

M/S. ESCORTS LIMITED

v.

RAMA MUKHERJEE

(Criminal Appeal No. 1457 of 2013)

SEPTEMBER 17, 2013

[P. SATHASIVAM, CJI AND JAGDISH SINGH KHEHAR, J.]

*Negotiable Instruments Act, 1881 - s.138 - Dishonour of cheque - Jurisdiction to try offence u/s.138 - Vesting with which Court - Held: The Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed u/s.138.*

**Issue arose for consideration as to whether the Court within the jurisdiction whereof, the complainant had presented the dishonoured cheque (issued by an accused), had the jurisdiction to entertain a petition filed under Section 138 of the Negotiable Instruments Act, 1881.**

**The High Court held that just because the dishonoured cheques in question were presented for encashment by the complainant at Delhi or the demand notice was sent from Delhi, the Courts at Delhi would not have jurisdiction to try the case. The High Court accepted the prayer made by the drawee of the cheque (i.e. the respondent) to conclude, that the Courts at Delhi did not have the jurisdiction to try the complaint filed by the appellant, under Section 138 of the Negotiable Instruments Act. Hence the present appeal.**

**Allowing the appeal, the Court**

**HELD: 1.1. It is apparent, that the conclusion drawn by the High Court, in the impugned order, is not in**

A consonance with the decision rendered by this Court in Nishant Aggarwal's case wherein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act. In addition to the judgment rendered by this Court in Nishant Aggarwal's case, another bench of this Court has also arrived at the conclusion drawn in Nishant Aggarwal's case, on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in *FIL Industries Limited vs. Imtiyaz Ahmed Bhat*. [Paras 5, 6] [351-A-D]

D 1.2. In view of the above, having taken into consideration the factual position noticed by the High Court in paragraph 13 of the impugned judgment, this Court is of the view that the High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138 of the Negotiable Instruments Act. The impugned order passed by the High Court is accordingly set aside. [Para 7] [354-E-F]

F *Nishant Aggarwal vs. Kailash Kumar Sharma* [Criminal Appeal no. 808 of 2013 (arising out of SLP (Crl.) No. 9434 of 2011); decision of Supreme Court dated 1.7.2013] and *FIL Industries Limited vs. Imtiyaz Ahmed Bhat* [Criminal Appeal No. 1168 of 2013 (arising out of SLP (Crl.) No.8096 of 2012), decision of Supreme Court dated 12.8.2013] - relied on.

G *K. Bhaskaran vs. Shankaran Vaidhyam Balan & Anr.* (1999) 7 SCC 510 : 1999 (3) Suppl. SCR 271; *Shri Ishar Alloys Steels Ltd. Vs. Jayaswal NECO Ltd.*, (2003) 3 SCC 609; *Harman Electronics Private Ltd. Vs. National Panasonic India Pvt. Ltd.* (2009) 1 SCC 720 : 2008 (17) SCR 487 and

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*FIL Industries Limited vs. Imtiyaz Ahmed Bhat* 2014 (2) SCC 266 - referred to. A

2. However, during the course of hearing, whilst it was the case of the appellant (based on certain documents available on the file of the present case) to reiterate that the cheque in question, which was the subject matter of the appellant's claim under Section 138 of the Negotiable Instruments Act, 1881 was presented for encashment at Delhi; it was the contention of the respondent, that the aforesaid cheque was presented for encashment at Faridabad. It was accordingly submitted, that the jurisdictional issue needed to be decided by accepting, that the dishonoured cheque was presented at Faridabad. It is not possible for this Court to entertain and adjudicate upon a disputed question of fact. In case, the respondent is so advised, it would be open to him to raise an objection on the issue of jurisdiction, based on a factual position now asserted before this Court. In case the respondent raises such a plea, the same shall be entertained and disposed of in accordance with law. [Para 8] [354-G-H; 355-A-D] B  
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Case Law Reference: E

1999 (3) Suppl. SCR 271	referred to	Para 4
(2003) 3 SCC 609	referred to	Para 4
2008 (17) SCR 487	referred to	Para 4
2014 (2) SCC 266	referred to	Para 6

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1457 of 2013.

