* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on : 16th September, 2011*
Judgment pronounced on: 21st September, 2011

\+ **CRL.M.C. 1056/2011**

SHREE RAJ TRAVELS & TOURS LTD.
& ORS ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1166/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1171/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1172/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD(SUBCONTINENT)
PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1173/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1174/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1175/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1176/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT)PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1178/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya

Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1179/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1181/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD
(SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1183/2011

SHREE RAJ TRAVELS & TOURS LTD.
& ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav

Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD (SUBCONTINENT)PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1186/2011

SHREE RAJ TRAVELS & TOURS LTD. & ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD (SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1187/2011

SHREE RAJ TRAVELS & TOURS LTD. & ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD (SUBCONTINENT)PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CRL.M.C. 1188/2011

SHREE RAJ TRAVELS & TOURS LTD. & ORS. ..... Petitioners
Through: Mr.Sunil Gupta, Sr.Advocate

with Mr.Jatin Zaveri, Mr.Gaurav Agarwal and Mr.Tanmaya Agarwal, Advocates

versus

DESTINATION OF THE WORLD (SUBCONTINENT) PRIVATE LTD. ..... Respondent
Through: Mr.Anindya Malhotra, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Briefly stated the facts leading to filing of the above captioned petitions are that respondent i.e. 'Destination of World (Subcontinent) Pvt. Ltd.' a company registered under the Companies Act filed 15 complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'); 3 cheques being the subject matter of each complaint. Petitioner No.1 i.e. 'Shree Raj Travels & Tours Ltd.' a company registered under the Companies Act was impleaded as accused No.1 and petitioners 2 to 7 were impleaded as co-accused on the allegation that as Directors they were incharge of the day to day affairs of the company and hence were vicariously liable for the defaults of the company. The complaint was filed in the Court of Additional Chief Metropolitan Magistrate (hereinafter referred to as the

'ACMM') New Delhi, inter-alia, averring that the respondent company and the accused No.1 company had entered into 2 agreements in terms whereof the accused No.1 company had issued 45 cheques drawn on State Bank of India Mumbai Branch, in favour of the respondent company, which cheques when presented for encashment by the respondent company with its Banker ICICI Bank New Delhi, were dishonoured and upon the cheques being returned the respondent company issued notices contemplated under proviso (b) to Section 138 N1 Act from Delhi to the accused No.1 company which failed to make payment in respect of the sum for which the cheques were drawn within 15 days of the receipt of the said notices. With respect to the jurisdiction of the Courts at Delhi it was pleaded that for the reason the respondent company had presented the cheques in question for collection with its banker ICICI Bank situated in Delhi, the Court had the necessary jurisdiction.

2. It may be noted at the outset that after the complaints were filed, the respondent company filed a suit bearing No.550/2010 in which petitioner No.1 was impleaded as the defendant before the High Court of Bombay praying for a decree to be passed in the principal sum for which the 45 cheques forming the subject-matter of the aforesaid complaints were issued. In the plaint, jurisdiction of the Courts at Mumbai was pleaded on the averment that the agreement pursuant whereto the cheques were issued was executed at Mumbai as also that the cheques in question were drawn and issued at Mumbai.

3. Taking cognizance of the complaints, the learned ACMM summoned the petitioners to face trial for an offence punishable under Section 138 of the N.I. Act.

4. Upon service of the summons, the petitioners filed application(s) under Section 177 Cr.P.C. inter-alia stating that the courts at Delhi have no jurisdiction to take cognizance of the complaints and prayed that the complaints be returned to the respondent to be filed in the court of competent jurisdiction. Together with the said application(s), petitioners 2 to 7 filed application(s) seeking exemption for personal appearance before the Court. Dismissing the application(s) seeking exemption from personal appearance and keeping pending, for consideration, application(s) filed under Section 177 Cr.P.C. vide order dated 25.05.2010 the learned ACMM issued bailable warrants against petitioners 2 to 7.

5. Aggrieved by the order dated 25.05.2010, petitioners 2 to 7 filed petition(s) under Section 482 Cr.P.C. before this Court, which petitions were dismissed vide order dated 23.09.2010. Aggrieved thereto, petitioners filed petitions seeking Special Leave to Appeal before the Supreme Court which were disposed of vide order dated 14.1.2011 with a direction to the learned ACMM that applications filed under Section 177 Cr.P.C. would be disposed of within 2 weeks.

