2017 eGLR_HC 10006437

Before the Hon'ble MR. J B PARDIWALA, JUSTICE

MAHENDRA KUMAR KEDARNATH MODI Vs. STATE OF GUJARAT

CRIMINAL MISC. APPLICATION No: 9134 of 2016 , Decided On: 05/05/2017

(A) [Head Notes Incorporated when Published in GUJARAT LAW REPORTER]

MR. DEVEN PARIKH, LD. SR. COUNSEL with MR CHETAN K PANDYA, for the Applicant(s) No. 1 - 3 MR. K.S. NANAVATI, LD. SR. COUNSEL for NANAVATI ASSOCIATES, for the Respondent(s) No. 2 MS. PATHAK & MS. THAKORE, APP, for the Respondent(s) No. 1

J. B. PARDIWALA, J. 1. Since the issues raised in all the captioned applications are the same and the parties are also same, those were heard analogously and are being disposed of by this common judgment and order.

2. By these applications under section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused Nos.2,3 and 4, seek to invoke the inherent powers of this Court praying for quashing of the thirty criminal cases registered in the court of the learned 12th Additional Chief Judicial Magistrate, Vadodara arising from the complaints filed under section 138 of the N.I. Act for the dishonour of the cheques.

3. For the sake of convenience, the Criminal Misc. Application No.9134 of 2016 is treated as the lead matter.

4. The applicants-original accused Nos.2,3 and 4 have prayed for the following reliefs;

"(A) To quash and set aside the complaint being Criminal Case No.49661 of 2015 pending before the Honble Court of 12th Additional Chief Judicial Magistrate, Vadodara at Annexure-A and to pass all incidental and consequential orders as may be deemed fit and proper.

(B) To quash and set aside the bailable warrant issued on 05.03.2016 by the Honble Court of 12th Additional chief Judicial Magistrate, Vadodara under section 138 of the Negotiable Instruments Act, 1881 Annexure-D to this application and to pass all incidental and consequential orders as may be deemed fit and proper.

(C) Pending admission, final hearing and disposal of this petition, to stay further proceedings of Criminal Case No.49661 of 2015 pending before the Honble Court of 12th Additional Chief Judicial Magistrate, Vadodara.

(D) Pending admission, final hearing and disposal of this petition, to stay bailable warrant issued on 05.03.2016 in Criminal Case No.49661 of 2015 by the Honble Court of 12th Additional chief Judicial Magistrate, Vadodara.

(E) To pass any other and further orders as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

(F) To provide for the cost of this application."

5. It appears from the materials on record that the respondent No.2-Gujarat State Fertilizers & Chemicals Ltd. filed a complaint in the court of the learned 12th Additional Chief Judicial Magistrate, Vadodara for the dishonour of the cheques bearing numbers as stated in the complaint punishable under section 138 of the N.I. Act. The averments made in the complaint are as under;

"1) That the Complainant is a limited company registered under the provisions of Companies Act, 1956 having its registered office at P.O Fertilizer Nagar - 391 750, District Baroda, Gujarat and is engaged in the business of manufacturing and selling of fertilizers and industrial products including Corporation.

2) The Accused No.1 viz. Modipon Fibres Company is a division of Modipon Ltd., registered under the provisions of Companies Act, 1956, having its registered office at hapur Road, Modinagar- 201 204, Gaziabad, Uttar Pradesh, India and engaged in the business of manufacturing and selling of Nylon Filament Yarn. The above accused Nos. 2 to 4 are the directors of the said No.1 company and are involved in day to day affairs and management of the said No.1 company. Accused No. 5 and 6 are the authorized signatories of M/s. Modipon Fibres Company, as division of Modipon Ltd and responsible to the conduct of the business of the said Company.

3) The complainant states that all the accused I.e. Accused Nos.2 to 4 are directors of the Accused No.1 Company and Accused No.5 and 6 are responsible signatories of the Accused No.1 Company. It is pertinent to note that all the said Accused when at the time of offence was committed were in charge of and were responsible for the conduct of the business of the Company.

It is further stated that being directors of the Accused No.1 Company, all the directors are taking part in day to day management of Accused No.1 Company. It is further stated that all the aforesaid directors Nos. 2 to 4 were aware of the transaction that the Accused Company had with the Complainant company and at the time of making decision, they were involved in decision making process in respect of entering into transaction with the Complainant Company. It is pertinent to note that at the said relevant point being directors and responsible officers of the Company, all were aware about the financial position of the accused No.1 Company. Despite being aware of the week financial position of the accused No.1 company all the directors and responsible officers and authorized signatories, they all were involved in decision making process of continuing business transaction with the complainant company, advancing on their behalf through their agents, false promises to their knowledge that as and when the amount will be due to the complainant company, the same will be paid.

It is also well settled that in addition to their fiduciary duties, the directors also owe a duty of care to the Company not to act negligently in the management of its affairs. A director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of the Company even through no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially. It is enough if his negligence is of such a character as to enable frauds to be committed and loses thereby incurred by the company.

It is further stated that all the said Accused are responsible for the conduct of the business of the Accused No.1 Company. It is further stated that directors being members of the board are always aware of the transaction that the accused company has with other parties or companies. In the present case also all the directors were aware about the transactions that the accused company had with the complainant company and all the directors have played active role in decision making process with the complainant company.

4. It is pertinent to note here that vide E mail dated 15.04.2007 followed by letter dated 17.08.2017 the accused No.1 had informed the Complainant company to change the name in the invoices, and invoices to be issued in the name of Modipon Ltd. since Modipon Fibres Company is the only division of Modipon Ltd. effective from 02.10.2006.

5. The complainant further states that accused No.1 had approached Complainant, for supplying Caprolactam being manufactured, marketed and sold by the complainant. The complainant has supplied accused No.2 the desired Caprolactam as per written order placed by the accused No.1 from time to time. The complainant company is maintaining and running regular books of accounts of Accused No.1 company on day to day basis for the supplies as per the orders placed by the accused No.1 as per their requirements to their satisfaction and accused No.1 had never raised any complaints/ disputes regarding either quality or quantity thereof, till date.

6. The complainant further states that the company stopped making payment against the goods as supplied by the complainant and therefore the payment for the said goods fell outstanding and as of now the total outstanding to the accused accounts stands at Rs. 24,64,33,025.62. The accused No.1 has issued 3 cheuqes drawn on Karanataka Bank Ltd., New Delhi Branch, bearing Nos. (1) 943805 dated 29.06.2007 of Rs. 19,59,759/- (ii) 943806 dated 29.06.2007 of Rs. 19,59,759 and (iii) 943807 dated 29.06.2007 of Rs. 19,59,759/- total amount of Rs. 58,79,277/- (Fifty Eight Lacs Seventy Nine Thousand Seventy Seven Only) in favour of the complainant against part outstanding legal dues. That in view of the said outstanding amount accused No.1 company had assured payment and payment & clearances of the outstanding amount vide many letters and assurances given therein, but to no avail. That in view of admitted liability, accused No.1 company had issued cheques with a view to clear liabilities towards the complainant company. Towards the aforesaid dues the accused No.5 and 6 had signed and issued three cheques from M/s. Modipon Fibre Company (a division of Modipon Ltd.) bearing Nos.(1) 943805 dated 29.06.2007 of Rs. 19,59,759/- (ii) 943806 dated 29.06.2007 of Rs. 19,59,759 and (iii) 943807 dated 29.06.2007 of Rs. 19,59,759/- drawn on Karnataka Bank Ltd., New Delhi Branch. The cheques were issued in favour of the complainant company with an implied assurance that the cheques would be honoured and payment shall be duly made.

7. Despite various correspondences with the Company, the outstanding amount was not cleared and, therefore, the complainant again required and called upon the Accused No.1 company to clear the outstanding but the accused No.1 company informed that it was in financial trouble and therefore, was in no position to clear the outstanding and that the same would be cleared as and when possible. However, all the accused on behalf of the accused No.1 company had impliedly assured clearance upon deposit of the said cheques and recovery of the amount and accordingly, the complainant presented the cheques with its banker viz. Corporation Bank ,New Delhi. Upon presenting the cheques on 17.10.2007, the bank sent the cheques with return memos dated 18.10.2007 which was received by the complainants bank viz. Corporation Bank , New Delhi on 18.10.2007. The corporation Bank had informed the complainant on 18.10.2007 that cheque bearing Nos. 1) 943805 dated 29.06.2007 of Rs. 19,59,759/- (ii) 943806 dated 29.06.2007 of Rs. 19,59,759 and (iii) 943807 dated 29.06.2007 of Rs. 19,59,759/- drawn on Karnataka Bank Ltd., New Delhi Branch were dishonoured by the banker for the reason FUNDS INSUFFICIENT". However, the accused intentionally, deliberately and with malafide intent to cheat the complainant and to evade payment did not make sufficient arrangement with Accused Bank to ensure that the cheques shall be honoured. Moreover, the accused never intended to clear the outstanding amount of the complainant and gave the cheques only to see that no proceedings are initiated by complainant against company till it is registered with BIFR, with intent to frustrate all available remedies of the complainant to recover its amount.

8. Thereafter, the advocate of the complainant under instruction of the complainant sent statutory notice on 7.11.2007 under section 138 read with section 141 of the Negotiable Instrument Act, 1881 to the accused. The said notice was sent by UPC and RPAD to all the accused at their respective proper address, calling upon them to make the payment of Rs.19,69,759/- + Rs.19,69,759 + Rs.19,69,759 = Rs. 58,79,277/- (Fifty Eight Lacs Seventy Nine Thousand Seventy Seven Only) within 15 days from the receipt of the notice. The notice sent by UPC was served to all the accused.

9. Advocate of complainant had sent notices to all the accused by RPAD and UPC dated 7.11.2007 on 8.11.2007.

10. The accused have failed and neglected to make the payments as demanded in the notice within 15 days thereof. The said cheques were issued by the Accused towards their existing debt and liability to the complainant and the cheques had been dishonoured due to the reason "FUNDS INSUFFICIENT" as endorsed by their own Bankers and therefore, the accused have unequivocally committed offence under section 138 read with section 141 of the Negotiable Instruments Act, 1881.

