

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

CRIMINAL WRIT PETITION NO. 30 OF 2011

Rajendra Marga Gaikwad,
age 40 years, occ. Business,
Proprietor 'Yashraj' Agencies S.No.
143/1/1 Tathawade Chowk,
Opp. Savani Transport Co.
Tathawadegaon, Pune-411033 and
R/o Samrat Nagar, Near Budhavihar,
Near Kate Petrol Pump, Pimple
Saudagar, Pune-411027

...Petitioner
(Original Accused)

VERSUS

Kail Limited (which is formerly
known as Kitchen Appliances
(India) Ltd.), a company
incorporated under the
Companies Act, 1956, having its
Corporate office at C-6,
Ashok Steel Compound,
159, C.S.T. Road, Santacruz (East),
Mumbai-400098 (India and
Administrative and Registered Office
at Auto Cars Compound, Adalat
Road, Aurangabad-431005

...Respondent
(Original Complainant)

.....

Shri P.R.Katneshwarkar, advocate holding for
Shri S.R.Andhale, advocate for the petitioner
Shri L.B.Palod, advocate for the respondent

.....

CORAM : SHRIHARI P.DAVARE, J.

DATE OF RESERVING

THE JUDGMENT : 01.08.2011

DATE OF PRONOUNCING

THE JUDGMENT : 10.08.2011

J U D G M E N T :

1 Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, taken up for final hearing.

2 The controversy in the present petition revolves around the aspect of territorial jurisdiction regarding filing of the complaint under Section 138 of the Negotiable Instruments Act, and the petitioner herein i.e. original accused has filed the present petition against the respondent i.e. original complainant under Article 227 of the Constitution of India and prayed that the impugned order passed on 23.9.2010, by the learned 10th

Joint Judicial Magistrate, First Class, Aurangabad, below Exh. 13, in Summary Criminal Case No. 1077 of 2010 be quashed and set aside.

FACTUAL MATRIX : -

3 The parties hereinafter are referred to as per their original status i.e. 'the complainant' and 'the accused'.

The petitioner (original accused) is the proprietor of Proprietary Firm, namely 'Yashraj Agencies' and he is carrying on the business of sale and purchase of various electronic items at Tathawadegaon, Pune. The detailed address thereof is given in the title clause of the present petition. He claims that he looks after the day today affairs and management of the said Company and is responsible for the entire dealings of the said Firm and is solely liable to pay the dues to the complainant Company, if any.

4 The complainant is a Company incorporated under the Companies Act and having its corporate office at Mumbai

and administrative and registered office at Aurangabad and is carrying on business of sale and purchase of various electronic items, such as colour Television Sets, VCD, DVD, Audios, etc. and having Branches throughout the country including Pune.

5 The complainant filed a complaint against the accused under Section 138 of the Negotiable Instruments Act, through its power of attorney holder Sunil Chandrakant Bhukele, who is authorised to file the complaint on behalf of the Company at Aurangabad. It is alleged in the said complaint that the accused purchased electronic items from the complainant and for the repayment of the said amount, the accused issued cheque of Rs.3,36,751/- bearing No. 124636, dated 1.8.2009, drawn on Indrayani Cooperative Bank Limited, Pimpri, Pune. The complainant presented the said cheque for encashment purpose through its banker H.D.F.C. Bank, Aurangabad. However, the said cheque was dishonoured and returned unpaid with the Bank memo, dated 26.11.2009, with the endorsement "funds insufficient". The accused's banker informed the said fact of dishonour of said cheque to the complainant's banker by its memo, and complainant's banker

in turn informed to the complainant by memo on 8.12.2009. Hence, the complainant issued demand notice dated 24.12.2009 to the accused and called upon him to make the payment of the said cheque at Aurangabad. However, the accused failed to comply with the requisitions contained in the said notice in spite of the receipt thereof. Hence, the complainant filed the complaint against the accused under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate, First Class, Aurangabad.

6 The accused appeared in the said complaint and preferred an application Exh.13 on 31.7.2010 and raised the objection in respect of the territorial jurisdiction contending that as per Section 177 of the Code of Criminal Procedure, the cause of action for the offence arose at Pune, and therefore, the learned Judicial Magistrate, First Class, Aurangabad has no jurisdiction to entertain and try the said complaint, and hence, requested the learned Judicial Magistrate, First Class, Aurangabad to return the said complaint for presentation thereof before the proper forum/prayed for dismissal of the said complaint.