From the Judgment and Order dated 27.04.2012 of the High Court of Delhi at New Delhi in Criminal Miscellaneous Case No. 1715 of 2011. G

S. Udaya Kumar Sagar, Bina Madhavan, Praseena E. Joseph, Shivendra Singh (for Lawyer's Knit & Co.) for the Appellant. H

A A.K. De, Debasis Misra, Rajesh Dwivedi, Sanjay Chetry  
for the Respondents.

The Judgment of the Court was delivered by

B **JAGDISH SINGH KHEHAR, J.** 1. This Court on  
21.2.2013 directed that the instant SLP (Crl.) No.7325 of 2012  
be listed after the pronouncement of judgment in Criminal  
Appeal no. 808 of 2013 (arising out of SLP (Crl.) No. 9434 of  
2011), titled *Nishant Aggarwal vs. Kailash Kumar Sharma*.  
C *Nishant Aggarwal's* case (supra) was disposed of by this Court  
on 1.7.2013. The pointed question, which arose for  
consideration in this Court's aforesaid determination was,  
whether the Court within the jurisdiction whereof, the  
complainant had presented the dishonoured cheque (issued by  
an accused), had the jurisdiction to entertain a petition filed  
D under Section 138 of the Negotiable Instruments Act. While  
disposing Criminal Appeal No.808 of 2013, this Court returned  
a finding in the affirmative by observing as under:

E "(7) We have already narrated the case of both the parties  
in the pleadings portion. In order to answer the only  
question, it is relevant to note that the undisputed facts in  
the context of territorial jurisdiction of the learned  
Magistrate at Bhiwani are that the drawee of the cheque  
i.e., the respondent/complainant is a resident of Bhiwani.  
F The native village of the respondent, namely, village  
Barsana is situated in District Bhiwani. The respondent  
owns ancestral agricultural land at village Barsana, District  
Bhiwani. It is also asserted that the respondent is running  
his bank account with Canara Bank, Bhiwani and is also  
residing at the present address for the last about two  
G decades. In view of the same, it is the claim of the  
respondent that he bonafidely presented the cheque in his  
bank at Bhiwani which was further presented to the  
drawer's Bank at Guwahati. The cheque was returned  
uncashed to the respondent's bank at Bhiwani with the  
H endorsement "payment stopped by drawer". The

respondent received the bounced cheque back from his bank at Bhiwani. Thereafter, the respondent sent a legal notice under Section 138 of the N.I. Act to the appellant from Bhiwani. In turn, the appellant sent a reply to the said notice which the respondent received at Bhiwani. In view of non-payment of the cheque amount, the respondent filed a complaint under Sections 138 and 141 of the N.I. Act before the learned Magistrate at Bhiwani.

(8) Inasmuch as the issue in question is directly considered by this Court in *K. Bhaskaran* (supra), before going into the applicability of other decisions, it is useful to refer the relevant portion of the judgment in paras 10 and 11 of the said case which reads thus:

"10. Learned counsel for the appellant first contended that the trial court has no jurisdiction to try this case and hence the High Court should not have converted the acquittal into conviction on the strength of the evidence collected in such a trial. Of course, the trial court had upheld the pleas of the accused that it had no jurisdiction to try the case.

11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 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 Act. It is normally difficult to

A 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  
 B resides or at the place where either of them carries  
 on business. Hence, the difficulty to fix up any  
 particular locality as the place of occurrence for the  
 offence under Section 138 of the Act."

C It is clear that this Court also discussed the relevant  
 provisions of the Code, particularly, Sections 177, 178 and  
 179 and in the light of the language used, interpreted  
 Section 138 of the N.I. Act and laid down that Section 138  
 has five components, namely,

- D i) drawing of the cheque;  
 ii) presentation of the cheque to the bank;  
 iii) returning the cheque unpaid by the drawee bank;  
 E iv) giving notice in writing 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 the notice.

