

# Jurisdiction of Court to take Cognizance of Offence for Dishonour of Cheque

In this article, the author has analysed two important decisions of the Supreme Court as regards to jurisdiction of the Courts to take cognizance for dishonor of cheque under Section 138 of the Negotiable Instruments Act, 1881. These two decisions of the Supreme Court caused great confusion among the public in general and also among the lower judiciary in particular, in the matter of receiving the complaints in appropriate Court having jurisdiction. In view of the above confusion, according to the author, the Legislature must immediately introduce an Amendment, by adding a new provision to Section 142(4) of the Negotiable Instruments Act. The author also proposes the amendment provision.

## Supreme Court on K. Bhaskaran

In the case of *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another* (1999) 7 SCC 510<sup>1</sup>, Justice K.T. Thomas and Justice M.B. Shah of the Supreme Court held that any one of the five Courts of Magistrate of First Class (the Courts) at five different places at which the five acts committed by drawer, resulting in the dishonour of cheques, have jurisdiction for prosecution against the drawer-accused (Accused) under Section 138 of the Negotiable Instruments Act, 1881 (the Act) and invoking Section 178(d) of The Code of Criminal Procedure, 1973<sup>2</sup> (the Code) which states that 'when different acts of an offence were done at different

places, to finally complete the offence, enabling for taking cognizance of the offence and hold the trial'.

The different acts of the 'actus reus' for the offence of *dishonour of cheque* referred to by the Supreme Court in *K. Bhaskaran's case* (Supra) are:<sup>3</sup>

1. place where the drawer had issued the cheque
2. place where the cheque was presented in Bank for encashment
3. place where the cheque was returned by bank to the payee
4. place where notice was issued, took demanding payment of amount of cheque from the drawer within 15 days of receipt of notice from the payee
5. place where the drawer failed to make payment of amount of cheque even after receiving the notice.

The Supreme Court gave the payee 'the right to file his complaint in any of the five different Courts established in five different places' by referring to 'actus reus' of the offence.

## Supreme Court on Harman Electronics

A division bench of the Supreme Court<sup>4</sup> in *Harman Electronics P. Ltd. and another Vs. National Panasonic India P. Ltd.* (2009) SCC 720, restricted the right of payee or holder of cheque in choosing the Court of his choice, after referring to earlier precedent, and by



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<sup>1</sup> This decision is also important from the point of 'sending and serving of notice' to the drawer of the cheque.

<sup>2</sup> Section 178(d) Cr.PC: 'where the offence consists of several acts done in different local areas it may be enquired into or tried by a court having such local areas'.

<sup>3</sup> Para 14 at page 518

<sup>4</sup> Justice S.B. Sinha wrote for the Bench with Justice Cyriac Joseph concurring with this.

exercising extraordinary powers given to Supreme Court under Article 142 of Constitution of India.<sup>5</sup>

The facts of *Harman's case (Supra)* were that while majority of acts constituting the offence under Section 138 of the Act were completed at Chandigarh (in Punjab State) "notice demanding payment of amount of cheque" was given at New Delhi, and the complaint was filled in the Court also at New Delhi since the complainant was carrying his business at Delhi.<sup>6</sup>

The Supreme Court after examining the decision in *Bhaskaran's case (Supra)* pointed out that "the offence will be completed only when drawer refuses to pay the amount within 15 days of receipt of notice"<sup>7</sup> and therefore 'the court at the place where drawer had failed to pay the amount has jurisdiction to conduct prosecution against the accused' since "cause of action" for filing the complaint arose not at New Delhi but at Chandigarh where the drawer failed to make the payment.

Explaining further, Justice S.B Sinha said that "While in civil cases, normally the expression 'cause of action' is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression 'cause of action' is therefore not a stranger to criminal cases."

Justice S.B. Sinha referred the decision in *Y.A. Ajit. Vs. Sofana Ajit, AIR 2007 SC 3151* with approval wherein it was held that "The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence, it is the cause of action for initiation of the proceedings against the accused."

The Supreme Court therefore allowed the appeal and held that the Court at Delhi, from where merely the notice was given, has no jurisdiction and issued directions to transfer the case to a court of competent jurisdiction at Chandigarh.<sup>8</sup>

### Decision of K. Bhaskaran Vs. Decision of Harman Electronics

These two decisions of the Supreme Court quite naturally caused great confusion among the public in general and also among the lower judiciary in

particular, in the matter of receiving the complaints in appropriate Court having jurisdiction.

In view of *Bhaskaran's case (Supra)*, the complainant has a right to file the complaint in any of the five different courts of his choice, without bothering about the ruling in *Harman's case (Supra)* though it is the latest decision of the Supreme Court.

There are two hypothetical situations that may come into existence on the decisions given in the above two cases.

1. Can it be possible for the Court to refuse to accept the complaint when 'it was filed in the Court at the place, other than the place where the drawer has failed to pay the amount of the cheque in view of the ruling in *Harman's case (Supra)* where it has been held that a complaint must be filed only at the place where the failure of drawer took place, whether or not the accused raises any objection on the competency of the Court to accept the complaint.