11. The notices dated 07.11.2007 were sent to all the accused on 08.11.2007 and replies in respect of the notices were received by the advocate of the complainant on various dates starting from 21.11.2007 and the last reply was received on 13.12.2007 and the complaint has bee filed today and therefore, the same is within the period of limitation. It is further stated that despite the notices served upon all the accused under the provisions of Negotiable Instruments Act 1881, all the accused deliberately did not make any arrangement towards clearance of the said cheques and have given evasive reply not tenable in the eye of law, only with a view to avoid discharging the admitted debts and liability, that all the accused owed towards the complainant.

All the accused had replied vide reply of notice dated 24.11.2007 which was received by the advocate of the complainant on 28.11.2007, through their advocates Op. Khaitan and Co. Further, all the accused had issued Corrigendum dated 28.11.2007 to clear certain typographical error of their earlier reply dated 24.11.2007, which was received by the advocate of the complainant on 1.12.2007. All the replies are false, frivolous and misleading.

The reply as aforesaid is issued with a view to frustrate the trust in the commercial transaction and is advanced only with a view to abuse the process of law and to avoid making payments towards admitted legal debts and liability. It is further stated that as aforesaid all the accused are actively involved in the conduct of the business of the accused company and all accused are responsible to the conduct of the accused company.

12. The cause of action has arisen in favour of the complainant and against the accused within the jurisdiction of this Honble Court when the notices under section 138 read with section 141 of above said act were served upon the accused and when they failed to comply with the same and neglected to make payments of the amount of the dishonoured cheques within 15 days from the receipt of the notices, as also when the replies to the said notices were received within the jurisdiction of this Honourable Court. "

6. It appears from the materials on record that the complainant has an account with the Bank of Baroda, Fertilizer Nagar Branch, Vadodara. The accused persons issued various cheques drawn in favour of the complainant in connection with the sale transaction of Caprolactam manufactured and marketed by the complainant.

7. Various cheques, to the tune of about Rs.11 to 12 crore were issued in favour of the complainant and handed over to the officials of the complainant at New Delhi. The accused issued the cheques in favour of the complainant drawn on the Karnataka Bank Ltd., New Delhi Branch. As the cheques were delivered at New Delhi, the complainant, instead of bringing those cheques to Vadodara, and depositing them in the Bank of Baroda, Fertilizer Nagar Branch, Vadodara, thought fit to handover those cheques to the Corporation Bank, New Delhi for the purpose of clearance. It appears that the Corporation Bank at New Delhi has provided the facility of FCS (Fund Collection System) (Parent Caps-Ahmedabad) for the complainant, by which facility, the daily fund/amount is collected from all the centers and credited in the account No.02090500000002 at the Bank of Baroda Fertilizers Nagar Main Branch, Vadodara. The cheques, which were presented before the Corporation Bank, were sent for clearance, and the Corporation Bank informed the complainant that all the cheques had been dishonoured to the account maintained by the complainant with the Bank of Baroda, Fertilizers Nagar Branch, Vadodara.

8. In such circumstances referred to above, the complainant issued the statutory notice to the accused persons, and as the amount was not paid, ultimately, thirty complaints came to be filed for the offence under section 138 of the N.I. Act in the court of the learned 12th Additional Chief Judicial Magistrate, Vadodara.

9. It is the case of the applicants that the complaints, for the dishonour of the cheques, could not have been filed in the court of the 12th Additional Chief Judicial Magistrate, Vadodara as the territorial jurisdiction to try the complaints would be with the court at New Delhi. This is the sum and substance of all the applications on hand.

Submissions on behalf of the applicants:

10. 10. Mr. Deven Parikh, the learned senior counsel appearing for the applicants has filed his submissions in writing. The submissions are as under;

10.1 A perusal of Section 142(2) demonstrates that it is in two parts. It either gives jurisdiction to the Court where the payees bank is situated or where the drawees bank is situated. In the facts of the present case, the jurisdiction is of the Court where the drawees bank (applicants bank) is situated.

10.2 Section 142(2)(a) read with the explanation confers jurisdiction to the former whereas Section 142(2)(b) confers jurisdiction to the latter.

10.3 Section 142(2)(a) deals with the situation where any kind of cheque is sent for collection through an account of the payee. The account referred to is obviously the payees account inasmuch as it is the Courts of the bank where such an account is maintained are situated that are conferred jurisdiction. Obviously when jurisdiction is granted based on the situation of the bank where the account is maintained, it must necessarily imply that the words "through an account"

must mean the payees account, as it is the place of this account which is taken into consideration for conferring jurisdiction.

10.4 The explanation clarifies that if the cheque is forwarded for collection from any other branch of the payees bank even then it is the branch where he actually holds the accounts that is relevant in the context of jurisdiction.

10.5 To exemplarate, if A has an account with SBI, Navrangpura Branch, and he deposits a cheque drawn on any bank in Delhi by the drawer, for collection in the said account, then it is the Courts where the Navrangpura Branch is situated that has jurisdiction. (under 142(2)(a) itself). If A deposits this very cheque drawn on any bank in Delhi by the drawer, in any branch of the SBI (i.e. the Bank of the Payee) situated in any other part of the country, even then, it shall be deemed that the cheque is deposited in his SBI, Navrangpura Branch, for the purpose of jurisdiction (as per the explanation). The explanation to Section 142(2) in terms states that it is only for the purposes of Clause (a).

10.6 If the payee seeks to encash his cheque in any other manner, than by depositing it for collection in his bank account at Navrangpura or at any other branch of the SBI, then, the case will fall under 142(2)(b).

10.7 Section 142(2)(b) deals with the situation not covered by (a). In such circumstances, it is the courts at the branch of the drawee bank that will have the jurisdiction.

10.8 Thus, if the payee does not use his account nor his bank to deal with the cheque, the legislature has not thought it fit to grant him the jurisdiction of the court where his account is actually situated. In such circumstances, the legislature has thought it fit to grant jurisdiction to the courts where the drawee bank is situated.

10.9 In the present case admittedly, the GSFC has its account in the Bank of Baroda at Vadodara. It has however not deposited the cheques drawn by the applicant for collection either in its account in the Bank of Baroda at Vadodara nor has it deposited the same for collection in any other branch of Bank of Baroda, anywhere in the Country. Clearly, therefore, this is not a case falling under 142(2) (a) or the explanation.

10.10 The GSFC has not chosen to use its bank or its bank account but has chosen its independent agreement and arrangement with the Corporation Bank, New Delhi for the purpose of deposit and presentation of the cheque. Such a situation falls under 142(2)(b).

10..11 The GSFCS detailed arrangement with the Corporation Bank, New Delhi is demonstrated by the documents from page 45 to 63 of the further Affidavit filed by the GSFC itself. The following salient features emerge:

a). The arrangement needs a separate Board Resolution (page 45), a separate exposure and credit limit (page 51), copies of income tax orders, display boards of the charge of Corporation Bank on the assets of the Company, submission of yearly audited accounts, etc. (page 53), which demonstrates a complete independent transaction between GSFC and Corporation Bank, New Delhi.

b). A separate customer code is granted by Corporation Bank to GSFC (page 57).

c). As soon as the cheque is deposited, Corporation Bank immediately transfers the money to the Bank of Baroda Account of GSFC even prior to realization through RTGS (page 46).

d). The definition of Bank is read to mean the Corporation Bank and not Bank of Baroda. GSFC further agrees that the Corporation Bank will not be held responsible if GSFC gives a wrong account for deposit of the money. As per clause 9, the Corporation Bank has authority to deduct from the collection proceeds any charges or expenses for providing the fast collection service. In case the cheque is returned and Corporation Bank is out of funds because they have already paid before hand, then the Corporation bank will charge interest. The Corporation Bank can recover this amount from further recovery of honoured cheques and in the meantime can also delay the payments (page 47). All these demonstrate that there is a clearly independent agreement and understanding between GSFC and the Corporation Bank which has no connection with its original account with the BOB. The only connection is that as instructed by GSFC, Corporation Bank will forward its RTGS payments even before collection to the said account. BOB is not even a party to this agreement and plays no role whatsoever in these dealings.

e). Even the "Pay-in-form" are not of BOB but of Corporation Bank showing the customer code of GSFC (pages 56 to 63). Hence, the "Pay-in-Form" also has no connection with the account of GSFC in BOB. It has direct connection to an independent deposit with the Corporation Bank.

f). All these facts are accepted in paras 4 & 5 of the Additional Affidavit of Respondent themselves (pages 38 & 39).

g). It is averred in para 6 of the said Affidavit that Corporation Bank is like a "holder in due course". (page 40).

h). Even the communication of the rejection of the cheque was sent by the Karnataka Bank, New Delhi to the Corporation Bank, New Delhi and not to the BOB, Baroda. Thus, the BOB account had no connection to the presentation or encashment of the cheque even the proceeds of the cheque if encashed would have gone to the Corporation Bank.

10.12 The aforesaid demonstrates, a completely independent mechanism between the GSFC and the Corporation Bank, New Delhi for the deposit and collection of the cheques. This agreement is not even remotely connected to the BOB account of the GSFC. In the new banking world, there may be various ways for presenting a cheque for collection, otherwise than through the payees account. The present is one such arrangement in the modern banking world.

10.13. All such arrangements where the payee does not use his account or his bank will fall under Section 142(2)(b).

10.14. The argument that Section 142(2)(b) deals with the bearer cheques whereas Section 142(2)(a) deals with cross or cross order cheques is clearly not palatable.

10.15. Nothing stopped the legislature from providing that Section 142(2)(b) deals with the bearer cheques. The absence of such language demonstrates that the legislature wanted to cover all kinds of situations where a cheque is presented otherwise than through an account.

