

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 77 OF 2009

Crompton Greaves Limited, a
Company registered under the
Companies Act, 1956, having its
Registered Office at 6th Floor,
CG House, Dr. A. B. Road, Worli,
Mumbai-400 030 and its Electric
Division at Betoda, Ponda Goa,
through its duly constituted
Attorney Shri T. S. Thiraviam,
Legal Executive, Western Region. ... Appellant

V e r s u s

1. Shri Kantibhai, Prop. Mahavir
Sales, Kanchan Ganga, Shop
No.2, Shivaji Peth, Opp. Punjab
National Bank, Thane (West)-
400 601.
2. State of Goa, through its
Public Prosecutor, High Court
of Bombay, at Goa. Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. H. Kankonkar,
Advocate for the Appellant.

Mr. A. D. Bhobe, Advocate for respondent no.1.

Mr. C. A. Ferreira, Public Prosecutor for respondent no. 2.

Coram : D. G. KARNIK &

F. M. REIS, JJ.

Reserved on : 23rd August, 2011.

Delivered on : 29th August, 2011.

JUDGMENT (Per D. G. KARNIK, J)

1. When this appeal came up for hearing before a

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Single Judge of this Court (Hon'ble U. D. Salvi, J), he noticed that the view taken by him in his earlier decision in Crompton Greaves Limited V/s M/s Shivam Traders (Criminal Revision Application No. 7 of 2009 decided on 17.11.2009) was in conflict with the view taken by Kingaonkar, J sitting at Aurangabad Bench in his decision in Dipti Kumar Mohanty V/s Videocon Industries Ltd., (Criminal Writ Petition No. 497 of 2008 decided on 17.02.2009; MANU/MH/01202009) and directed that the papers be placed before the Hon'ble the Chief Justice for appropriate directions. Accordingly, the matter has been placed before us under the directions of the Hon'ble the Chief Justice.

2. The case pertains to an offence punishable under Section 138 of Negotiable Instruments Act and the question involved is which magistrate will have the jurisdiction to entertain the complaint. The lead decision on the question is rendered by the Supreme Court in K. Bhaskaran V/s Sankaran Vaidhyan Balan, AIR 1999 SC 3762. Therein the Supreme Court has considered the meaning and the effect of clause (d) of Section 178 of the Code of Criminal Procedure (for short "the Cr. P. C") . which provides : where it (offence)consists of several acts done in different local areas it may be

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inquired into and tried by a Court having jurisdiction over any of such local areas. Analysing several acts necessary for culmination of an offence under Section 138 of the Negotiable Act, in para 14 of the decision the Supreme Court has held :

“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 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”.

From the decision of the Supreme Court, it is clear that any magistrate within whose jurisdiction one or more of the five acts mentioned in paragraph 14 of its decision in K. Bhaskaran's case take place would have a jurisdiction to inquire into and try the accused for the offence under Section 138 of the Negotiable Instruments Act.

We would now proceed to indicate which are the places where the five acts mentioned in the decision of K.

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Bhaskaran take place.

Place No. 1 – Where the cheque is drawn :

3. Under Section 13 of the Negotiable Instruments Act cheque is a negotiable instrument. Ordinarily a cheque is drawn at a place where the drawer of the cheque writes and signs the cheque. Where however the drawer writes the cheque and keeps it in his own possession that does not create any liability against him or in favour of the payee. It is only when the drawer of the cheque delivers it to the payee that the payee becomes an holder as defined in Section 8 of the Negotiable Instruments Act and the drawer becomes liable under it. It, therefore, stands to reason that the drawing of the cheque becomes complete and the cheque becomes a negotiable instrument when it is delivered to the payee or his agent. Mere writing and signing of a cheque may not, therefore, be enough to hold that the cheque is drawn at the place where it is written and signed because the cheque would become negotiable instrument in the hands of the payee only when it is delivered to the payee or his agent.

Place No. 2 : Presentation of the cheque to the bank.