Can the Court really have the power to do so, when it was observed that *Harman's case (Supra)* was decided under Article 142, while exercising the extraordinary powers of the highest Court in India, *albeit* by a Bench of equal strength? It cannot be a binding precedent to be followed in future prosecutions under the Act when another ruling *i.e.* in *Bhaskaran's case (Supra)* of same number of Judges as in *Harman's case (Supra)* is still in force. Since the Division Bench in *Harman's case (Supra)* cannot overrule the earlier decision of another Bench of the same strength.

2. As a reverse case, what can be the reaction of Courts if accused raises an objection, as an extreme argument depending upon some special circumstances of his age etc., that it is not convenient for him to defend himself, if the complaint is filed at the place where the drawer has failed to pay the amount, rather than in any of four Courts having jurisdiction on the strength of *Bhaskaran's case (Supra)* by ignoring the decision in *Harman's case (Supra)* as a binding precedent.

<sup>5</sup> Article 142(1) of Indian Constitution--"The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision is in that behalf is so made, in such manner as the President may by order prescribes.(Cl.2 is not necessary)"

<sup>6</sup> Para 23 at page 723,724. The Additional Sessions Judge and also the High Court relied on *Bhaskaran's case*.

<sup>7</sup> Para 20 at page 731

<sup>8</sup> Para 23 at page 732

Whether *Harman's case (Supra)*, even by necessary implication, overrules *Bhaskaran's case (Supra)*?

1. The answer of author is 'YES' and the first reason is that Justice S.B. Sinha and Justice Cyriac Joseph in *Harman's case (Supra)* have referred, examined and analysed the facts and the also legal issues raised in *Bhaskaran's case (Supra)* before coming to the decision that only the final act of the drawer in not paying the amount of the cheque even after receiving the notice, brings the cause of action into existence for filing of the complaint in the Court at that place where the failure took place.

The first four different acts referred to in *Bhaskaran's case (Supra)* did not produce the final result. Very interestingly in *Bhaskaran's case (Supra)* both the Justices agreed that 'for completion of the offence there must be concatenation of all the five acts referred above'.

The author is in complete agreement with the ruling of *Harman's case (Supra)*.

In *Harman's case (Supra)* it was not declared that this decision does not operate as a precedent in future as it happened in many cases and the ruling was also not given on the unusual facts, but on the basis of ordinary facts as they happen in all the cases coming under Section 138 of the Act so that this case need not be followed as a binding precedent in future is the second reason for author's opinion.

Therefore, *Harman's case (Supra)* being the latest decision, it is to be strictly followed in future cases.

2. As a matter of different opinion, if the answer to the above question is 'NO' then *Harman's case (Supra)* cannot be followed as it was a decision given under Article 142 and *Bhaskaran's case (Supra)* still holds sway, until it is overruled by a decision of a larger Bench.

With great respect, the author feels that the ruling in *Bhaskaran's case (Supra)* is not very pragmatic, as it gave unlimited choice to the complainant to file

the complaint, by unnecessarily enlarging and giving wide jurisdiction to five different Courts, without appreciating the practical difficulties of the lower Courts.

### Conclusion

'Corrective of what' is the question to be asked in the above context. The author is of the opinion that it is a corrective of an earlier decision which did not render complete justice. If we accept what M.P. Jain has written in his book on 'Constitutional Law', then decisions given under Article 142 are also absolutely binding on all the lower courts.

When Article 141 of the Constitution<sup>9</sup> states that 'the law declared by Supreme Court is binding on all the courts', any decision given under Article 142 of the Constitution, like decisions given under Articles 134 and 136<sup>10</sup> by Supreme Court is also binding, unless the Supreme Court declares it as not to be taken as a precedent for future cases. However, this point was not completely settled.

M.P. Jain in his classic work on the subject of 'Constitutional Law'<sup>11</sup>, expressed the opinion that a decision given under Article 142 is 'corrective and curative decision'. If there is an early opportunity for the Supreme Court, then this controversy must authoritatively and immediately be settled. Or, in view of the above confusion, the Legislature must immediately introduce an Amendment, by adding a new provision to Section 142(4) of the Act which may be as under:

*"Provided a complaint, as a matter of first instance, notwithstanding Sections 177 to 189 of The Code of Criminal Procedure, 1973, shall be filed in the Court having jurisdiction in the local area where the drawer had failed to pay the amount of the cheque or in the Court at the place jointly selected by both payee and drawer, subject to the five acts forming the offence under Section 138(1) of the Act."*

According to the author, this Amendment will completely settle the confusion on the issue. ■

<sup>9</sup> Art. 141. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

<sup>10</sup> Article 134. (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court— (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (c) 1[certifies under article 134A] that the case is a fit one for appeal to the Supreme Court: Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

\*Art. 136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India. (Clause 2 of both Articles is not necessary)

<sup>11</sup> Sri M. P. Jain, *Indian Constitutional Law*, 6<sup>th</sup> Edition.