10.16 More importantly a scheme of the Negotiable Instruments Act and more Specifically Sections 5, 64, 123 and 126 make no distinction between a bearer cheque or a cross cheque, so far as they are considered to be a negotiable instrument or a bill of exchange. Both kind of cheques are required to be presented for payments (Section 64). The only difference is to whom the bank should pay. (Section 126). However, the presentation for payment is to be done for both the cheques. Thus,

the mere use of the words "presented for payment" in Clause (b) of Section 142(2) is quite irrelevant inasmuch as both kind of cheques are required to be presented for payment. Furthermore, both kind of cheques can be presented for payment through an account. More often than not even bearer cheques are presented through the account of the holder. Thus, in the manner in which the banking transactions are carried out in the two kinds of cheques and further in light of there being no difference in the two kinds of cheques under the Negotiable Instruments Act in the context of their being bill of exchanges, such an artificial compartmentalization of clause (a) and clause (b) is clearly neither justified nor sustainable.

10.17. The judgment of this Court in Criminal Miscellaneous Application No. 13062 of 2011 clearly deals with a case under Section 142(2)(a). In that case the cheque was drawn on the Union Bank of India, Uttar Pradesh and was deposited by the Complainant with the ICICI Bank, Uttar Pradesh. It is important to note that the Complainants bank was the ICICI bank itself. Thus, though it was a pooling account, it was a pooling account with the Complainants own bank. Hence, the Complainant used his own bank account to deposit the cheque. In this case, even the intimation of dishonour was received from the ICICI Bank Limited at Ahmedabad.

10.18. The Court referred to the New Banking System where under a person can deposit a cheque in any branch of his bank and not necessarily the branch where he holds the account.

10.19. Now in such circumstances this Court immediately relied upon the explanation in the Section to hold that there is a deeming fiction that even if the cheque is presented in any other branch of his bank it shall be deemed to have been deposited in the branch where he has an account. The Court went on to refer to various case laws on explanations and deeming fictions.

10.20. Clearly therefore, the court was considering that case to be under Section 142(2)(a). As a matter of fact, the argument that the case fell under Section 142(2)(b) was specifically rejected.

10.21. It is submitted that even in the context of the present interpretation, this Court arrived at the correct conclusion as it was dealing with Section 142(2)(a) read with the explanation, and in that case the IClCl where themselves the Complainants bankers. In light of the explanation, it may be little different whether the cheque was deposited in their own account of lClCI bank or in any other branch of their bank.

10.22. The aforesaid judgment has no application to Section 142(2)(b). inasmuch as the said Sub-Section was not being considered. The observations cannot be taken to be an absolute proposition of law laid down in the context of the said sub-section.

10.23. When the Court was not dealing with the said sub-section, the judgment cannot be read as if the court was considering all the possibilities that may ever fall under the said sub-section. The Court only gave an example that the situation where a bearer cheque is presented over the counter could be a situation falling under 142(2)(b). The court started giving an example on page 12 and in continuation thereof, gave an illustration that when the cheque is presented over the counter would be one of the situations covered under 142(2)(b). Having given this illustration, the same illustration was continued at the end of the judgment on page 27.

10.24. It is submitted that by no stretch of imagination can it be suggested that the court was seeking to lay down any and every possible situation that would be covered under the said sub-section. This was not even the issue before the court. Clearly presenting a cheque over the counter is one of the obvious situation covered under the said sub-section, but to read the said judgment as an authority for the fact that there can be no other situation falling under 142(2)(b) is a clear far cry.

10.25 If the Judgment is read in such a manner, then, there is also an observation on page 12 that in View of the amendment a Complaint can only be filed in the court where the payees account is located. This is absurd inasmuch as the court is bound to know that under Clause (b) the complaint can be otherwise. It is submitted that the judgment can only be read in the context of the issues before it.

10.26. The said judgment can never purport to cover each and every situation falling under 142(2) (b), neither could that have been the intent of the Court while giving such illustrations.

10.27. Even otherwise, the application is required to be allowed on the basis of the complaint itself. The complaint specifically says that their bankers are Corporation Bank (page 16). Even the written memo was received by the Complainants bank i.e. the Corporation Bank (page 17). Thus, BOB is not referred as their banker anywhere in the complaint. Even on page 21A, the list of witness shows the person in- charge of the complainants bank viz. Corporation Bank, New Delhi branch.

10.28 The issue of jurisdiction have to be decided on the basis of the averments in the complaint. Bank of Baroda and their account in it is not even mentioned. Hence also, the application ought to be allowed.

10.29 The applications are, therefore, required to be allowed.

11. Mr. Parikh, in support of his submissions, has placed reliance on a decision rendered by this Court in the case of Brijendra Enterprise C/o. Shri Enterprise & Anr. vs. State of Gujarat & Anr.,

reported in 2016(3) GLH 143.

Submissions on behalf of the complainant:-

12. On the other hand, all the applications have been vehemently opposed by Mr. K.S. Nanavati, the learned senior counsel appearing for the complainant. Mr. Nanavati has also filed his submissions in writing. The submissions are as under;

12.1. The cheques issued by the accused are Crossed "Account Payee only" cheques, drawn on the Karnataka Bank Ltd in favour of the Complainant. For collection of the cheques, the banker of the Complainant is the Corporation Bank with which the Complainant has entered into arrangement of Fast Collection Services (FCS). Under this arrangement, the Complainant has to deposit the cheques for collection at any of the operating branches of the Corporation Bank. The Corporation Bank has assigned a "Customer Code (GFC 563)". All the cheques delivered for collection to the Corporation Bank would be reflected in the Account of the complainant. On the amount being collected, the collection would get credited in the Pooled Account No. 02090500000002 with the Pooling Branch of Bank of Baroda.

12.2. On such facts, the case clearly falls under Section 142(2)(a). Section 142(2) seeks to define the jurisdiction to try offences under section 138 of dishonoured cheques. The jurisdiction is defined and demarcated by reference to the mode of collection.

12.3. The Act contemplates two modes of collection; viz - through an account and (ii) otherwise through an account i.e. over the counter.

12.4(I) In all cases where the cheques are delivered for collection "through an account" i.e. not over the counter, Section 142(2)(a) applies.

(ii). "Otherwise through an account"- This mode would cover collection of payment against a cheque which is collectable "otherwise through an account".

Looking to the scheme of the Act, particularly Section 5 and Section 13-the cheque could be payable either to order or to bearer [Section13(1) and Section 5). Delivery of such cheques for collection could be "over the counter". If such cheque is dishonoured, the case would be governed by section 142(2)(b).

The cheques which are not payable to the bearer or to order, viz. cross cheques are governed by Chapter XIV. Reading Section 123 with Section 126, it is clear that the banker on whom the cheque is drawn "shall not pay it otherwise then to a banker". The payment of such cheques either to a bearer or to the order of the payee is not permissible over the counter. Such cheques, if dishonoured, would fall under Section 142(2)(a).

12.5. This is the plain grammatical meaning of the provision and resort to the explanation is not necessary because on the facts of the case, the cheque in question is a crossed cheque, payees account only. Therefore, it cannot be delivered for payment over the counter. The cheque and the payments would be transacted through only "an account", and therefore the applicable sub-section would be 142 (2)(a) and not (b) as the applicants seek to contend. In such case, in terms of Section 142(2)(a) the Court competent to inquire and try the offence would be the Court situated at a place where the Bank of the payee i.e. the Complainant is located i.e. Baroda.

12.6 The contention of the accused that the account through which the cheque is delivered for collection has to be the account of the payee has no substance because that would be adding the words "of payee" in first part of Section 142(1) (a) which is not permissible. In its natural and grammatical meaning, the provision is wide enough to cover all cases of dishonoured cheques not payable over the counter or which are sent for Collection through an account "even if such cheque happens to be a bearer cheque". Apart from the fact that in the event of the cheque being a bearer cheque, the payee would have to deliver the cheque to the drawers bank for payment "otherwise through an account" that is over the counter, and cannot be deposited in payees account (like an account payee cheque) as suggested by the applicants.

12.7. Even otherwise, in the instant case such issue does not arise because as is apparent from the pleadings the collecting Bank i.e. Corporation Bank does maintain an account of the Complainant bearing Code No. GFC 563.

12.8. The submission of the accused that there is no distinction between the cross and bearer cheques and both are negotiable instruments and have to be presented to the drawee has no relevance to the interpretation. Both are undoubtedly negotiable instruments, however, both are treated separately by the Act in so far as how the payment is to be made is concerned, which Section 142 (2) seeks to bifurcate.

12.9. The case of the Complainant is fully covered by the Judgement of this Court in Criminal Miscellaneous Application No. 13062 of 2011 dated 30.03.2016 and in particular paragraphs 19, 28, 29, 41 and 42 where the Court has in terms discussed the mode of collection of cross cheques or open or bearer cheques. How the Cheque is delivered for collection and processed by the collecting bank through the coded account of the complainant is essentially a question of fact. That would depend on the evidence that may be led at the trial or an inquiry conducted pursuant to the

orders of the Court. Such issue can therefore be a subject matter of application under Section 177 read with Section 201 of CrPC and not in an application under Section 482. To put it in other words, the applicants ought to have raised the issue of territorial jurisdiction before the trial court and should have asked the trial court to return the complaints and present them before the appropriate court having jurisdiction to try the complaints. In such circumstances referred to above, it is submitted that all the applications be rejected.

13. Mr. Nanavati also seeks to rely on the following averments made in the affidavit-in-reply filed on behalf of the complainant;

"6. With reference to para 7 of the Application, I say that before passing the Order dated 22.08.2015 below Exh. 18, the Ld. Metropolitan Magistrate, Ahmedabad was not required to hear the Accused as the Applicants themselves had preferred Application under S. 201 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") alleging that the Ld. Metropolitan Magistrate did not have territorial jurisdiction as stated by the Applicants themselves in para 4 of the present Application. Apart from that, I say that Respondent No. 2 is the Complainant and for seeking return of its Complaints, the Accused need not be heard. At any rate, Respondent No. 2 was acting in compliance of the Order dated 14.08.2015 passed by this Honble Court. I say that the Applicants have not. challenged the said Order dated 22.08.2015 below Exh. 18 and therefore, they cannot now be heard to say in the present Application that they were not heard before the Order dated 22.08.2015 was passed.