7 After hearing the rival submissions advanced by the learned counsel for the accused and the complainant, the learned 10th Joint Judicial Magistrate, First Class, Aurangabad, passed an order on 23.9.2010 and held that the said court has territorial jurisdiction to entertain and try the said complaint, relying upon the judgment in the case of K. Bhaskaran of Apex Court and declined to hold that the Pune court shall have jurisdiction, as contended by the accused, and consequently, dismissed the said application.

8 Being aggrieved and dissatisfied by the said order, dated 23.9.2010, the accused preferred the present writ petition for the prayers as set out herein above.

SUBMISSIONS : -

9 Learned counsel for the petitioner (original accused) submitted that Chapter XIII comprising Sections 177, 178 and 179 of the Code of Criminal Procedure deals with the territorial jurisdiction aspect of the criminal courts in inquiries and trials,

and it is submitted that in the judgment of the Apex Court, in the case of K. Bhaskaran vs Sankaran Vaidya and Co., reported at (1999) 7 SCC 510, the said aspect has been aptly dealt with and the Apex Court opined that the offence under Section 138 of the Negotiable Instruments Act can be completed only with the concatenation of a number of acts, namely (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; and (5) failure of the drawer to make payment within 15 days of the receipt of the notice. It was opined that 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 and the complainant would be at liberty to file the complaint at any of those places, as regards the requirement of giving notice and also receipt thereof by the accused, it was stated.

10 Learned counsel argued that the said issue of territorial jurisdiction was further developed and enunciated by

the Apex Court in the case of Harman Electronics (P) Ltd. Vs National Panasonic India Ltd., reported at 2009 (1) SCC 720 and relying upon the said case, it was argued that the crucial question is whether any part of the cause of action arose within the jurisdiction of the Aurangabad court, in terms of Section 177 of the Code of Criminal Procedure, since it is the place where offence was committed. In essence, it is the cause of action for initiation of the proceedings against the accused. Accordingly, it is submitted that the court derives the jurisdiction only when the cause of action arose within its jurisdiction. It is also canvassed that issuance of notice by itself would not give rise to the cause of action, but the communication of the notice would.

11 Thus, relying upon the said Ruling, learned counsel for the accused canvassed that the whole transaction between the accused and the complainant took place at Pune and even the disputed cheque in question was issued by the accused to the complainant at Pune and the drawee bank of the said cheque was situated at Pune and the said cheque was dishonoured at Pune and only by presenting the said cheque

by the complainant from Aurangabad for realisation and issuance of demand notice from Aurangabad after dishonour of the said cheque and having administrative and registered office of the complainant at Aurangabad, will not confer jurisdiction upon court at Aurangabad and considering Sections 177 and 178 of the Code of Criminal Procedure, having conjoint reading of Section 138 (a), (b) and (c) of the Negotiable Instruments Act therewith, the only irresistible conclusion that can be drawn is that Pune court shall have jurisdiction, and therefore, prayed that present petition be allowed.

12 Learned counsel for the complainant countered the said arguments vehemently and submitted that the complainant's administrative and registered office is situated at Aurangabad, although it's Branch office is situated at Pune and disputed cheque in question was issued by the accused to the complainant at Pune and the said cheque was presented by the complainant for realisation through its collecting banker H.D.F.C. Bank at Aurangabad and it was dishonoured and was returned unpaid and the intimation thereof was received by the complainant through its collecting banker at Aurangabad and

the complainant issued the demand notice on 24.12.2009 to the accused from Aurangabad and called upon the accused to make payment of the said dishonoured cheque at Aurangabad, and accordingly, the accused failed to make the payment within 15 days from the date of receipt of the notice at Aurangabad, as called upon to him by the said demand notice, and therefore, it is submitted that the offence was constituted at Aurangabad and the cause of action arose at Aurangabad, and hence, Aurangabad court only has jurisdiction to entertain and try the complaint filed by the complainant.