4. The determination of the place of presentation of the cheque poses some difficulty, especially when the cheque is drawn on a bank and the branch where the accused (drawer of the cheque) maintains his account is situate in a city or town different than the city or town where the payee (holder) maintains his bank account and deposits the cheque in his (holder's) bank for collection. The question that arises is whether the presentation of the cheque takes place in the city or town where the holder deposits the cheque for collection in his bank or the presentment takes place where the cheque is presented to the drawee bank at its branch on which it is drawn and where the drawer maintains his account. The controversy is whether the cheque is presented where the concerned branch of the drawee bank is situate or where the concerned branch of the collecting branch is situate.

5. In ***Shri Ishar Alloys Steel Limited V/s Jayaswals NECO Ltd., AIR 2001 SC 1161***, the Supreme Court was required to consider inter alia the time period within which a cheque was required to be presented to the bank for computing the period of validity of the cheque of six

months. In para 9 of the decisions, the Supreme Court observed :

" A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee". (Under lining supplied)

This observation gives a clear indication that the cheque must be presented for payment to the bank on which it is drawn. Such presentment would therefore, save and except where the cheque is payable at par at all or multiple branches of the bank on which the cheque is drawn, is effected at the branch in which the drawer of the cheque maintains his account. In this regard, further observations made by the Supreme Court in para 8 in the case of Shri Ishar

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Alloys Steel Limited V/s Jayaswals NECO Ltd., (supra) also needs to be quoted, they are :

"8. The use of the words "a bank" and "the bank" in the section is indicator of the intention of the Legislature. The former is indirect article and the latter is pre-fixed by direct article. If the Legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under section 138 is prefixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account "The" is the word used before nouns, with a specifying or particularising effect opposed to the indefinite or generalising force of "a" or "an". It determines what

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particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in Clause (a) to the proviso to section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued."

(Underlining supplied)

6. Despite the clear pronunciation of the law of the Supreme Court that the expression " the bank" referred to in clause (a) to the proviso to Section 138 of the Negotiable Instruments Act would mean the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the holder different Courts have taken divergent views, some holding that the presentment of the cheque is made only at the drawee bank (bank of the accused) and others taking the view that the presentment is made at holder's bank i.e. the collecting bank where the holder deposits the cheque.

In *Mattathil Ouseph Ittira V/s State of Kerala and anr.*, 2003 Cr. L.J. 514, the cheque in question was drawn on M/s Abudabi Commerical Bank, Sharjah and was presented to Tiruvale Branch of Indian Overseas Bank. The cheque was dishonoured. The Kerala High Court held that the fact that drawee bank was outside India did not matter since the cheque was presented for encashment within the jurisdiction of the Court where the collecting bank was situate, the complaint could be filed before it. Dissenting from the view of the Kerala High Court as also of the view taken by the Andra Pradesh and Delhi High Court, a Single Judge of this Court (R. C. Chavan, J) in *Ahuja Nandkumar Dongre V/s State of Maharashtra*, 2006(6) AIR Bom. R 201, held that the cheque has to be presented to the drawee bank at the place mentioned on the cheque. The Court within whose jurisdiction the cheque was merely presented for realization (i.e. the place where the collecting bank was situate) would not have jurisdiction to entertain the complaint. The deicision of R. C. Chavan J, in *Ahuja Nandkumar Dongre's* case was followed by another Single Judge of this Court (Kingaonkar J) in *Dipti Kumar Mohanty V/s Videocon Industries Ltd.* (MANU/MH/0120/2009). However in *Shri Damodar S. Prabhu V/s Balkrishna Naik* (Criminal W. P. No.2/2008) another

learned Single Judge of this Court (R. M. S. Khandeparkar J) observed that the view taken in Ahuja Dongre was contrary to the view taken by the Supreme Court in K. Bhaskaran. He, therefore referred the matter to a larger bench. However, the reference did not materialize as the dispute between the parties was settled. The decision of the Single Judge in Ahuja Dongre's case came up for consideration before a Division Bench of this Court in Preetha S. Babu V/s Voltas Ltd., 2009 (3) Mah. L. J. 234 in a petition filed under Article 226 and 227 of the Constitution of India for quashing and setting aside of a complaint pending before the Metropolitan Magistrate. The decision of the Division Bench in this regard is equivocal. The first sentence of para 28 of the judgment in the Preetha's case indicates that the Division Bench has agreed with the view of the Single Judge in Ahuja Dongre's case that the expression "the bank" referred to in clause (a) to proviso to Section 138 of the Negotiable Instruments Act would mean the drawee bank on which the cheque is drawn. However, in the next sentence the Division Bench has observed that the view expressed by the learned Single Judge that only the Court within whose jurisdiction the drawee bank is situate will have the jurisdiction to entertain the complaint and not the Court where it is presented for realization needs to be reconsidered