7. With reference to para 8 of the Application, I deny that the impugned cheques were returned unpaid at the banks situated at New Delhi as alleged. I say that Respondent No. 2 maintains Account No. 02090500000002 at Bank of Baroda at Vadodara. Corporation Bank has provided to Respondent No. 2 facility of Fund Collection System (hereinafter referred to as "FCS) at New Delhi by which facility, the daily fund/ amount is, collected from all Centers and credited in the said Account No. 02090500000002 at Bank of Baroda, Vadodara. Annexed hereto and marked as Annexrure-RI is a copy of a Certificate dated 07.09.2015 with Annexure A thereto issued by the Senior Manager of Corporation Bank, Ahmedabad certifying that the cheques listed at Annexure A to the said Certificate had been deposited and dishonored to the said Account No. 02090500000002 at Bank of Baroda, Vadodara. I say that the impugned cheques were deposited in New Delhi only to facilitate collection so that the amount is credited in the said Account No. 02090500000002 maintained by Respondent No. 2 at Bank of Baroda, Vadodara.

9. With reference to para 10 of the Application, I reproduce for ready reference the Explanation to S.142(2) of the Negotiable InStruments Act, 1881 (hereinafter referred to as "the Act") after the amendment dated 26. 12.2015:

Explanation: For the purpose of Clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have

been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

As aforesaid, Respondent No.2 maintains Account No. 02090500000002 at Bank of Baroda, Vadodara. The impugned cheques though deposited in New Delhi, as stated in the said Certificate dated 07.09.2015 issued by Corporation Bank, under the funds collected were to be credited in Account No. 02090500000002 at Bank of Baroda, Vadodara. Therefore, I say that in view of the Explanation to S. 142(2) of the Act, the Honble Court of 12th Additional Chief Judicial Magistrate, Vadodara has territorial jurisdiction to inquire into and try the offence under S.138 of the Act.

10. With reference to para 11 of the Application, I say that the Applicants cannot be aggrieved or dissatisfied with the filing of the Criminal Case before the Honble Court of 12th Additional Chief Judicial Magistrate, Vadodara and issuance of the Bailable Warrants vide Order dated 05.03.2016. I say that the Applicants are admittedly defaulters and liable to be prosecuted for the offence under S.138 of the Act in accordance with law and cannot simply be permitted to raise territorial jurisdiction issues wherever ReSpondent No. 2 files the Complaint in line with the legal position at the time of filing the Complaint.

11. I say that the Honble Court of 12th Additional Chief Judicial Magistrate, Vadodara does have territorial jurisdiction to inquire and try the offence under S. 138 of the Act in accordance with the amendment dated 26.12.2015 of the Act.

14. Mr. Nanavati further seeks to rely on the averments made in an additional affidavit filed on behalf of the complainant;

"4. I say that, respondent No.2 has been availing/having arrangement of FCS with Corporation Bank for past number of years which is merely a facility/service of collection of cheques from serveral places of the drawers in the country to the Bank Account of the beneficiary of this gervice and effectively reduces the process time. For such facility inlvolving collection and transfer of funds, Corporation Bank allots a Customer Code and charges a very nominal amount. Since the business of Respondent No.2 is spread across various parts of the country, such FCS immensely helps Respondent No.2 as cheques received at different places in the country can be deposited at a convenient FCS branch of Corporation Bank and the funds so collected are credited to the Bank Account of the Beneficiary. This is merely an arrangement or method or facility of pooling cheques deposited at various branches of Corporation Bank across the Country for crediting in Bank Account No. 02090500000002 ("Central Pooling Account") maintained by Respondent No.2 with Bank of Baroda, Fertilizer Nagar, Vadodara. I say that, for this purpose, Respondent No.2 has been a given a Customer Code "GFC 563" for availing such service. Annexed hereto and marked as Anenxure-R3 (Colly.) are copies of Pay-in- Forms dated 17.10.2007 reflecting the said Customer Code GFC 563 and details of the cheques in question and copies of some cheques that got dishonoured with their Return Memos. For availing this service, the beneficiary need not have any

bank account with Corporation Bank at any place in India including New Delhi. Instead, the Customer Code allotted is sufficient for effective functioning of the facility.

5. Thus, the total amount of the previous days cheques so deposited gets reflected in the said Central Pooling Account even before the cheques so deposited get realized or dishonoured. In case of dishonour of a cheque deposited with any FCS Corporation Bank branch anywhere in the country, as per the terms and conditions of the arrangement, Corporation Bank currently charges Rs. 100/ - per such returned unpaid instrument and some interest as stated in the terms and conditions and give effect to the cheque dishonoured. Therefore, I say that, regardless of where a cheque is deposited by Respondent No.2 with any FCS branch of Corporation Bank, it effectively (in all practical purposes), amounts to depositing in the said Central Pooling Account maintained by Respondent No.2 at Bank of Baroda, Fertilizer Nagar, Vadodara. Such FCS or Cash Management Service is provided by other banks also such as ICICl Bank without there being any requirement of maintaining an account at every branch involved in providing such service.

6..I say that, Corporation Bank where Respondent No.2 does not maintain any bank account can at best be called mere holder in due course (facilitating agency) and therefore depositing a cheque in any FCS branch of Corporation Bank, Delhi shall amount to depositing the cheques in the said Bank Account] Central Pooling Account of Bank of Baroda, Fertilizer Nagar Branch only Hence, the Court having territorial jurisdiction over Bank of Baroda, Fertilizer Nagar Branch, Vadodara has to be the Court that can inquire into and try the offence under Section 138 of the Negotiable Instruments Act, 1881.

7. I say that, the current legal position on territorial jurisdiction of a Court for instituting a Complaint under S. 138 of the Negotiable Instruments Act, 1881, especially, after the Negotiable Instruments (Amendment) Act, 2015 came into force is that, a Complaint under the said Section can only be filed in the Court situated at and having jurisdiction over the place where the bank, in which the payee holds account, is located. This legal position has been well explained by the Honble Bench comprising of Mr. Justice J B Pardiwala of Honble Gujarat High Court at Ahmedabad in its recent judgment dated 30.03.2016 in the case of Brijendra Enterprise C/o Shail Enterprise v. State of Gujarat.

8. in View of the above, I say that the Court having territorial jurisdiction over Corporation Bank, New Delhi where the cheques were deposited, in the present case cannot and does not have territorial jurisdiction merely because Respondent No.2 is not required to and does not maintain any bank account with the said bank and therefore, the Court havmg terriroriaI jurisdiction over Bank of Baroda, Fertilizer Nagar Branch, Vadodara alone shall have territorial jurisdiction in the present matter as Respondent No.2 maintains the said Central Pooling Account where the amounts of the dishonoured cheques under FCS would have been credited, had the same been honoured on presentment. "

ANALYSIS

15. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the 12th Additional Chief Judicial Magistrate, Vadodara has the territorial jurisdiction to try the complaints filed by the complainant under section 138 of the N.I. Act.

16. In the case of Brijendra Enterprise (supra), I had the occasion to consider the issue of territorial jurisdiction of a court to try the offence under section 138 of the N.I. Act having regard to the amended provisions of section 142 of the N.I. Act. In the said case, the cheque was drawn by the accused on an account maintained by him with the Union Bank of India, Badalapur, Dist: Jaunpur, State of U.P. The complainant deposited the cheque with the ICICI Bank Ltd., Gorakhpur Branch, Gorakhpur, State of U.P. The cheque was dishonoured as the funds were insufficient in the account maintained by the accused with the Union Bank of India. The complainant issued a statutory notice under section 138 of the Act and as the accused failed to make the payment within the statutory time period, the complaint was lodged in the court of the learned Metropolitan Magistrate, Ahmedabad. The accused filed an application stating therein that as the entire transaction had taken place in the State of U.P., the court at Ahmedabad had no territorial jurisdiction to entertain the complaint for the dishonour of the cheque, although the registered office of the complainant is situated in Ahmedabad. To put it in other words, the contention raised on behalf of the accused was that the cheque issued by the accused was presented by the complainant in a Bank where the complainant had no account, but as the Centralized Pooling Account was created at Ahmedabad, the ICICI Bank at Gorakhpur accepted the cheque for the purpose of clearance and credited in the account maintained by the complainant with the ICICI Bank at Ahmedabad.

17. The contention raised by the accused in the said case as regards the territorial jurisdiction of the court at Ahmedabad to try the offence was rejected by me holding as under;

"Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the Court of the learned Metropolitan Magistrate, Ahmedabad, has the territorial jurisdiction to try the offence of dishonour of cheque, punishable under Section 138 of the Act.

This matter is of the year 2011. The same will have to be now considered keeping in mind the Negotiable Instruments (Amendment) Act, 2015.

The President of India promulgated an Ordinance called, the Negotiable Instruments (Amendment) Ordinance, 2015, on 15th June 2015, effecting certain amendments in the Negotiable Instruments Act, 1881. The jurisdiction to file complaints of dishonour of cheques has now been changed by virtue of the said Ordinance, superseding the judgment of the Supreme Court in the case of Dashrath

Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129. A complaint for the dishonour of cheque under Section 138 of the Act needs to be now filed in a Court at a place in accordance with the provisions of Section 142(2) of the Act, which has been inserted by the new Ordinance referred to above. According to the new Ordinance, even the pending cases would stand transferred to the Courts.

In Dashrath Rupsingh Rathod (supra), a three Judge bench of the Supreme Court took the view that a complaint for dishonour of cheque can be filed only in a Court which has the territorial jurisdiction over the place where the cheque is dishonoured by the bank on which it is drawn. Thus, if a cheque is drawn by a person of the account maintained with his bank at Ahmedabad, the complaint for dishonour in respect of such cheque could be filed only in a Court at Ahmedabad within whose territorial jurisdiction the said bank is located. According to the decision of the Supreme Court, such a case cannot be filed in any other Court at any other place. For example, if X is the payee of the cheque and if he presents a cheque for clearing at Vadodara, it cannot be filed at Vadodara. The judgment of the Supreme Court proceeded on the footing that the payee of a cheque should not necessarily harass the drawer of the cheque by filing complaint for dishonour at the place of his choice by deliberately choosing a different place for presenting the cheque or for sending the notice, etc. The above was the position according to the decision of the Supreme Court.