13 Moreover, it is also canvassed by the learned counsel for the complainant that it was agreed between the parties that the transaction is subject to the jurisdiction of Aurangabad and the said term is mentioned on the invoice and accepted by the accused, and hence, it is submitted that the jurisdiction has been conferred upon Aurangabad court only.

14 Learned counsel for the complainant relied upon the judgment of the Division Bench of this court in the case of Preetha S. Babu, Ernakulum vs Voltas Ltd., Chochin and

another, reported at 2010 (3) Mh.L.J. 234, (Hon'ble Smt. Justice Ranjana Desai and Hon'ble Smt. Justice Mrudula Bhatkar), wherein afore said both the judgments in the cases of K. Bhaskaran and Harman Electronics (P) Ltd., rendered by Hon'ble Supreme Court were discussed and it was held that if the complainant calls upon the accused to make payment at a place mentioned in the demand notice and if the accused fails to make payment at that place, part of cause of action would arise at that place.

15 Learned counsel for the complainant relied upon the latest Ruling of Single Judge (Hon'ble Shri Justice J.H.Bhatia) of this court in the case of ASR Systems Pvt. Ltd. New Delhi and another vs Kimberly Clark Hygiene Products Pvt. Ltd. Mann and another, reported at 2011 (4) Mh.L.J. 275, wherein it is held as follows :

“ That in the case of dishonour of cheque and as regards the territorial jurisdiction of the court in the event of cheque issued by the accused at Delhi against their accounts maintained with the banks at Delhi and the cheque deposited by the complainant at Pune bank for presentation to the drawee bank at Delhi, the

complainant's banker at Pune did not become banker to whom the cheque was presented and notice issued by the complainant from Pune making demand of money of the bounced cheques. Thereupon the accused was expected to make payment at Pune and on failure to make the payment, the court at Pune had jurisdiction to entertain and decide the complaint [2000 (1) Mh.L.J.(SC)193] relied upon."

16 Hence, learned counsel for the complainant asserts that Aurangabad court only shall have jurisdiction to entertain and try the complaint filed by it and learned Trial Court has rightly rejected application Exh.13 preferred by the accused, by order, dated 23.9.2010 raising objection regarding territorial jurisdiction and no interference therein is called for and the present petition, which bears no substance, be dismissed.

CONSIDERATION :-

17 Considering the rival submissions advanced by the learned counsel for the parties and also after having gone through the judicial pronouncements, cited by them, carefully, it

is necessary to reproduce relevant provisions of the Code of Criminal Procedure and the Negotiable Instruments Act, in respect of territorial jurisdiction, as stated below :-

“ Section 177 of the Code of Criminal Procedure -

Ordinary place of inquiry and trial : - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178 of the Code of Criminal Procedure -

Place of inquiry or trial : -

- (a) When it is uncertain in which of several local areas an offence was committed; or
- (b) where an offence is committed partly in one local area and partly in another, or
- (c) where an offence is continuing one, and continues to be committed in more local areas than one, or
- (d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Section 179 of the Code of Criminal Procedure -

Offence triable where act is done or consequence ensues :-

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. “

“ Section 138 of the Negotiable Instruments Act

Dishonour of cheque for insufficiency, etc., of funds in the account :-

.....

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

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

..... “

pertaining to the territorial jurisdiction, and coming to the case of Division Bench of this court in Preetha S. Babu vs Voltas Ltd. (supra), wherein it is observed as follows :-

“9 It is necessary to see how the Supreme Court proceeded to deal with the question of jurisdiction. The Supreme Court referred to Chapter 13 of the Code of Criminal Procedure, 1973 (for short, “the Code”) which pertains to jurisdiction of the criminal courts in inquiries and trials. The Supreme Court referred to Section 177 of the Code which says that "every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed." The Supreme Court observed that Section 177 has been framed by the legislature thoughtfully by using the precautionary word 'ordinarily' to indicate that the rule is not invariable in all cases. The Supreme Court then referred to Section 178 of the Code which pertains to place of inquiry or trial. It was observed that Section 178 suggests that if there is uncertainty as to where, among different localities, the offence would have been committed, the trial can be had in a court having jurisdiction over any of those localities. The Supreme Court observed that this 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 to try the case. The Supreme Court then turned to Section 179 of the Code and observed that Section 179 of the Code stretches its scope to a wider horizon. Section 179 of the Code states that 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. Therefore, the court within whose local jurisdiction the consequences ensue can also have jurisdiction to try that offence. The Supreme Court cautioned that the above provisions of the Code must be borne in mind when the question regarding territorial jurisdiction of the court to try the offence is to be determined.