6. Vide order dated 14.02.2011 the learned ACMM dismissed the application(s) under Section 177 Cr.P.C. filed by the petitioners on the ground that in view of the dictum of law laid down by the Supreme Court in the decision

reported as (2004) 7 SCC 338 *Adalat Prasad v Roop Lal Jindal* once the Magistrate has taken cognizance of a complaint he has no power to return the same to the complainant with a direction that the same be filed in a court of competent jurisdiction.

7. Aggrieved by the order dated 14.02.2011 passed by the learned ACMM, the petitioners have filed the above-captioned petition(s) under Section 482 Cr.P.C. requiring this Court to hold that courts at Delhi have no jurisdiction to take cognizance of the complaints in question and seek directions to the learned ACMM to return the same for filing before the Court of Competent Jurisdiction.

8. It is the case of the petitioners that the cheques in question were drawn at Mumbai. The drawee bank is at Mumbai, notice issued by the respondent to the petitioner company was received at Mumbai and thus merely because the respondent posted the notice from Delhi and deposited the cheque with its bank at Delhi would not confer jurisdiction on Courts in Delhi.

9. The issue has to be debated with reference to Section 138 of the NI Act and the applicable provisions of the Code of Criminal Procedure i.e. Sections 177, 178 and 179 of the Code of Criminal Procedure.

10. In the decision reported as 1999 (7) SCC 510 *K.Bhaskaran Vs. Shankaran Vaidhyan Balan & Anr.*, the Supreme Court has opined, after considering Sections 178 to Section 179 of the Code of Criminal Procedure, that an

offence may be completed in different localities and thus can be tried in any Court having jurisdiction over said localities. To put it pithily, in relation to territorial jurisdiction, qua an offence, law recognizes more than 1 court having territorial jurisdiction and the issue of territorial jurisdiction would have to be decided with reference to whether a part of an offence was committed within the territorial jurisdiction of a court. The issue is no longer res integra and I just need to note the decision of the Supreme Court in *K.Bhaskaran*'s case (supra) and highlight that the aforesaid is to be culled out from paras 11 and 12 of the said decision.

11. The next logical question would be, what are the contours of Section 138 of the NI Act pertaining to acts to be performed in relation to an offence contemplated by the said Section? It hardly be re-emphasized that it are acts of commission or omission which constitute offences, with or without the requisite mens rea, depending upon whether the offence is an absolute offence or not.

12. Let me thus note Section 138, NI Act which reads as under:-

> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an

agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

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

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

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

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

13. In *Bhaskaran*'s case (supra) the Supreme Court had an occasion to deal with the issue of territorial jurisdiction in relation to Section 138 of the NI Act, and of necessity, the discussion required the Supreme Court to identify the various acts of commission and omission which constituted the offence punishable under Section 138 of the NI Act and suffice would it be to highlight that in para 14 of the

decision, the Supreme Court highlighted that there are 5 acts which are the components of the offence punishable under Section 138 of the NI Act and I re-produce the same from para 14 of the decision of the Supreme Court. They read as under:-

(i) drawing of the cheque,

(ii) presentation of the cheque to the bank,

(iii) returning the cheque unpaid by the drawee bank,

(iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(v) failure of the drawer to make payment within 15 days of the receipt of the notice.

14. After holding that 5 acts would constitute the components of an offence under Section 138 of the NI Act, in paras 15 and 16 the Supreme Court observed as under:-

> "15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(*d*) of the Code is useful. It is extracted below:
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> ....
>
> 16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of

> those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act." *(Emphasis Supplied)*

15. On the issue of service of notice required to be given by the complainant to the accused, the Supreme Court observed as under:-

> "17. The more important point to be decided in this case is whether the cause of action has arisen at all as the notice sent by the complainant to the accused was returned as "unclaimed". The conditions pertaining to the notice to be given to the drawer, have been formulated and incorporated in clauses (*b*) to (*c*) of the proviso to Section 138 of the Act. The said clauses are extracted below:
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> .....
>
> 18. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.

.....

20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

21. ....The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in clause (*b*) of the proviso to Section 138 of the Act show that the payee has the statutory obligation to "make a demand" by giving notice. The thrust in the clause is on the need to "make a demand". It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is despatched his part is over and the next depends on what the sendee does.

22. It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him (vide *Harcharan Singh* v. *Shivrani*[2] and *Jagdish Singh* v. *Natthu Singh*[3]).