It appears that the Legislature took notice of the difficulties experienced by the people at large and, therefore, thought fit to introduce the amendment by way of an Ordinance in the Act itself.

The Negotiable Instruments (Amendment) Ordinance, 2015 (No.6 of 2015) was promulgated by the President of India further to amend the Negotiable Instruments Act. The Ordinance was published in the Gazette, dated 15th June 2015. As per the Ordinance, sub-section (2) of Section 142 of the Negotiable Instruments Act was inserted, which reads as follows:

"(2) The offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction:--

(a) If the cheque is delivered for collection through an account, the branch of the Bank where the payee or holder in due course, as the case may be, maintains the account, is situated: or

(b) If the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.--For the purposes of Clause (a), where a cheque is delivered for collection at any branch of the Bank of the payee or holder in due course, then the cheque shall be deemed to have

been delivered to the branch of the Bank in which the payee or holder in due course, as the case may be, maintains the account."

By the said Ordinance, Section 142A was inserted in the Principal Act. Section 142A reads as follows:

"142A.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or directions of any Court, all cases arising out of Section 138 which were pending in any Court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the Court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub- section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the Court having jurisdiction under sub- section (2) of Section 142 or the case has been transferred to that Court under sub-section (1), and such complaint is pending in that Court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same Court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that Court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different Courts, upon the said fact having been brought to the notice of the Court, such Court shall transfer the case to the Court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

The Negotiable Instruments (Amendment) Ordinance, 2015 (Ordinance 6 of 2015) came to be replaced with the Negotiable Instruments (Amendment) Bill, 2015. The Negotiable Instruments (Amendment) Bill, 2015, inter alia, provides for the following, namely :

(i) cases relating to dishonor of cheques under section 138 of the said Act to be inquired and tried only by a court within whose local jurisdiction the branch of the bank, where the payee or the holder in due course maintains the account, is situated;

(ii) cases under section 138 pending in any court before the commencement of the proposed legislation to be transferred to the court in accordance with the new scheme of jurisdiction for such

cases as proposed under sub-section (2) of section 142;

(iii) where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of section 138 of the said Act against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court;

(iv) where, if more than one prosecution filed by the same payee or holder in due course against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case of the court having jurisdiction as per the new scheme of jurisdiction proposed under sub-section (2) of section 142; and

(v) amending Explanation I under section 6 of the said Act which relates to the meaning of expression a cheque in the electronic form, as the said meaning is found to be deficient because it presumes drawing of a physical cheque, which is not the objective in preparing a cheque in the electronic form and therefore, inserting a new Explanation III in the said section giving reference of the expressions contained in the Information Technology Act, 2000.

The (Amendment) Act, 2015, provides as under :

5. (1) The Negotiable Instruments (Amendment) Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

In view of the amendment, a complaint for dishonour of cheque under Section 138 of the Act can be now filed only in the Court situated at the place where the bank, in which the payee has account, is located.

Let me give an example to understand the jurisdiction according to the amendment :

1. A holds an account with the Navrangpura Branch, Ahmedabad, of XYZ Bank, issues a cheque payable at par in favour of B. B holds an account with the M.S. University Road Branch, Vadodara,

of the PQR Bank, deposits the said cheque at the Surat Branch of the PQR Bank and the cheque is dishonoured. The complaint will have to be filed before the Court having the local jurisdiction where the M.S.University Road Branch, Vadodara, of the PQR Bank is situated.

2. A holds an account with the Navranpura Branch, Ahmedabad, of XYZ Bank, issues a cheque payable at par in favour of B. B presents the said cheque at the Vadodara Branch of the XYZ Bank (but B does not hold account in any branch of the XYZ Bank) and the cheque is dishonoured. The complaint will have to be filed before the Court having the local jurisdiction where the Navrangpura Branch, Ahmedabad, of the XYZ Bank is situated.

Therefore, to summarise, first, when the cheque is delivered for collection through an account, the complaint is to be filed before the Court where the branch of the bank is situated, where the payee or the holder in due course maintains his account and, secondly, when the cheque is presented for payment over the counter, the complaint is to be filed before the Court where the drawer maintains his account.

Secondly, once a complaint for dishonour of the cheque is filed in one particular Court at a particular place, then later on if there is any other cheque of the same party (drawer) which has also dishonoured, then all such subsequent complaints for dishonour of the cheques against the same drawer will also have to be filed in the same Court (even if the person presents them in some bank in some other city or area). This would ensure that the drawer of the cheques is not harassed by filing multiple complaints for dishonour at different places. It necessarily implies that even multiple complaints for dishonour of cheques against the same party can be filed only in one Court even though the cheques might have been presented in different banks at different places.

Thirdly, all criminal complaints for dishonour of cheques pending as on 15th June 2015 in different Courts in India would be transferred to the Court which has the jurisdiction to try such case in the manner mentioned above, i.e. such pending cases will stand transferred to the Court having jurisdiction over the place where the bank of the payee is located. If there are multiple complaints of dishonour pending between the same parties as on 15th June 2015, then all such complaints would be transferred to the Court having jurisdiction to try the first case.

To put it briefly, the (Amendment) Act takes care of the interest of the payee of the cheque while, at the same time, also takes care to see that the drawer of the multiple cheques is not harassed by filing different complaints at different locations to harass him (if more than one cheque is bounced).

The (Amendment) Act virtually supersedes the decision of the Supreme Court in the case of Dashrath Rupsingh Rathod (supra).

It is not in dispute that the accused is a resident of Badalapur, State of Uttar Pradesh. The cheque in question was issued at Uttar Pradesh. It appears that the complainant deposited the cheque with the ICICI Bank Limited, Gorakhpur Branch, Gorakhpur, Uttar Pradesh. The same was accepted by the bank without there being any account of the complainant with the same. It was dishonoured with the intimation funds insufficient. However, as explained by the complainant, the complainant was to receive the credit of the said cheque at the centralized pooling account in Ahmedabad. Since the cheque could not be cleared, the intimation regarding the same was given by the ICICI Bank Limited, JMC House, Ahmedabad Branch, to the complainant at its address of the registered office in Ahmedabad.

Whatever may be the arrangement of the complainant with its banker, could it be said that the cheque was deposited in the ICICI Bank Limited at Ahmedabad i.e. the branch which actually gave intimation to the complainant regarding the dishonour of the cheque. The argument canvassed on behalf of the complainant is that since the requisite cheque amount was to be credited in the account maintained by the company with the ICICI Bank Limited at Ahmedabad and the intimation of dishonour was also by the branch of the ICICI Bank Limited at Ahmedabad, his complaint at Ahmedabad in the Court of the learned Metropolitan Magistrate is maintainable.

Before adverting to the rival submissions canvassed on either side, let me look into the decision of the Supreme Court in the case of Bridgestone India Pvt. Ltd. v. Inderpal Singh, 2016(2) SCC 75.

In the case before the Supreme Court, a cheque drawn on the Union Bank of India, Chandigarh, was issued by the respondent to the appellant. The appellant presented the cheque at the IDBI Bank in Indore. The appellant received intimation of its being dishonoured on account of exceeds arrangement at Indore. The appellant issued a legal notice, which was served on the respondent, demanding the amount depicted in the cheque. Ultimately, proceedings were initiated by the appellant in the Court of the learned JMFC, Indore, under Section 138 of the Negotiable Instruments Act. The respondent preferred an application before the learned JMFC, Indore, Madhya Pradesh, under Section 177 of the Code of Criminal Procedure, contesting the territorial jurisdiction with respect to the cheque drawn on the Union Bank of India, Chandigarh. The prayer made by the respondent that the learned JMFC, Indore, did not have the jurisdiction to entertain the proceedings initiated by the appellant was declined on 2nd June 2009. The respondent being dissatisfied with the order passed by the learned JMFC, Indore, preferred a petition under Section 482 of the Code in the High Court of Madhya Pradesh before its Indore Bench. The High Court remitted the case to the learned JMFC, Indore, directing him to pass a fresh order after taking into consideration some additional documents relied upon and the judgments. The learned JMFC, Indore, once again passed an order, holding that he had the territorial jurisdiction to adjudicate the controversy raised by the appellant under Section 138 of the Act. The matter again reached to the High Court and the High Court took the view that the jurisdiction lay only before the Court wherein the original drawee bank was located, namely, at Chandigarh. The appellant, being dissatisfied with the order passed by the High Court of Madhya Pradesh, approached the Supreme Court. The Supreme Court, while allowing the appeal of the appellant and set-asiding the order passed by the High Court of Madhya Pradesh, observed thus :

[9] During the course of hearing, learned counsel for the appellant cited the decision rendered by a three-Judge Bench of this Court in Dashrath Rupsingh Rathod vs. State of Maharashtra and another, 2014 9 SCC 129, and pointedly invited our attention to the conclusions drawn by this Court in paragraph 58, which is extracted hereunder:

"58. To sum up:

1. An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

2. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

58.3 The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque, and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

58.4 The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

58.5 The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

58.6 Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

58.7 The general rule stipulated under Section 177 CrPC applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof."

In view of the decision rendered by this Court in Dashrath Rupsingh Rathods case, it is apparent, that the impugned order dated 05.05.2011, passed by the High Court of Madhya Pradesh, Bench at Indore, was wholly justified.

10. In order to overcome the legal position declared by this Court in Dashrath Rupsingh Rathods case, learned counsel for the appellant has drawn our attention to the Negotiable Instruments (Amendment) Second Ordinance, 2015 (hereinafter referred to as the Ordinance). A perusal of Section 1(2) thereof reveals, that the Ordinance would be deemed to have come into force with effect from 15.06.2015. It is therefore pointed out to us, that the Negotiable Instruments (Amendment) Second Ordinance, 2015 is in force. Our attention was then invited to Section 3 thereof, whereby, the original Section 142 of the Negotiable Instruments Act, 1881, came to be amended, and also, Section 4 thereof, whereby, Section 142A was inserted into the Negotiable Instruments Act. Sections 3 and 4 of the Negotiable Instruments (Amendment) Second Ordinance, 2015 are being extracted hereunder:

"3. In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section

(1) as so numbered, the following sub- section shall be inserted, namely:-

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,--

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

4. In the principal Act, after section 142, the following section shall be inserted, namely:-

142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Ordinance, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in subsection (2) of section 142 or sub- section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under subsection (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of this Ordinance, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that subsection had been in force at all material times."