10 The Supreme Court then stated the components of offence under Section 138 of the NI Act. Paragraph 14 of the said judgment needs to be quoted.

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence : (1)

drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.”

11 The Supreme Court then observed that it is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But, the concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the NI Act. To emphasis these points, the Supreme Court referred to Section 178(d) of the Code which states that when it is uncertain in which of several local areas an offence was committed or where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas. After referring to Section 178(d) of the Code, the Supreme Court observed that the five different acts, which are the components of Section 138 of the NI Act as stated by it in paragraph 14, which we have quoted hereinabove, are 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 NI Act. It is necessary to quote paragraph 16 because it has great relevance to this case.

“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.”

12 It is pertinent to note that on the facts of the case before it, the Supreme Court observed that the locality where the bank which dishonoured the cheque is situated cannot be regarded as the sole criteria to determine the place of offence (emphasis supplied). Implicit in this observation of the Supreme Court is its view that the place where the cheque is dishonoured can be a criterion to determine the place of

offence. The Supreme Court further observed that offence under Section 138 of the NI Act would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the NI Act. The Supreme Court further went on to say that it is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. The Supreme Court held that the Kerala High Court was, therefore, right in holding that the trial court had jurisdiction to entertain the complaint.

13 In *Shamshad Begam*, a Single Judge of the Karnataka High Court had dismissed the petition under Section 482 of the Code where a prayer was made to quash the case pending on the file of learned Magistrate at Mangalore arising out of Section 138 of the NI Act. The appellant accused had filed the petition in the Karnataka High Court on the ground that the Mangalore court had no jurisdiction to try the case because the agreement was entered into at Bangalore and the cheques were returned by the

banks at Bangalore. The complainant stated that before issuing the notice, he had shifted his residence to Mangalore and, therefore, he had issued the notice from Mangalore which was received by the appellant-accused and the reply was sent by her to the appellant-accused at Mangalore address. As the notice in writing to the drawer of the cheque demanding payment of cheque amount was sent from Mangalore, the court at Mangalore has jurisdiction to try the case. The High Court noted that one of the components of the offence was giving notice in writing to the drawee of the cheque by demanding payment of the cheque amount. The said action had taken place in Mangalore and, therefore, the petition was without merit. The Supreme Court referred to K. Bhaskaran and quoted extensively from it. The Supreme Court reaffirmed that offence under Section 138 of the NI Act has five components i.e. (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 and (5) failure of the drawer to make payment within 15 days of the receipt of the notice. The Supreme Court reiterated that it is not necessary that the above five acts should have been perpetrated at the same locality and it is possible that each of these five acts could be done at five different localities.

The Supreme Court refused to interfere with the High Court's order. In our opinion, the law of jurisdiction has been succinctly stated in K. Bhaskaran followed by Shamshad Begam and we need to say nothing more on this aspect.

14 In Harman, the complainant and the accused entered into a business transaction. The accused was a resident of Chandigarh. He carried on the business in Chandigarh. He issued the cheque in question at Chandigarh. The complainant had a Branch Office at Chandigarh although his Head Office was at Delhi. He presented the cheque given by the accused at Chandigarh. The cheque was dishonoured at Chandigarh. The complainant issued a notice upon the accused asking him to pay the amount from New Delhi. The said notice was served on the accused at Chandigarh. On failure on the part of the accused to pay the amount within fifteen days from the date of the communication of the said letter, the complainant filed a complaint at Delhi. In the complaint it was stated that the Delhi Court has jurisdiction to try the case because the complainant was carrying on business at Delhi; the demand notice was issued from Delhi; the amount of cheque was payable at Delhi and the accused failed to make the payment of the said cheque within statutory period of fifteen days from the date of receipt of notice.