F After saying so, this Court concluded that the complainant  
 can choose any one of the five places to file a complaint.  
 The further discussion in the said judgment is extracted  
 hereunder:

G "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:

- H (1) drawing of the cheque,

- (2) presentation of the cheque to the bank, A
- (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, B
- (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below: C

"178. (a)-(c) \* \* \*

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas." D E

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." F G

(9) Para 11 of *K. Bhaskaran* (supra), as quoted above, clarified the place in the context of territorial jurisdiction as H

A per the fifth component, namely, "failure of the drawer to  
 make payment within 15 days of the receipt." As rightly  
 pointed out by learned senior counsel for the respondent,  
 the place of failure to pay the amount has been clearly  
 B qualified by this Court as the place where the drawer  
 resides or the place where the payee resides. In view of  
 the same and in the light of the law laid down by this Court  
 in *K.Bhaskaran* (supra), we are of the view that the learned  
 Magistrate at Bhiwani has territorial jurisdiction to try the  
 complaint filed by the respondent as the respondent is  
 C undisputedly a resident of Bhiwani. Further, in *K.*  
*Bhaskaran* (supra), while considering the territorial  
 jurisdiction at great length, this Court has concluded that  
 the amplitude of territorial jurisdiction pertaining to a  
 complaint under the N.I. Act is very wide and expansive  
 D and we are in entire agreement with the same.

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(12) Mr. Ahmadi, learned senior counsel for the appellant  
 has also relied on a decision of this Court in *Harman*  
 E *Electronics Private Limited and Another vs. National*  
*Panasonic India Private Limited*, (2009) 1 SCC 720. In  
*Harman Electronics* (supra), the complainant and the  
 accused entered into a business transaction. The accused  
 was a resident of Chandigarh. He carried on the business  
 F in Chandigarh and issued a 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  
 G 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 15 days from  
 the date of the communication of the said letter, the  
 H 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 the statutory period of 15 days from the date of receipt of notice. It is further seen that the cognizance of the offence was taken by the learned Magistrate at Delhi. The accused questioned the jurisdiction of the Magistrate at Delhi before the Addl. Sessions Judge, New Delhi. The 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. The learned Judge has 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. Thereafter, the accused approached this Court. This Court considered Section 138 of the N.I. Act and also referred to *K.Bhaskaran's* case (supra) and quoted the five components of offence under Section 138 which have been noted in paragraph supra. This Court reiterated that the five different acts which are the components of offence under Section 138 of the N.I. 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 N.I. Act and the complainant would be at liberty to file a complaint at any of those places. Ultimately, this 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 also in Chandigarh, the transactions were carried on only from Chandigarh and the cheque was issued and presented at Chandigarh. This Court pointed out that the complaint did

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A not show that the cheque was presented at Delhi, because  
it was absolutely silent in that regard and, therefore, there  
was no option but to presume that the cheque was  
presented at Chandigarh. It is not in dispute that the  
dishonour of the cheque also took place at Chandigarh  
B and, therefore, the only question which arose before this  
Court for consideration was whether the sending of notice  
from Delhi itself would give rise to a cause of action in  
taking cognizance under the N.I. Act. In such  
circumstances, we are of the view that *Harman Electronics*  
C (*supra*) is only an authority on the question where 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 in *K.*  
*Bhaskaran* (*supra*). This Court has accepted that the place  
D where the cheque was presented and dishonoured has  
jurisdiction to try the complaint. In this way, this Court  
concluded that issuance of notice would not by itself give  
rise to a cause of action but communication of the notice  
would. In other words, the court clarified only on the service  
E in such notice and failure on the part of the accused to pay  
the demanded amount within a period of 15 days,  
thereafter, the commission of an offence completes. We  
are of the view that this Court in *Harman Electronics*  
(*supra*) affirmed what it had said in *K. Bhaskaran* (*supra*)  
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 notice can have jurisdiction  
to try the offence under Section 138 of the N.I. Act. It is also  
relevant to point out that while holding that the Chandigarh  
Court has jurisdiction, this Court in *Harman Electronics*  
(*supra*) observed that in the case before it, the complaint  
was silent as to whether the said cheque was presented  
at Delhi. In the case on hand, it is categorically stated that  
the cheque was presented at Bhiwani whereas in *Harman*  
*Electronics* (*supra*) the dishonour had taken place at  
Chandigarh and this fact was taken into account while  
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holding that Chandigarh court has jurisdiction. In the complaint in question, it is specifically stated that the dishonour took place at Bhiwani. We are also satisfied that nothing said in *Harman Electronics* (supra) had adverse impact on the complainant's case in the present case.

(13) As observed earlier, we must note that in *K. Bhaskaran* (supra), this Court has held that Section 178 of the Code has widened the scope of jurisdiction of a criminal court and Section 179 of the Code has stretched it to still a wider horizon. Further, for the sake of repetition, we reiterate that the judgment in *Ishar Alloy* (supra) does not affect the ratio in *K. Bhaskaran* (supra) which provides jurisdiction at the place of residence of the payer and the payee. We are satisfied that in the facts and circumstances and even on merits, the High Court rightly refused to exercise its extraordinary jurisdiction under Section 482 of the Code and dismissed the petition filed by the appellant-accused.