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by a larger bench in an appropriate case. Again in para 31, the Division Bench has observed :

“If the cheque is dishonoured and money is not paid within 15 days of the notice, complaint can be filed at the place where collecting bank is situated”.

The view expressed in para 31 however is not emphatic and it is clear from further observations made in para 33 of the decision which are to the following effect :

“ We respectfully agree with learned Single Judge when he states in Ahuja Dongre that if the Courts at the place where the cheque was presented were to have jurisdiction drawer of the cheque would be harassed by unscrupulous litigants by presenting the cheque at a place far away from the place at which it was meant to be paid. But we must refer to the Supreme Court's observation in Harman that in such cases, it is necessary to strike a balance between the right of the complainant and the right of the accused vis-a-vis the provisions of the

Code. It is possible to urge that whereas the accused can take exemptions from appearance in the Court, the complainant runs the risk of his complaint being dismissed in his absence and, therefore, hardship caused to the complainant is more. Therefore, though we are not expressing a total voice of dissent, in our opinion, learned Single Judge's view that the words "the bank" in item no.2 of paragraph 14 of K. Bhaskaran mean the "drawee bank" needs to be referred to a larger bench in an appropriate case so that it can be more advantageously heard and decided. With respect, we feel that learned Single Judge's view that practice of presenting a cheque to the payee's or holder's own banker does not make such banker "the drawee" needs to be considered by a larger bench in the context of K. Bhaskaran. We have not given necessary direction to the Registry because for the disposal of this petition, the decision on the said issue is not necessary". (Underlining supplied)

Since the Division Bench has held that the question whether the Court having jurisdiction over a place where "the bank" (collecting bank) is situate, is required to be referred to a larger bench, it would not be appropriate for us to express our view on the issue and the matter would be finally decided by a larger bench when a reference is made on an appropriate occasion.

7. We may here refer to the new developments taking place in the commercial world and the amendment to the Negotiable Instruments Act made by amending Act No. 55 of 2002 which has come into force w.e.f. 6/2/2003. Section 6 of the Negotiable Instruments Act which defines the cheque has been substituted by the amending Act No. 55 of 2002. The amended Section 6 defines the cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. Clause (a) of Explanation 1 to Section 6 defines "a cheque in the electronic form" to mean a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital

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signature (with or without biometrics signature) and asymmetric crypto system. Clause (b) of the Explanation 1 defines "a truncated cheque" to mean a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing. The amending Act 55 of 2002 also amends Section 64 of the Negotiable Instruments Act. Sub-section (2) added to Section 64 by the amendment says that notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification. The result of the amendment of the Negotiable Instruments Act, 1881 effected by Act 55 of 2002 is to dispense with the need for physical presentation of the cheque to the drawee bank in certain cases. It is possible for

a collecting bank to present the cheque in an electronic form to the drawee bank and when a truncated cheque is presented by electronic means the drawee bank is required to make the payment to the collecting bank presenting the truncated cheque without insisting upon the physical presentation of the cheque except when there is a suspicion about the genuineness of the apparent tenor of the instrument or of any fraud, forgery, tampering or destruction of the instrument. It is only in cases mentioned in Section 64 like suspicion of fraud, forgery, tampering or destruction that the drawee bank is entitled to require the collecting bank to physically present the original paper cheque. We are not required to consider, as no arguments were advanced before us on it, as to the place where the presentment of the cheque would take place where the cheque is presented in a truncated form by electronic means and not by physical delivery. We may now refer to the developments in the commercial world. Today, armed with advanced technology, many banks issue to its customers cheque books containing leaves of cheques which are payable at par on all or specified branches of that bank. When such a person draws and issues a cheque which is payable at par on all or multiple branches of his bank, the holder is not required to present the cheque

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to the branch of the bank in which the drawer maintains his account. The holder, through his bank (the collecting bank) would then present the cheque to any branch specified on the cheque for payment. Ordinarily, such a cheque would be presented at branch in the same city or town in which the collecting branch is situate if the cheque is payable at par on any branch of the drawee bank in the city. In such cases, it would be perfectly possible for the magistrate having jurisdiction in that city or place where the cheque is so presented to inquire and try the accused for the alleged offence under Section 138 of Negotiable Instruments Act.