15 Cognizance of the offence was taken by learned Magistrate. The accused questioned the jurisdiction of the Magistrate at Delhi before the Additional Sessions Judge, New Delhi. Learned Sessions Judge held that the Magistrate at Delhi had jurisdiction to entertain the complaint as admittedly the notice was sent by the complainant to the accused from Delhi and the complainant was having its registered office at Delhi and was carrying on business at Delhi. Learned Judge also observed that the accused failed to make payment at Delhi as the demand was made from Delhi and the payment was to be made to the complainant at Delhi. The Delhi High Court dismissed the petition filed by the accused.

16 The accused approached the Supreme Court. The Supreme Court considered Section 138 of the NI Act. It referred to K. Bhaskaran and quoted the five components of offence under Section 138 of the NI Act which have been noted in K. Bhaskaran . The Supreme Court reiterated that if five different acts which are the components of offence under Section 138 of the NI Act 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 NI Act and the complainant

would be at liberty to file a complaint/petition at any of those places.

17 The Supreme Court held that the Chandigarh court had jurisdiction to entertain the complaint because the parties were carrying on business at Chandigarh; branch office of the complainant was in Chandigarh; the transactions were carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. The Supreme Court observed that the complaint did not show that the cheque was presented at Delhi, it was absolutely silent in that regard and, therefore, there was no option but to presume that the cheque was presented at Chandigarh. Undisputedly the dishonour of the cheque also took place at Chandigarh and, therefore, according to the Supreme Court, the only question which arose for consideration was whether sending of notice from Delhi itself would give rise to a cause of action in taking cognizance under the NI Act.

18 Harman is, therefore, only an authority on the question whether a court will have jurisdiction because only notice is issued from the place which falls within its jurisdiction and it does not deviate from the other principles laid down by the Supreme Court in K. Bhaskaran. The Supreme Court accepted that the place

where the cheque was presented and dishonoured has jurisdiction to try the complaint. The Supreme Court concluded that issuance of notice would not by itself give rise to a cause of action but communication of the notice would. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, commission of an offence completes. The Supreme Court in effect affirmed what it had said in K. Bhaskaran that court within whose jurisdiction the cheque is presented and in whose jurisdiction there is failure to make payment within 15 days of the receipt of the notice can have jurisdiction to try the offence under Section 138 of the NI Act. “

19 It is material to note that the Apex Court while holding that Chandigarh court has jurisdiction, has observed in the case of Harman Electronics (P) Ltd. that in the case before it, the complaint was silent as to whether the said cheque was presented at Delhi. However, in the present case, it is categorically stated that disputed cheque in question was presented for realisation at Auangabad through the collecting banker of complainant i.e. H.D.F.C. Bank, Aurangabad and in the present case, it is also categorically stated that dishonour of

the disputed cheque in question took place at Aurangabad, since the complainant's banker informed the fact of dishonour of said cheque to the complainant company by its memo received by the complainant company on 8.12.2009, as stated in para no.6 of the complaint, and therefore, the offence constituted and cause of action took place at Aurangabad, which consequently, confers jurisdiction for filing the complaint in Aurangabad court.

20 Moreover, it is also important to note that in the case of Preetha S. Babu (supra), the Division Bench of this court has considered the Ruling of the learned Single Judge of this court (R.C.Chavan, J.) in Ahuja Dongre's case and also considered the judgment of another learned Single Judge of this court (V.R.Kingaonkar, J.) in Dipti Kumar Mohanty, where Ahuja Dongre's case was followed., and also considered the judgment of learned Single Judge of this court (S.A.Bobde, J.) in the case of Nutan Damodar Prabhu, as well as considered the judgment of learned Single Judge (R.M.S.Khandeparkar, J.) in the case of Damodar S.Prabhu, and observed that the view taken in Ahuja Dongare's case is contrary to the view taken by

Hon'ble Supreme Court in the case of K.Bhaskaran, and agreed with the view taken by the learned Single Judge in Ahuja Dongare's case to the extent that 'the Bank' referred to in Clause (a) to the proviso to Section 138 of the Negotiable Instruments Act, would mean that the drawee bank on which the cheque is drawn, but with great respect further observed that the view taken by the learned Single Judge in that case in the context of jurisdiction of the court to entertain complaint under Section 138 of the Negotiable Instruments Act, that the cheque has to be presented to the drawee bank at the place mentioned in the cheque and only the court within whose jurisdiction, the drawee bank is situated will have jurisdiction to entertain the complaint and not the court at another place where it is presented for realization, needs to be reconsidered by a larger bench in an appropriate case.