23. Here the notice is returned as unclaimed and not as refused. Will there be any significant difference between the two so far as the presumption of service is concerned? In this

connection a reference to Section 27 of the General Clauses Act will be useful. The section reads thus:

.....

24. No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.

25. Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (*c*) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption." *(Emphasis Supplied)*

16. The expressions: *'presentation of the cheque to the Bank'* and '*if the five different acts were done in <u>five different localities</u> any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act*' to be found in paras 14 and 16 respectively in *<u>Bhaskaran</u>*'s case (supra) have been understood by many to mean that

the Court within local limits of which the payee Bank i.e. the Bank where the complainant deposited the cheque is situated has the jurisdiction to try the complaint under Section 138 of the NI Act, and the understanding appears to be fortified by the observations of the Supreme Court in paras 15 and 16 that if the 5 acts contemplated as the ingredient of an offence under Section 138 of the NI Act were done in 5 different localities, any one of the court exercising jurisdiction in any one of the 5 local areas would have jurisdiction.

17. But, it is apparent that the observations in para 15 and 16 are an obiter as it is not 5 places where the 5 acts constituting an offence under Section 138 of the NI Act can possibly be performed. The acts can be performed, as would be explained hereinafter, only at 4 places and I would immediately state that act No.2 and act No.3 relate to only one place i.e. the place where the drawee bank is located.

18. The second and the third act, of the 5 listed by the Supreme Court, as constituting the offence under Section 138 of the NI Act are: (a) presentation of the cheque to the bank; and (b) returning the cheque unpaid by the drawee bank.

19. The third act is the return of the cheque unpaid by the drawee bank and thus there is no scope for any argument as to which bank is contemplated with reference to the said act. The second act pertains to the act of presentation of cheque to the bank. I highlight that the twin words used are '*the bank*'.

20. In the decision reported as 2001 (3) SCC 609 *Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd.*, a 3 Judge Bench of the Supreme Court, having as a member of the Bench the author of the judgment in *Bhaskaran*'s case (supra), dealt with and decided as to what would be meant by '*the bank*' as mentioned in Section 138 of the NI Act. Was it the drawee bank or the payee bank? The Supreme Court answered the question in the following words:-

> "2. (*a*) What is meant by, "the bank" as mentioned in clause (*a*) of the proviso to Section 138 of the Negotiable Instruments Act, 1881?
>
> (*b*) Does such bank mean the bank of the drawer of the cheque or
> the payee of the cheque?
>
> (*c*) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the Act?,
>
> are the questions to be determined by this Court in this appeal.
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> .....
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> 7. It has further to be noticed that to make an offence under Section 138 of the Act, it is mandatory that the cheque is presented to "the bank" within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. It is the cheque drawn which has to be presented to "the bank" within the period specified therein. When a post-dated cheque is written or drawn, it is only a bill of exchange. The post-dated cheque become a cheque under the Act on the date which is written on the said cheque and the six months'

period has to be reckoned, for the purposes of Section 138 of the Act, from the said date.

8. Section 138 provides that where any cheque drawn by a person on an account maintained by him with a "*banker*" for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by "the *bank*" unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that *bank*, such person shall be deemed to have committed an offence punishable with imprisonment as prescribed therein subject to the conditions mentioned in clauses (*a*), (*b*) and (*c*) of the proviso. Section 3 of the Act defines the "*banker*" to include any person acting as a banker and any post office savings bank. Section 72 of the Act provides that a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relations between the drawer and his banker has been altered to the prejudice of the drawer.

9. The use of the words "a bank" and "the bank" in the section is an indicator of the intention of the legislature. The former is an indirect (*sic* indefinite) article and the latter is prefixed by a direct (*sic* definite) article. If the legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is prefixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is prefixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and

makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote a particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in clause (*a*) to the proviso to Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

10. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the *drawee or payee bank* on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued....The non-presentation of the cheque to the drawee bank within the period specified in the section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 3, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is

> necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee." *(Emphasis Supplied)*

21. Though the decision in *Ishar Alloy*'s case (supra) has been rendered in the context of limitation for presentation of a cheque, the said decision brings out in no uncertain terms that Section 138 of the NI Act contemplates that a cheque is required to be presented for encashment to the drawee Bank and that the payee Bank, merely acts as an agent of the payee/complainant for the purposes of presenting the cheque in question for encashment to the drawee Bank.