Place No.3 – Returning the cheque unpaid by the drawee bank.

8. Cheque may be presented by the holder of the cheque to the drawee bank in person if the cheque is payable to the bearer or order. However, where the cheque is crossed, it would be required to be presented by the holder to the drawee bank only though a bank for being credited to his account. Where the holder of the cheque maintains an account in the same branch of the bank on which the cheque is drawn the drawee bank would credit the account of the

holder if there is available balance in the account of the drawee. In case of insufficiency of funds in the account of the drawer, the drawee bank would return it to the holder in that very branch and that very place. This situation presents no difficulty as the cheque is returned to the holder at the branch on which the cheque is drawn. However, when the holder of the cheque has an account in a different bank, perhaps in a different town, he would deposit the cheque in his bank (collecting bank). The collecting bank would then present the cheque to the drawee bank either by itself or through the network of its branches. The cheque would be presented at the branch of the drawee bank where the drawer of the cheque maintains the account. If the balance in drawee's account is adequate, the drawee bank would pay the amount of the cheque when the cheque is presented to it by the collecting bank through clearing house or through any other mechanism of payment recognised and approved by the banking system. Where however the balance in the account of the drawer is inadequate, the drawee bank would return the cheque unpaid to the collecting bank; the cheque is returned and delivered to the collecting bank there and then or through the clearing house in the same town, in the ordinary course. When the collecting bank presents the

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cheque to the drawee bank, it acts an agent of the holder of the cheque and not as an agent of the drawer of the cheque. The return of the cheque by the drawee bank to the collecting bank is thus a return of the cheque to the agent of the holder of the cheque. The cheque is returned unpaid at the branch of the drawee bank on which cheque is drawn. It is, therefore, the Court which has jurisdiction over the place where the branch of the drawee bank on which cheque is drawn is situate that would have jurisdiction to inquire into and try the accused for an offence under Section 138 of Negotiable Instruments Act.

Place No.4 - Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.

9. In ***M/s Harman Electronics (P) Ltd. & Anr V/s M/s National Panasonic India Ltd.,*** the Supreme Court has considered the issue : whether the place from where the notice was issued by the complainant or the place where the notice was received by the accused would have a jurisdiction to inquire and try the accused for the offence. In paragraph 17 of the decision the Supreme Court has observed :

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"For constitution of an offence under Section 138 of the Act, the notice must be received by the accused. It may be deemed to have been received in certain situations. The word "communicate" inter alia means "to make known, inform, convey, etc.".

In paragraph 20 of the decision the Supreme Court further observed :

"Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary".

In paragraph 23, it is further observed :

"Presumption raised in support of service of notice would depend upon the facts and circumstances of each case. Its application is on the question of law or the fact obtaining. Presumption has to be raised not on the hypothesis or surmises but if the foundational facts are laid down therefor. Only because presumption of service of notice is possible to be raised at the trial, the same by itself may not be a ground to hold that the distinction

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between giving of notice and service of notice ceases to exist.”

Though a presumption may arise in certain circumstances about the service of notice where a notice is proved to have been issued that would not allow the Court having jurisdiction at a place from which the notice is issued to have jurisdiction to inquire and try the accused for the offence. This is because the fact of dishonour of the cheque is required to be communicated to the drawer of the cheque for completion of an offence under Section 138 of the Negotiable Instruments Act and the communication is complete only when the notice is received (or in certain circumstances deemed to have been received) by the accused. Therefore, the Court having jurisdiction over the place where the notice is received (or deemed to have been received) by the accused would be the Court which will have the jurisdiction to inquire and try the accused for the offence and not the Court within whose jurisdiction the notice was issued.