A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, specially in view of the explanation thereunder, that with reference to an offence under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction.

11. It is, however, imperative for the present controversy, that the appellant overcomes the legal position declared by this Court, as well as, the provisions of the Code of Criminal Procedure. Insofar as the instant aspect of the matter is concerned, a reference may be made to Section 4 of the Negotiable Instruments (Amendment) Second Ordinance, 2015, whereby Section 142A was inserted into the Negotiable Instruments Act. A perusal of Sub-section (1) thereof leaves no room for any doubt, that insofar as the offence under Section 138 of the Negotiable Instruments Act is concerned, on the issue of jurisdiction, the provisions of the Code of Criminal Procedure, 1973, would have to give way to the provisions of the instant enactment on account of the non-obstante clause in sub-section (1) of Section 142A. Likewise, any judgment, decree, order or direction issued by a Court would have no effect insofar as the territorial jurisdiction for initiating proceedings under Section 138 of the Negotiable Instruments Act is concerned. In the above view of the matter, we are satisfied, that the judgment rendered by this Court in Dashrath Rupsingh Rathods case would also not non-suit the appellant for the relief claimed.

12. We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142A(1) to the effect, that the judgment rendered by this Court in Dashrath Rupsingh Rathods case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonor of the cheque in the present case arises.

13. Since cheque No.1950, in the sum of Rs.26,958/-, drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI Bank, Indore, which intimated its dishonor to the appellant on 04.08.2006, we are of the view that the Judicial Magistrate, First Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable Instruments (Amendment) Second Ordinance, 2015. The words "...as if that sub-section had been in force at all material times..." used with reference to Section 142(2), in Section 142A(1) gives retrospectivity to the provision.

14. In the above view of the matter, the instant appeal is allowed, and the impugned order passed by the High Court of Madhya Pradesh, by its Indore Bench, dated 05.05.2011, is set aside. The parties are directed to appear before the Judicial Magistrate, First Class, Indore, on 15.01.2016. In case the complaint filed by the appellant has been returned, it shall be re-presented before the Judicial Magistrate, First Class, Indore, Madhya Pradesh, on the date of appearance indicated hereinabove.

Thus, the decision of the Supreme Court makes it clear that the offence under Section 138 of the Act can be inquired into and tried only by a Court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated. Indisputably, in the case in

hand, the cheque was collected by the complainant at Uttar Pradesh and was presented in the ICICI Bank Limited, Gorakhpur Branch, Gorakhpur, Uttar Pradesh. Thereafter, the bank acted according to the cash management service agreement as explained by me earlier.

The new banking system provides that the payee can present the cheque for collection in any branch of the ICICI Bank anywhere in the country without there being any account being maintained in the said branch. The branch bank which accepts the cheques will thereafter process the same, and as explained above, the credit of the requisite amounts mentioned in the cheque would be given in the centralized pooling account, i.e. like in the present case, in the centralized pooling account maintained by the complainant at Ahmedabad.

At this stage, it is important to look into the explanation in Section 142(2). The explanation provides that for the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or the holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or the holder in due course, as the case may be, maintains the account. For example, like in the present case, the cheque was delivered for collection at the ICICI Bank, Gorakhpur branch, Uttar Pradesh, where the complainant has no account but, by virtue of the said explanation, it is deemed to have been delivered at the ICICI Bank, JMC House Branch, Ahmedabad, where the account is maintained.

It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in Interpretation of Statutes while dwelling on the various aspect of an Explanation observes as follows:

"(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute."

Swarup in Legislation and Interpretation very aptly sums up the scope and effect of an Explanation thus :

"Sometimes an explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an explanation does not either restrict or extend the enacting part; it does not enlarge or

narrow down the scope of the original section that it is supposed to explain..... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa ."

Bindra in Interpretation of Statutes (5th Edn.) at page 67 states thus :

"An explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section.... The purpose of an explanation is, however, not to limit the scope of the main provision.... The construction of the explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An explanation must be interpreted according to its own tenor."

The principles laid down by the aforesaid authors are fully supported by various authorities of the Supreme Court. In Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Commercial Tax Officer [(1961) 1 SCR 902 : (AIR 1961 SC 315)], a Constitution Bench decision of the Supreme Court observed thus :

"Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain cl. (1)(a) of the Article and not vice versa . It is an error to explain the Explanation with the aid of the Article, because this reverses their roles."

In Bihar Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar (1967) 1 SCR 848 : (AIR 1967 SC 389), the Supreme Court observed thus :

"The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."

In Hiralal Rattanlal etc. v. State of U.P. [(AIR 1973 SC 1034)], the Supreme Court observed thus :

"On the basis, of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. "

In Dattatraya Govind Mahajan v. State of Maharashtra [(1977) 2 SCR 790: (AIR 1977 SC 915), the Supreme Court observed thus :

"It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it..... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations."

Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

A deeming fiction is a supposition of law that the thing is true without inquiring whether it be so or not, that it may have the effect of truth so far as it is consistent with justice. A deeming provision is made to include what is obvious or what is uncertain or to impose, for the purpose of statute, an ordinary construction of a word or phrase that would not otherwise prevail but, in each case, it would be a separate question as to that what object the Legislature has made on such a deeming fiction.

The word deemed is used in various senses. Sometimes, it means generally regarded. At other time, it signifies taken prima facie to be, while in other case, it means, taken conclusively. Its various meanings are, - to deem is to hold in belief, estimation or opinion; to judge; adjudge; decide; considered to be; to have or to be of an opinion; to esteem; to suppose, to think, decide or believe on considerations; to account, to regard; to adjudge or decide; to conclude upon consideration. (see Major Law Lexicon by P.Ramanatha Aiyar, 4th Edition 2010 Vol.2).

I find it difficult to accept the argument of the learned counsel appearing for the accused that the case in hand is covered by Section 142(2)(b). The argument is that as the cheque was delivered for collection at the ICICI Bank, Gorakhpur branch, Uttar Pradesh, without any account maintained in the said branch, it could be said that the cheque was presented for payment by the complainant otherwise through an account, and if that be so, the complaint for dishonour could be filed in a Court within whose local jurisdiction the branch of the drawee bank where the drawer maintains the account, is situated. In my view, the words otherwise through an account would mean that the cheque is presented for payment over the counter.

In the case in hand, there is no question of presenting the cheque for payment over the counter because the cheque is crossed. When a cheque is crossed, the holder cannot encash it at the counter of the bank. The payment of such cheque is only credited to the bank account of the payee. A cheque is either open or crossed. An open cheque can be presented by the payee to the paying banker and is paid over the counter. A crossed cheque cannot be paid across the counter but must be collected through a banker. A crossing is a direction to the paying banker to pay the money generally to a banker or to a particular banker, and not to pay otherwise. The object of crossing is to secure payment to a banker so that it could be traced to the person receiving the amount of the cheque. Crossing is a direction to the paying banker that the cheque should be paid only to a banker or a specified banker. To restrain negotiability, addition of words Not Negotiable or Account Payee Only is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. Crossing affords security and protection to the holder of the cheque.

Thus, in my view, the learned Metropolitan Magistrate at Ahmedabad has the jurisdiction to try the case instituted by the complainant for the dishonour of the cheque."

18. So far as the case on hand is concerned, if the cheques would have been presented for the purpose of clearance with any branch of the Bank of Baroda at New Delhi or at any other place, then, probably, the case would have been squarely covered by the decision of this court in the case of Brijendra Enterprise (supra) However, the facts of the present case are slightly different. The factual distinction between the two cases warrants interpretation of the words "through an account" as appearing in section 142 (2)(a) of the N.I. Act.

19. Ex pra-ecedentibus et consequentibus optima fit interpretatio. The best interpretation is made from things preceeding and following.

20. The historical background leading to an enactment of a statute has been recognized in law as one of the relevant considerations while interpreting a statutory provision and even while examining the extent of its scope and application. The legislative intent and object and reasons of enactment are also accepted as the legitimate tools of the law of interpretation. In Maxwell on The Interpretation of Statutes (Twelfth Edition by P. St. J. Langan) the observation of Sir George Jessel M.R. are noticed when he said, "the court, is not to be oblivious of the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells the Court, and prior judgments tell this present Court, what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view to extending it to something that was not intended."

21. It is significant to note that the traditional English view earlier held that the Legislative intent is not to be gathered from the Parliamentary history and felt that the introduction of the measures in Parliament cannot be used as evidence for the purpose of showing the intention. The Law then gradually changed its course and it was held that the courts are entitled to consider such external or historical facts as may be necessary to understand the subject matter to which the statute relates. The House of Lords in Black-Clawsan International Ltd. v. Papierwerke Waldhof-Aschaffenburg, A.G., [(1975)1 All ER 810 (HL)]1 unanimously held that the report of a committee presented to the Parliament preceding the legislation could be seen for finding out the then state of the law and the mischief required to be remedied. The earlier traditional view came to be criticized and the entire Law tilted more in favour of considering the surrounding circumstances and permitted use of such aid for better interpretation of the provisions. The school of thought that limited but open use should be made of Parliamentary history in construing statutes has been gaining ground as indicated in English Law Commission and Scottish Law Commission as contended in (1970) 33 Modern Law Review 197. Lord Browne Wilkinson said, "Reference to parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to absurdity. Even in such cases references in court to parliamentary material should only be permitted in given circumstances.