(14) In the light of the above discussion, we hold that the ratio laid down in *K. Bhaskaran* (supra) squarely applies to the case on hand. The said principle was correctly applied by the learned Sessions Judge as well as the High Court. Consequently, the appeal fails and the same is dismissed. In view of the dismissal of the appeal, the interim order granted by this Court on 09.12.2011 shall stand vacated."

(emphasis is ours)

2. Leave granted.

3. We have heard learned counsel for the rival parties. The reason for posting the instant matter for hearing after the disposal of *Nishant Aggarwal's* case (supra) was, that the controversy arising herein, was exactly the same as was sought to be determined by this court in *Nishant Aggarwal's* case

A (supra). The factual position necessary for the disposal of the instant Civil Appeal, was noticed in paragraph 13 of the impugned order, passed by the Delhi High Court. The same is being extracted hereunder:

B "13. Thus *M/s Religare Finvest* (supra) relied on by the  
 C Petitioner was a case where even the drawer bank's  
 clearing branch which dishonoured the cheque was also  
 situated at New Delhi. In the said case, the jurisdiction was  
 vested in the Courts at Delhi because of the drawer's  
 bank's clearing branch being at Delhi and not because the  
 D cheque was presented in the payee bank or that the legal  
 notice of demand was issued from a place at Delhi.  
Applying the decisions aforementioned to the facts of the  
 present case, I do not consider it fit to state that just  
 because the cheques were presented at Delhi or the  
 demand notice was sent from Delhi, Courts at Delhi would  
 have jurisdiction to try the present case."

(emphasis is ours)

E 4. Having taken into consideration the fact that the cheque  
 was presented for encashment by the complainant at Delhi, and  
 having referred to the judgments rendered by this Court in *K.  
 Bhaskaran vs. Shankaran Vaidhyam Balan & Anr.*, (1999) 7  
 SCC 510, *Shri Ishar Alloys Steels Ltd. Vs. Jayaswal NECO  
 F Ltd.*, (2003) 3 SCC 609, and *Harman Electronics Private Ltd.  
 Vs. National Panasonic India Pvt. Ltd.*, (2009) 1 SCC 720, the  
 High Court accepted the prayer made by the drawee of the  
 cheque (i.e. the respondent herein) to conclude, that the Courts  
 at Delhi did not have the jurisdiction to try the complaint filed  
 G by the appellant, under Section 138 of the Negotiable  
 Instruments Act. Having so concluded, the Metropolitan  
 Magistrate before whom the matter was pending, was directed  
 to return the complaint to the respondent. Liberty was granted  
 to the appellant, to file the returned petition before the  
 H jurisdictional Court at Kolkata.

5. It is apparent, that the conclusion drawn by the High Court, in the impugned order dated 27.4.2012, is not in consonance with the decision rendered by this Court in *Nishant Aggarwal's* case (supra). Therein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act.

6. In addition to the judgment rendered by this Court in *Nishant Aggarwal's* case, another bench of this Court has also arrived at the conclusion drawn in *Nishant Aggarwal's* case, on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in *FIL Industries Limited vs. Imtiyaz Ahmed Bhat*, Criminal Appeal No. 1168 of 2013 (arising out of SLP (Cri.) No.8096 of 2012), decided on 12.8.2013. This Court in the above matter held as under:

"3. The facts very briefly are that the respondent delivered a cheque dated 23rd December, 2010 for an amount of ₹29,69,746/- (Rupees Twenty Nine lakhs sixty nine thousand seven hundred forty six only) on Jammu and Kashmir Bank Limited, Branch Imam Saheb, Shopian, to the appellant towards some business dealings and the appellant deposited the same in UCO Bank, Sopore. When the cheque amount was not encashed and collected in the account of the appellant in UCO Bank Sopore, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Chief Judicial Magistrate, Sopore. The respondent sought dismissal of the complaint on the ground that the Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint. By order dated 29th November, 2011, the learned Chief Judicial Magistrate, Sopore, however, held that he had the jurisdiction to entertain the complaint. Aggrieved, the appellant filed Criminal Miscellaneous Petition No. 431 of 2011 under Section 561A of the

A Jammu and Kashmir Criminal Procedure Code and by the impugned order dated 2nd June, 2012, the High Court quashed the complaint saying that the Court at Sopore had no jurisdiction to receive and entertain the complaint.

