situated.

**2.2 *Cognizance of offence:*** The SC held that there is a discernibly demarcated difference between the commission of an offence and cognizance of offence. Cognizance leads to cause of action. For section 138 complaints, the cause of action arises only when the drawer fails to pay the defaulted payment. The complaints can be filed only in the courts within whose jurisdiction the cheque is presented for encashment. But, the courts can take cognizance of the offence only when: (i) the cheque is presented to the bank within 6 months from the date on which it is drawn; (ii) notice has been issued to the drawer demanding the defaulted payment within 30

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<sup>4</sup> (2009) 1 SCC 720

days from the date of dishonor by the bank; and (iii) the drawer fails to pay the defaulted payment within 15 days from the receipt of the notice.

**2.3** *Jurisdiction under section 138 NI:* The SC held that the return of the cheque by the drawer bank only constitutes commission of offence under section 138. Hence, the courts within which drawer bank is located will only have the jurisdiction to try the case. Adopting a strict approach, the SC wanted to rule out the unintended ramifications caused to the drawer by the principles laid in Bhaskaran's case. The flexibility given to the drawee so far with respect to choosing the place for initiating action under section 138 NI had caused severe hardships to the drawer as the places sometimes had no connection with the drawer or with any facet of the transaction. With the Dashrath ruling, the judicial inquiry or trial has been restricted to place of the commission of offence so as to restrain abuse of section 138.

**2.4** *Alternate remedies:* In terms of alternate remedies, the SC also observed that the relief sought under section 138 is in addition to the reliefs available under Indian Penal Code ("**IPC**") and common law. The drawee of a dishonored cheque can lodge a First Information Report with the Police or file a complaint directly before the concerned Magistrate or a civil suit. If the drawee succeeds in establishing that the inducement for accepting a cheque which subsequently was dishonored, had occurred where he/she resides or ordinarily transacts business, he/she will not have to travel to the place where the cheque was dishonored. All remedies under the IPC, CrPC will be available to a drawee, if he/she chooses to pursue this course of action, rather than a complaint under section 138.

The SC decision will have a massive impact on the cases already pending before various courts because numerous cases will have to be transferred to the courts within whose jurisdiction the cheque was dishonored. However, keeping in perspective the (a) hardship caused to the accused who may have to travel long distances to conduct their defense, and (b) mindful of the legal implications of proceedings permitted to continue in a court devoid of jurisdiction, the SC held that the cases, in which evidence has commenced (as envisaged under section 145(2) of NI) will continue in the same court. To obviate and eradicate any legal complications, the category of cases where proceedings have gone to the stage of section 145(2) or beyond will be deemed to have been transferred from the courts, which possess the territorial jurisdiction to the court where it is presently pending. All other complaints, including the ones where the accused has not been properly served will be returned to the complainant for filing in the proper court. If such complaints are re-filed within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred

### **3. At Par Cheques**

The BHC in *Ramanbhai Mathurbhai Patel ("**Petitioner**") v State of Maharashtra & Anr ("**Respondent**")*<sup>5</sup>, dealt with territorial jurisdiction of the courts on "At Par cheques". In this case, two cheques were drawn on State Bank of India and Bank of Maharashtra located at Gandhinagar in Gujarat. Both these cheques were multi-city cheques payable at par in any of the branches of the respective banks. The drawee presented them in his bank at Mumbai, and

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<sup>5</sup> 2014(4)Bom CR(Cri)126

they were sent for clearing to the respective branches of the two banks located in Kurla, Mumbai. Both the cheques were dishonored and section 138 proceedings were launched at Metropolitan Magistrate, Kurla. The Petitioner challenged the jurisdiction of Kurla court by filing criminal writ petition before BHC. However, BHC held that in the case of at par cheques, the drawer has given an option to the banker of the drawee to get the cheques cleared from the nearest branch of the drawee bank. In the case of multi-city cheque section 138 complaints can be filed in Mumbai i.e. place of drawee bank. Thus, BHC ruling implies that the drawee can choose the court where section 138 proceedings may be initiated which is contrary to the ratio held in Dashrath case. Since SC, in Dashrath's case did not held specifically on the territorial jurisdictions of courts in multi-city cheques, it becomes necessary that another case will need to clarify the confusion emanating from the BHC judgment.

### Conclusion

The SC has finally ruled on and clarified a very complicated issue by categorically holding that the place where the drawee bank is situated will only be the place for judicial inquiry and trial for section 138 NI complaints. On the flipside, the present decision will burden the courts as the pending matters will have to be transferred to the appropriate courts and potentially will cause unnecessary procedural delays. The recent BHC decision has raised the issue of territorial jurisdiction of courts in multi- city cheques. However, the SC has stayed the BHC decision<sup>6</sup> as it runs contrary to the essence of Dashrath. Thus, the jurisdiction of courts on multi-city cheques is yet to be determined by the SC.

### Author:

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<sup>6</sup> SLP(CRL) NO. 7251/2014 dated September 16, 2014.