22. Under the American practice, the traditional English practice was relaxed much earlier and now, the law liberally permits reference to historical background. In India, the modern view prevalent in these two systems have been applied with greater freedom and free of restrictions. Right from the case of State of Mysore v. R.V. Bidap, AIR 1973 SC 2555, it has been seen that Courts have now veered to the view that legislative history within circumspect limits may be consulted by courts in resolving ambiguities. The use of such remedy has to be purposive that is to achieve the purpose and for finding of the mischief dealt with by the statute or for better attainment of the object of the Legislature. To put it more simply the provisions of a statute and particularly of a procedural code need to be examined very objectively while applying the rule of plain construction at the same time keeping in mind the need to examine the attending circumstances in the backdrop of legislative history. It is a settled principle of law that the construction and interpretation of procedure law may normally be not controlled by the rule of strict construction if such application is likely to frustrate the very object of the procedural law

23. The procedural law is intended to control and regulate the procedure and the judicial proceedings to achieve the ends of justice and expeditious disposal. The Supreme Court, in the case of Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425 had taken the view that the procedure is mere machinery and its object is to facilitate and not to obstruct the administration of justice. Its interpretation should not be permitted or allowed to defeat the substantial justice.

24. The attendant circumstances and external aids being some of the tools available with the court for interpretation of a statute, their application has been largely accepted. In the case of Sub-Committee on Judicial Accountability v. Union of India and others, 1991 (4) SCC 699, the Constitution Bench of Supreme Court took the view that it was permissible to take into consideration the entire background as aid to interpretation and that it was a well settled principle of modern statutory construction that external aid could be used to discover the object of legislation particularly when internal aids are not forthcoming. Similar view was also accepted by the Supreme Court in the case of Shashikant Laxman Kale and another v. Union of India and another, (1990)4 SCC 366, where the court held as under:-

"For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A. Thangal Kanju Musaliar v. M. Venkitachalam Potti, the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in State of West Bengal v. Union of India that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for `the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. Similarly, in Pannalal Binjraj v. Union of India a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act."

25. In Maxwell on the Interpretation Statute, at pages 27 and 28 of the 12th Edition, the principle is laid down thus:-

"..... It is an elementary rule that construction is to be made of all the parts together and not of one part only by itself..... Such a survey is often indispensible even when the words are the plainest, for the true meaning of and passage is that which (being permissible) best harmonies with the subject and with every other passage of the statue."

26. Let me, at this stage, once again, at the cost of repetition, look into the objects with which the Negotiable Instruments (Amendment) Act, 2015 came to be enacted.

"Be it enacted by Parliament in the Sixty-SiXth Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons. --The Negotiable Instruments Act, 1881 was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The Banking, Public Financial Institutions and Negotiable Instruments Last (Amendment) Act, 1988 inserted in the Negotiable Instruments Act 1881 (hereinafter called the said Act), a new Chapter XVII, comprising Sections 138 to 142 with effect from 1st April, 1989. Section 138 of the said Act provides for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque.

2. As Sections 138 to 142. of the said Act were found deficient in dealing with dishonour of cheques, the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, inter alia, amended Sections 138,141 and 142 and inserted new Sections 143 to 147 in the said Act aimed at speedy disposal of cases relating to dishonour of cheque through their summary trial as well as making, them compoundable. Punishment provided under Section 138 too was enhanced from one year to two years. These legislative reforms are aimed at encouraging the usage of cheque and enhancing the credibility of the instrument so that the normal business transactions and settlement of liabilities could be ensured.

3. The Supreme Court, in its judgment dated 1st August, 2014, in the case of Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, held that the territorial jurisdiction for dishonour of cheques is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. The Supreme Court has directed that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable. Instruments Act, 1881, will proceeding continue at that place. All other com plaints (including those where the accused/respondent has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with exposition of the law, as determined by the Supreme Court.

4. Pursuant to the judgment of the Supreme Court, representations have been made to the Government by various stakeholders, including industry associations and finanacial institutions, expressing concerns about the vide impact this judgment would have on the business interests as it will offer. undue protection to defaulters at the expense of the, aggrieved complainant, will give a complete go-by to the practice/Concept of Payable at Par cheques and would ignore the current realities of cheque clearing with the introdution of CTS (Cheque Truncation System) where cheque clearance happens only through scanned image in electronic form and cheques are not physically

required to be presented to the issuing branch (drawee bank branch) but , are settled between the service branches of the drawee and payee banks; will. give rise to multiplicity of cases covering several cheques drawn on bank(s) at different places; and adhering to it is impracticable for a single window agency with customers spread all over India.

5. To address the difficulties faced by the payee or the lender of the money in filing the case under Section 138 of the said Act, because of which, large number of cases are stuck, the jurisdiction for offence under Section 138 has been clearly defined. The Negotiable Instruments (Amendment) Bill, 2015 provides for the following, namely-

(i) filing of cases only by a court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated;

(ii) stipulating that where a complaint has been filed against the drawer of a cheque 1n the court having jurisdiction under the new scheme of jurisdic tion, all subsequent complaints arising out of Section 138 of the said Act against the same drawer shall be filed before the same court. Irrespetive of whether those cheques were presented for payment within the territorial jurisdiction of that court;

(iii) stipulating that if more than one prosecution is filed against the same drawer of cheques before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case to the court having jurisdiction as per the new scheme of jurisdiction; and

(iv) amending Explanation 1 under Section 6 of the said Act relating to the meaning of expression "a cheque in the electronic form", as the said meaning is found to be deficient because it presumes drawing of a physical cheque, which is not the objecrive in preparing "a cheque in the electronic form" and inserting a new Explanation III in the said section giving :reference of the expressions contained in the Information Technology Act, 2000.

6. It is expected that the proposed amendments to the Negotiable Instruments Act, 1881 would help in ensuring that a fair trial of cases under Section 138 of the said Act is conducted keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques.

7. The Bill seeks to achieve the above objects. "

27. It is not in dispute that all the cheques were account payee cheques. Those were presented before the Corporation Bank at New Delhi as the said Corporation Bank is providing the facility of fund collection system. Such facility is being provided to the complainant and the Corporation Bank has issued a client code ..... GFC 563.

28. Jurisdiction is a DIGNITY which a man hath by a power to do justice in causes of complaint made by persons seeking to avail themselves of its process by reference (1) to the subject matter of the issue, or (2) to the persons between whom the issue is joined, or (3) to the kind of relief sought, or to any combination of those factors. In its wider sense it embraces also the setttled practice of the Court as to the way in which it will exercise its powers to hear and detrermine issues which fall within its "jurisdiction" (in the strict sense) or as to circumstances in which it will grant a particular kind of reilef which it has "jurisdiction" (in the strict sense) to grant, including its settled practice to refuse to exercise such powers, or to grant such relief in particular circumstances.

29. The issue of territorial jurisdiction has always been a very complex one for both, the legislature as well as the Courts. In the case of K. Bhaskaran vs. Sankaran Vaidyan Balan, reported in 2000 (1) ALT I(Cri.) 42 (SC), the Supreme Court had taken the view that the offence under section 138 of the N.I. Act can be completed only with the concatenation of a number of acts. Following are the acts, which were enumerated by the Supreme Court as components of the said offence.

(1) Drawing of the cheque;

(2) Presentation of the cheque to the Bank.

(3) Returning of 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.

30. The Supreme Court took the view that it was not necessary that all the five acts should have been perpetrated at the same locality. It was possible that each of those five acts could be done at five different localities. But concatenation of all the above five was held to be sine qua non for the comletion of the offence under section 138 of the N.I. Act. The Supreme Court, ultimately, held that

the complainant could 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.

31. The judgment of the Supreme Court, in the case of K. Bheskaran (supra) was followed over a period of time. However, in view of the other decisions of the Supreme Court, in the case of Nishant Aggarwal vs. Kailash Kumar Sharma, reported in 2013(10) SCC 72, in the case of Shri Ishar Alloys Steels Ltd. vs. Jayaswals Neco Ltd., reported in 2001 (3) SCC 609 and in the case of Harman Electronicss (P) Ltd. vs. National Panasonic India Ltd., reported in 2009 (1) SCC 720, the issue as regards the territorial jurisdiction, once again, became debatable. In such circumstances, a larger bench was constituted, and it delivered the judgment in the case of Dasrath Rupsingh Rathod (supra). In this case, a three judge bench of the Supreme Court had held that a cheque bouncing case can be filed only in a court, which has the territorial jurisdiction over the place where the cheque is dishonoured by the Bank on which it is drawn. This judgment, in the case of Dasrath Rupsingh Rathod (supra) was delivered to ensure that the payee of a cheque does not unnecessarily harass the drawer of the cheque by filing the cheque bouncing complaints at the place of his choice by deliberately choosing a different place for presenting the cheque or for sending a notice, etc.

32. The decision of the Supreme Court, in the case of Dasrath Rupsingh Rathod (supra) created lot of difficulties. Many representations were made to the Government by various business and financial institutions and it was brought to the notice of the Government that as the common adage goes, the debtor should seek the creditor. However, by virtue of the said judgment, the situation became exactly the opposite and things became difficult for the payees.

33. To meet with such a situation, the legislature thought fit to bring in an ordinance. Section 142(2) of the N.I. Act now makes it clear that the offence under section 138 shall be inquired into and tried only by a court, within whose local jurisdiction, the cheque is delivered for collection through an account, the branch of the Bank where the payee or holder, in due course, as the case may be, maintains the account is situated or if the cheque is presented for payment by the payee or holder, in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account is situated.

34. In my view, the legislature has given importance to the mode of delivery,i.e., the fact of a cheque being delivered for collection through an account rather than the place where the cheque is delivered. The explanation for the purposes of clause (a) makes the picture more clear. The intention of the legislature in enacting section 142(2) was to ensure that undue hardship is not caused to the complainant. The complainant should not suffer at both the ends. First, he has not been able to realise the money due and payable to him and, secondly, if he has to chase the drawer, the same will be more cumbersome for the complainant. The new law on the issue of territorial jurisdiction now introduces the clarity and uniformity. It takes care of the interests of the payee of the cheque while, at the same time, also taking care that the drawer of the multiple cheques is not harassed by filing the multiple litigations at different locations to harass him (if more than one cheque has bounced). It would not be out of place to state at this stage that in the N.I. Amendment Bill, 2015, as introduced in the Lok Sabha, section 142 (2) intended to be amended as follows;

Section 142, Cognizance of offences:-

"(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated.