B 4. We have heard learned counsel for the parties and we find that in *K.Bhaskaran v. Sankaran Vidyabalan and Another*, (1999) 7 SCC 510, this Court had the occasion to consider as to which Court would have the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and in paras 14, 15 and 16 of the judgment in the aforesaid case held as under:-

C "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.

D "15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

E "Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

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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."

5. It will be clear from the aforesaid paragraphs of the judgment in *K. Bhaskaran's* case (Supra) that five different acts compose the offence under Section 138 of the Negotiable Instruments Act and if any one of these five different acts was done in a particular locality the Court having territorial jurisdiction on that locality can become the place of trial for the offence under Section 138 of the Negotiable Instruments Act and, therefore, the complainant can choose any one of those courts having jurisdiction over any one of the local area within the territorial limits of which any one of the five acts was done. In the facts of the present case, it is not disputed that the cheque was presented to the UCO Bank at Sopore in which the appellant had an account and, therefore the Court at Sopore had territorial jurisdiction to entertain and try the complaint.

6. Learned counsel for the respondent, however, relied on the decision of this Court in Harman Electronics Private Limited and Another v. National Panasonic India Private Limited to submit that the Court at Shopian would have the territorial jurisdiction. We have perused the aforesaid decision of this Court in Harman Electronics Private Limited (Supra) and we find on a reading of paragraphs 11 and 12 of the judgment in the aforesaid case that in that

A case the issue was as to whether sending of a notice from  
Delhi itself would give rise to a cause of action for taking  
cognizance of a case under Section 138 of the Negotiable  
Instruments Act when the parties had been carrying on  
business at Chandigarh, the Head Office of the  
B respondent-complainant was at Delhi but it had a branch  
at Chandigarh and all the transactions were carried out only  
from Chandigarh. On these facts, this Court held that Delhi  
from where the notice under Section 138 of the Negotiable  
Instruments Act was issued by the respondent would not  
C have had jurisdiction to entertain the complaint under  
Section 138 of the Negotiable Instruments Act. This  
question does not arise in the facts of the present case.

D 7. For the aforesaid reasons, we allow the appeal, set  
aside the impugned judgment of the High Court and  
remand the matter to the Chief Judicial Magistrate, Sopore  
for decision in accordance with law."

(emphasis is ours)

E 7. In view of the above, having taken into consideration the  
factual position noticed by the High Court in paragraph 13 of  
the impugned judgment, we are of the view, that the High Court  
erred in concluding that the courts at Delhi, did not have the  
jurisdiction to try the petition filed by the appellant under Section  
138 of the Negotiable Instruments Act. The impugned order  
F dated 27.4.2012 passed by the High Court is accordingly liable  
to be set aside. The same is, therefore, hereby set aside.

G 8. Despite the conclusion drawn by us hereinabove, it  
would be relevant to mention, that our instant determination is  
based on the factual position expressed by the High Court in  
paragraph 13 of the impugned order. During the course of  
hearing, whilst it was the case of the learned counsel for the  
appellant (based on certain documents available on the file of  
the present case) to reiterate that the cheque in question, which  
H was the subject matter of the appellant's claim under Section



138 of the Negotiable Instruments Act, was presented for encashment at Delhi; it was the contention of the learned counsel for the respondent, that the aforesaid cheque was presented for encashment at Faridabad. It was accordingly submitted, that the jurisdictional issue needed to be decided by accepting, that the dishonoured cheque was presented at Faridabad. It is not possible for us to entertain and adjudicate upon a disputed question of fact. We have rendered the instant decision, on the factual position taken into consideration by the High Court. In case, the respondent herein is so advised, it would be open to him to raise an objection on the issue of jurisdiction, based on a factual position now asserted before us. The determination rendered by us must be deemed to be on the factual position taken into consideration by the High Court (in paragraph 13, extracted above), while disposing of the issue of jurisdiction. In case the respondent raises such a plea, the same shall be entertained and disposed of in accordance with law.

9. Allowed in the aforesaid terms.

B.B.B.

Appeal allowed.