Place No.5 : Failure of the drawer to make payment within 15 days of the notice

10. There appears to be difference of view in the two decisions of Single Benches on this question.

In Dipti Kumar Mohanty V/s Videocon Industries Ltd., (Supra) the facts were that the accused used to purchase the goods from the complainant company's branch at Bhubneshwar. The accused issued a cheque for Rs.3,00,000/- in favour of the complainant company drawn on Uco Bank at its branch at Tangi (Orissa). The cheque was presented by the complainant in its bank namely State Bank of India, Ahmednagar Branch, for encashment. The cheque was dishonoured by the drawee bank with the remark " funds insufficient". The complainant issued a notice of demand to the accused from its branch office at Ahmednagar by registered post and it was received by the accused in the State of Orissa. On failure of the accused to make payment within the statutory period provided under proviso to Section 138 of Negotiable Instruments Act, the complainant filed a complaint in the Court of Judicial magistrate at Ahmednagar. The accused filed an application to dismiss the complaint for want of jurisdiction. Learned magistrate held that part of cause of action had arisen within its jurisdiction. He also held that as the payment was demanded under the demand notice

issued from Ahmednagar, the complaint was maintainable. Aggrieved by the decision, the accused approached this Court, at its Aurangabad Bench, in revision. Kingaonkar J, relying upon the decision of the Supreme Court in Shri Ishar Alloys Steels Ltd. (supra) and of a single Judge of this Court in Ahuja Nandkumar Dongre held that mere fact that the cheque in question was presented to the collecting bank situated at Ahmednagar was of no consequence. The cheque was required to be presented to the drawee bank and it was presented to the drawee bank by the collecting bank at Tangi (Orissa) and not at Ahmednagar. Referring to the argument of place of issuance of notice, relying upon the decision of the Apex Court in M/s Harman Electronics (P) Ltd. & anr (supra) he held that the place of issuance of notice by itself would not determine the jurisdictional issue but the Court within whose jurisdiction the notice was received would be the Court which would have jurisdiction. It appears that an argument was also advanced before Kingaonkar J, that the complainant company was carrying on business at Ahmednagar and the money was payable at Ahmednagar and therefore the magistrate at Ahmednagar had jurisdiction to inquire and try the accused for the offence. Rejecting the contention, the Court in para 17 of the decision observed as under :

"The averments in the complaint that the company carries on business at Ahmednagar is of no much relevance in the fact situation of the present case. It need not be emphasized that the head office of both the Companies is at Mumbai. The goods were delivered by the branch offices situated at Bhubneshwar. The cheques were issued and drawn on branch of the Bank at Tangi/Khurda (Orissa). The demand notice was served on the concerned accused at the places situated in Orissa State. In the absence of any written agreement to pay the amounts at Ahmednagar, the jurisdiction cannot be assumed to be with the said Court merely because it is stated in the demand notice that the payment shall be made there. The case of "K. Bhaskaran" (supra) is duly considered and discussed by the learned Single Judge (Chavan,J.) in "Ahuja Nandkishore Dongre" (supra). This Court held that the place of notice would not by itself determine the jurisdictional issue. I have gone through judgment of learned Single Judge in "Nutan Damodar Prabhu and another" (supra)." (Underlining supplied).

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11. After quoting this passage in his order of reference, U.D. Salvi, J has observed that view taken by Kingaonkar J and expressed in the aforementioned paragraph was in conflict with the view which he had taken in Crompton Greaves Ltd. V/s M/s Shivam Traders. In that case it was held :

“ Ordinarily, therefore, item no.5 in para 14 of K. Bhaskaran's judgment would enable the payee or the holder in due course of the cheque to prosecute the drawer at any of the places, where he either resides or carries on business or works for gain.” (Underlining supplied)

12. This view apparently is in conflict with the view taken in the case of Dipti Kumar Mohanty, wherein Kingaonkar, J has held that :

“The averments in the complaint that the company carries on business at Ahmednagar is of no much relevance in the facts situation of the present case.”

This conflict has resulted in the reference.