35. Accordingly, the N.I. Amendment Bill, 2015, which, in fact was approved by the Lok Sabha, but couldnt make it through the Rajya Sabha, provided that the Court will try the case within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated. However, the N.I. Ordinance, 2015, did not stick to what the N.I. Amendment Bill, 2015 suggested and provided additional set of rules for the cases not presented through the payees bank account. What I am trying to drive at is that it was not possible for the legislature to keep in mind all the possible permutations and combinations of the problems arising in filing the cases under section 138 of the N.I. Act. The N.I. Ordinance, 2015, finally put an end to the confusion of territorial jurisdiction in cases under section 138 of the N.I. Act by clearly laying down that (I) if the payee presents the cheque through the account, the court will try the case within whose local jurisdiction thebank branch of the payee (collecting bank) is situated & (ii) if the payee presents the cheque through the counter of the drawee bank for payment, the court will try the case within whose local jurisdiction the bank branch of the drawer (drawee bank) is situated.

36. It is appropriate for me, at this stage, to look into a document on record in the form of a certificate dated 07.09.2015 issued by the Corporation Bank, which reads as under;

"CERTIFICATE

TO WHOM SO EVER IT MAY CONCERN

CORPORATION BANK HAS PROVIDED FACILITY OF FCS (FUND COLLECTION SYSTEM) AT NEW DELHI (PARENT CAPS-AHMEDABAD) FOR CLIENT GUJARAT STAGE FERTILIZERS & CHEMICALS LTD., BY WHICH FACILITY DAILY FUND / AMOUNT IS COLLECTED FROM ALL CENTRES AND CREDITED IN ACCOUNT NO.02090500000002 AT BANK OF BORODA, FERTILIZER NAGAR MAIN BRANCH, VADODARA GUJARAT.

OUR CLIENT NAME: GUJARAT STATE FERTLIZERS & CHEMICAL LTD., CLIENT CODE: GFC 563 IS HAVING A/C/ NO. 02090500000002 AT BANK OF BARODA, FERTILIZERS NAGAR BRANCH AT VODODARA - 391750, GUJARAT IS OPERATIVE SINCE 1993. THE

FOLLOWING CHEQUES ANNEXED AS A HAVE BEEN DEPOSITED AND DISHONOURED TO ACCOUNT NO. 02090500000002 AT BANK OF BARODA, FERTILIZER NAGAR BRANCH, VADODARA, GUJARAT."

37. The terms and conditions of the facility, namely, the Fast Collection Service, is as under;

"1) Name of Facility :- Fast Collection Service.

2) Exposure Level :- Rs. 4.75 crore (Rupees Four Crore Seventy Five Laskh Only)

3) Name & Address :- M/s. Gujarat State Fertilizers & Chemicals Ltd., P.O. Fertilizernagar, Vadodara- 391750.

4) Location, process flow & charges.

Location Process Flow Charges 1000

Metro Locations Day 0-Day 1 Rs.0.03

Mini Metro Location Day 0-Day 1 Rs.0.03

RBI Locations Day 0-Day 1 Rs.0.03

SBI Locations Day 0-Day 1 Rs.0.06

Other SBI Locations Day 0-Day21 Rs.0.10

5) Pooling Branch :- Bank of Baroda, Fertilizernagar, Main Branch, Vadodara.

6) Mode of Pooling :- By way of credit to clients BOB banks CC a/c. No. 02090500000002 maintained with Bank of Baroda, Ferlitizernagar, Vadodara.

7) Return Instrument Charges :- Rs. 100/- per instrument + interest @ 14.50% p.a. i.e. Base Rate(10.25% p.a.) + 4.25% for the period bank is rendered out of funds.

8) Interest on RIA :- 14.50% p.a. i.e. Base Rate (10.25% p.a.) + 4.25%, till the date of recovery.

9) Courier charges perInstrument Location. :- No.

10) Courier Arrangement :- No.

11) Interest on delayed realization :- No."

39. Thus, although the cheques issued by the accused were collected by the complainant at New Delhi and were presented for clearance with the Corporation Bank at New Delhi, yet in my view, it could be said that the cheques were presented through an account, i.e., the account maintained by the complainant with the Bank of Baroda, Fertilizer Nagar Branch, Vadodara. Without the account of the complainant maintained with the Bank of Baroda, Fertilizer Nagar Branch, Vadodara, the Corporation Bank could not have given credit if, ultimately, the cheques would have been cleared. What is important is the account maintained by the complainant with the Bank of Baroda, Fertilizer Nagar Branch at Vadodara. The Corporation Bank has made itself very clear in the certificate dated 07.09.2015 that the cheques were deposited and dishonoured to the account No. 02090500000002 at the Bank of Baroda, Fertilizer Nagar Branch, Vadodara, Gujarat. Giving strict interpretation to the words "through an account", as suggested by the learned counsel appearing for the applicants will frustrate the very object, with which, section 142 of the N.I. Act came to be amended. I find it extremely difficult to accept the argument of Mr. Parikh that in the case on hand, the payee could not be said to have used his account nor his Bank to deal with the cheques. If the cheques are account payee, such cheques, for the purpose of clearance, are bound to be "through an account". Of course, it is the argument of Mr. Parikh that a situation like the one on hand would fall within the clause (b) to section 142(2) and presenting the cheques across the counter is not the only mode, which would bring the case within the ambit of clause(b). However, I do not find merit in such submission. It is also difficult for me to accept the argument that the original account of the complainant with the Bank of Baroda has nothing to do with the independent agreement and understanding between the GSFC and the Corporation Bank. As noted above, it is the original account of the complainant maintained with the Bank of Baroda, which is important and without the said account, the arrangement with the Corporation Bank can never come into play.

40. My above noted interpretation of the words "through an account" would subserve the object of the amendment of section 142 of the N.I. Act and insertion of new section 142(A) by amendment. Any other interpretation would frustrate the object. The complainant company is a government undertaking and its business is spread across the various parts of the country. The Fast Collection Service provided by the Corporation Bank helps the complainant to a considerable extent. The

cheques received at the different places in the country can be deposited at a convenient FCS Branch of the Corporation Bank and the funds so collected are credited to the bank account of the complainant.

41. The effect of the rule of strict construction might almost be summed up in the remark that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permit, to be held to fall within its remedial influence.

42. I do agree, to a certain extent, with Mr. Parikh, the learned senior counsel appearing for the applicants that in the complaint lodged by the complainant, there is not even a passing reference to the account maintained by the complainant with the Bank of Baroda, Fertilizer Nagar Branch, Vadodara. The territorial jurisdiction of a particular court to try the case can be determined on the basis of the averments made in the complaint in that regard. However, there is overwhelming materials on record as regards the Bank of Baroda account, which is otherwise not in dispute. At this stage, let me deal with the contention raised by Mr. Nanavati, the learned senior counsel appearing for the complainant as regards section 201 of the Cr.P.C. According to Mr. Nanavati, the accused persons should have raised the issue of territorial jurisdiction of the court at Vadodara at the earliest so that the court concerned could have looked into the same keeping in mind the provisions of section 201 of the Cr.P.C. In my view, at this stage, section 201 of the Cr.P.C will have no application.

43. Chapter XV Cr.P.C. relates to complaints to the Magistrates whereas Chapter XVI relates to commencement of proceedings before the Magistrates.

44. Section 200 of the Cr.P.C. relates to the examination of the complaint. A Magistrate taking cognizance of an offence on a complaint is required to examine the complaint and both the complainant and witness present, if any. On such examination of the complainant and the witness, if the Magistrate is of the opinion that there is no ground for proceeding, he has to dismiss the complaint under Section 203 Cr.P.C.

45. Section 201 Cr.P.C. lays down the procedure to be followed by the Magistrate not competent to take cognizance of the offence. If the complaint is made to a Magistrate who is not competent to take cognizance of the complaint he shall return the written complaint for its presentation before a proper court and if the complaint is not in writing, direct the complainant to move before the proper court.

46. Section 202 contemplates "postponement of issue of process" on receipt of a complaint in the circumstances mentioned therein. If the Magistrate is of the opinion that there is no sufficient ground for proceeding, under Section 203 Cr.P.C. he can dismiss the complaint by briefly recording his reasons.

47. The commencement of proceedings before the Magistrate under Chapter XVI starts with the issue of process under Section 204 Cr.P.C. If in the opinion of a Magistrate taking cognizance of the offence there is sufficient ground for proceeding, and the case appears to be a summons case, he shall issue his summons for the attendance of the accused, but if it is a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction. No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

48. The aforesaid provisions make it clear that the Magistrate is required to issue summons for attendance of the accused only on examination of the complaint and on satisfaction that there is sufficient ground for taking cognizance of the offence and that he is competent to take such cognizance of offence. Once the decision is taken and summons is issued, in the absence of a power of review including the inherent power to do so, the remedy lies before the High Court under Section 482 Cr. P.C or under Article 227 of the Constitution of India and not before the Magistrate.

49. Section 201 Cr.P.C., as noticed earlier, can be applied immediately on receipt of a complaint, if the Magistrate is not competent to take cognizance of the offence. Once the Magistrate taking cognizance of an offence forms his opinion that there is sufficient ground for proceeding and issues summons under Section 204 Cr.P.C., there is no question of going back following the procedure under Section 201 Cr.P.C. In the absence of any power of review or recall the order of issuance of summons, the Magistrate cannot recall the summons in exercise of its power under Section 201 Cr.P.C. (see Devendra Kishanlal Dagalia vs. Dwarkesh Diamonds Private Limited & Ors., (2004) 2 SCC 246)

50. For the foregoing reasons, I hold that the Court at Vadodara has the territorial jurisdiction and the complaints filed by the complainant for the offence under section 138 of the N.I. Act are maintainable.

51. In the result, all the applications fail and are hereby rejected. Notice is discharged. The interim relief, earlier granted in terms of para-14(d), stands vacated forthwith.

(J.B.PARDIWALA, J.)

After the pronouncement of the judgment, Mr. Parikh, the learned senior counsel appearing for the applicants makes a request to continue the interim relief granted by this Court earlier for a period of eight weeks. The request of Mr. Parikh is accepted. The interim relief granted by this Court earlier in all the matters shall continue for a period of eight weeks.

Appeal rejected