21 Thereafter, having considered the judgment of Hon'ble Supreme Court in the case of Ishar Alloys Steels Ltd. Vs Jayaswals NECO Ltd., 2001 (3) Mh.L.J. (SC) 1, the Division Bench of this court in the case of Preetha's case (supra) observed that therefore, the cheque can be presented at the

collecting bank of the payee. The collecting bank has to then send it to the drawee bank. That must be done within six months. If the cheque is dishonoured and money is not paid within 15 days of the notice, complaint can be filed at the place where the collecting bank is situated. The idea is that the cheque should reach the drawee bank within six months. It can be directly presented to it or it can be presented through the collecting bank.

22 Applying the afore said parameters to the present case, it is apparently clear that the accused issued disputed cheque in question at Pune, drawn on its drawee bank, namely Indrayani Cooperative Bank, Pimpri, Pune, but the complainant presented the said cheque for realisation and encashment through its collecting banker i.e. H.D.F.C. Bank at Aurangabad and the said cheque was dishonoured by the bank of the accused and sent the same to the complainant's banker i.e. H.D.F.C. Bank, Aurangabad, with the remark "funds insufficient" along with memo, dated 26.11.2009, and consequently, the complainant's banker H.D.F.C. Bank, Aurangabad informed the said fact of dishonour of the said cheque to the complainant by

its memo on 8.12.2009.

23 Thereafter, the complainant issued the demand notice to the accused from Aurangabad on 24.12.2009 and called upon the accused to make the payment of the said cheque to the complainant at Aurangabad (emphasis supplied) and the said notice was received by the accused, but the accused failed to make the payment of the said cheque to the complainant at Aurangabad, within 15 days as contemplated therein at Aurangabad, as specifically called upon by the complainant to the accused to do so (emphasis supplied), and therefore, the offence was constituted at Aurangabad and it cannot be construed that whole cause of action took place at Pune only, since part of cause of action arose at Aurangabad, and hence, inevitably Aurangabad court shall have the territorial jurisdiction to entertain and try the complaint lodged by the complainant.

24 Moreover, the very root cause in the present matter i.e. the invoice cannot be ignored and it was agreed between the parties that the transaction is subject to the jurisdiction of

Aurangabad and the said term is mentioned on the invoice and accepted by the accused, as rightly observed by the learned Trial Court in the impugned order, dated 23.9.2010.

25 Besides, as observed by the Apex Court in Harman Electronics (P) Ltd.'s case that it is necessary to strike a balance between the right of the complainant and the right of an accused vis-a-vis the provisions of the Code of Criminal Procedure, it is possible that the accused can take exemption from appearance in the court; whereas the complainant runs the risk of his complaint being dismissed in his absence, and therefore, hardship caused to the complainant is more, and therefore also, the Aurangabad court where the complainant's administrative and registered office is situated, and where part of cause of action arose, as stated hereinabove, shall have jurisdiction to entertain and try the complaint.

26 In the light of the afore said discussion, and having conjoint reading of Sections 177, 178 and 179 of the Code of Criminal Procedure and Section 138 (a), (b) and (c) of the Negotiable Instruments Act, and considering the guidelines, in

respect of law of territorial jurisdiction, laid down by the Hon'ble Supreme Court and the Division Bench of this Court, as afore stated, it is amply clear that the learned Trial Court has rightly dismissed the application Exh.13 in Summary Criminal Case No. 1077 of 2010 in respect of the objection of territorial jurisdiction raised by the accused and has rightly declined the submission of the accused that only court at Pune can have jurisdiction and rightly held that Aurangabad court shall have jurisdiction to entertain and try the complaint filed by the complainant and no interference therein is warranted in the extraordinary jurisdiction of this court, and hence, the present petition bears no substance and same is devoid of any merits and therefore, same deserves to be dismissed.

27 In the result, present petition is dismissed. The impugned order, dated 23.9.2010, passed by the learned 10th Joint Judicial Magistrate, First Class, Aurangabad, below Exh. 13, in Summary Criminal Case No. 1077 of 2010 is upheld and confirmed. Rule stands discharged accordingly.

(SHRIHARI P. DAVARE, J.)