13. In our view, the difference in the views has arisen, if we may say so with respect, because the Hon'ble Judge

(Salvi J) had in the background of his mind the notion of "cause of action" as understood in civil law. In our view, the place of residence of the defendant or the place where the "cause of action" has arisen which confers "jurisdiction on a civil court to entertain a suit for recovery of money" have no relevance for deciding the place of commission of an offence or the jurisdiction of the magistrate to inquire into and try a person for an offence under Section 138 of Negotiable Instruments Act. While the jurisdiction of a magistrate to inquire and try a person for an offence under section 138 of Negotiable Instruments Act is determined by clause (d) of Section 178 of the Cr. P.C., the jurisdiction of a civil court to entertain a suit for recovery of money is determined by section 20 of the Code of Civil Procedure (for short "the C.P.C."). Section 20 of the C.P.C. says that every suit (other than those covered by Sections 16 to 19) shall be instituted in a Court within the local limits of whose jurisdiction -

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

A suit for recovery of money, whether due on a negotiable instrument or otherwise, can be filed at (a) a place where the defendant resides irrespective of the fact where the money was lent or advanced or was payable. This is possible because of clause (a) of Section 20 of C.P.C. A suit for recovery of money due on a negotiable instrument or otherwise can also be filed at a place where the cause of action arises irrespective of the place of the residence of the parties. This is because of clause (c) of Section 20 of the C.P.C. But this is not the case in respect of a criminal trial for an offence. Section 178 of Cr. P. C. prescribes the places where an offence can be inquired into and tried. A complaint under Section 138 of the Negotiable Instruments Act can be filed only at one of the five places mentioned in para 14 of the decisions of the Supreme Court in K. Bhaskaran's case. The place of the residence of the accused or even the place of

accrual of cause of action for the purpose of determination of jurisdiction of the civil court to try a suit under Section 20 of the C.P.C., are not relevant for the purpose of considering whether a judicial magistrate would have jurisdiction to inquire and try the accused for an offence under Section 138 of the Negotiable Instruments Act. If none of the five things specified in the decision of K. Bhaskaran's case takes place within the jurisdiction of a magistrate, he would not have jurisdiction to inquire into and try the accused for an offence under Section 138 of the Negotiable Instruments Act merely because the accused resides within his jurisdiction. This principle applies a fortiori to the cause of action. Merely because the cause of action for the purpose of filing a civil suit has arisen within the jurisdiction of a particular civil court, the magistrate having jurisdiction at the place where the cause of action for the civil suit has arisen would not have a jurisdiction to try the accused for the offence punishable under Section 138 of Negotiable Instruments Act unless any one or more of the five things mentioned in para 14 of K. Bhaskaran's case has happened at the place within the jurisdiction of the magistrate.

14. In our view, the decision of the learned Single Judge (U. D. Salvi, J) in Crompton Greaves Ltd. V/s M/s Shivan Traders (supra) in so far it holds " that item no.5 in para 14 of K. Bhaskaran's case would enable the payee or the holder of the cheque to prosecute the drawer at any of the places, where he either resides or carries on business or work for gain" does not lay down the correct law and stands overruled. The place where a civil suit can be filed for recovery of money (due on a cheque) in view of Section 20 of the CPC, is not relevant for determining jurisdiction of the magistrate to entertain a complaint for an offence under Section 138 of the Negotiable Instruments Act. The jurisdiction of the magistrate would necessarily depend only upon Section 178 of the Cr. P. C. If the place where one of the several acts which together constitute an offence also happens to be a place where the cause of action for filing of a suit has arisen or where the accused resides that may be pure coincidence and in which case both the civil suit as well as the prosecution can be lodged before the civil court and the magistrate having jurisdiction at that place. In a given case the civil court may have jurisdiction to entertain and try the suit for recovery of money due on a negotiable instrument based upon the place of residence of the defendant or place of

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accrual of cause of action but that would not be relevant for the purpose of determining of the jurisdiction of the magistrate to try the accused for an offence under Section 138 of Negotiable Instruments Act.

15. The reference is answered accordingly. The matter may now be placed before the learned Single Judge for its decision in accordance with law.

D. G. KARNIK,J

F. M. REIS, J.

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