22. Thus, the 2nd act to which the Supreme Court referred to in *Bhaskaran*'s case as one of the 5 which constitutes the offence under Section 138 of the NI Act was the presentation of the cheque to the drawee bank and needless to state the 3rd act which constitutes an ingredient of the offence is the return of the cheque unpaid by the drawee bank and thus it becomes crystal clear that the 2nd and 3rd act constituting the offence would relate to only one place i.e. the place where the drawee bank is located.

23. These are my humble reasons to hold that the observations in paras 15 and 16 have to be read as an orbiter and thus the 5 acts contemplated as constituting the offence are capable of being performed not in 5 but only in 4 places and since deposit of the cheque with the payee bank is not an act contemplated as an ingredient of the offence, the place where the payee bank is located would be

irrelevant for purposes of determining jurisdiction of the criminal court.

24. It is settled law that a decision is an authority for the point it decides and not what can be logically deduced therefrom and the ratio of a decision has to be gathered with reference to the facts of a case and I just highlight only one decision of the Supreme Court being the decision reported as *Dhodha House v S.K. Maingi* (2006) 9 SCC 41.

25. The matter regarding jurisdiction can also be decided with reference to Section 6, Section 7, Section 64 and Section 72 of the NI Act.

26. The relevant portion of Section 6, Section 7 and Section 64 of NI Act and Section 72 of the NI Act reads as under:-

> Section 6. Cheque: - A ''cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.
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> X X X
>
> Section 7. The maker of a bill of exchange or Cheque is called the "drawer"; the person thereby directed to pay is called the "Drawee".
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> X X X
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> Section 64. Presentment for payment. — (1)]Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the

> other parties thereto are not liable thereon to such holder.....
>
> X X X
>
> Section 72. Subject to the provisions of section 84 a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

27. A co-joint reading of Sections 6, 7, 64 and 72 as also of Section 138 of the NI Act brings out that in order to attract penal provisions of Section 138 of the NI Act a cheque is required to be presented for encashment to the drawee Bank and that the payee Bank acts merely as an agent of the payee/complainant for the purposes of presenting the cheque in question to the drawee Bank. The necessary corollary thereof is that no part of cause of action for the offence punishable under Section 138 of the NI Act arises in the Court within the local limits of which the collecting Bank of the complainant i.e. payee Bank is situated and thus said Court has no jurisdiction to try a complaint under Section 138 of the NI Act filed by the complainant.

28. This takes me to the consideration of second question involved in the present case i.e. whether the court within the local limits of which the place from where the complainant had sent a notice contemplated under proviso (b) appended to Section 138 of the NI Act is situated has the jurisdiction to try a complaint filed under Section 138 of the NI Act.

29. I have already noted the observations made by the Supreme Court in *Bhaskaran*'s case (supra) in the foregoing paras and would highlight that in paras 17 to 23 the Supreme Court has reflected upon the limitation within which the notice has to be given to the accused. The Supreme Court was considering the expression 'giving a notice' in proviso (b) to Section 138 of the NI Act, with reference to the 15 days' time contemplated then by which the requisite notice had to be served, which time is now 30 days.

30. Another decision of the Supreme Court, reported as (2009) 1 SCC 720 *Harman Electronics Private Limited v National Panasonic India Private Limited* is worth noting on the subject.

31. In *Harman*'s case (supra) the question which had arisen before the Supreme Court was precisely the same question which arises for consideration in the present petition i.e. whether the court within the local limits of which the place from where the complainant had sent a notice contemplated under proviso (b) to Section 138 of the NI Act is situated has the jurisdiction to try a complaint filed under Section 138 of the NI Act. Answering the aforesaid question in the negative, the Supreme Court observed as under:-

> "12. .....The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the Negotiable Instruments Act.

13. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in provisos (*a*), (*b*) and (*c*) appended to Section 138 of the Negotiable Instruments Act are intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (*b*) and (*c*) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

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

.....

20. ..... A court derives a jurisdiction only when the cause of action arose within its jurisdiction. The same cannot be conferred by any act of omission or commission on the part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable

> instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, the commission of an offence completes. Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter that in *Dalmia Cement (Bharat) Ltd.* v. *Galaxy Traders & Agencies Ltd* emphasis has been laid on service of notice." *(Emphasis Supplied)*

32. At a first blush reading of the decisions of the Supreme Court in *Bhaskaran* and *Harman*'s cases (supra) it may strike to the reader that there is a conflict between the two decisions inasmuch as in *Bhaskaran*'s case (supra) it was held that the expression '*giving of notice*' occurring in proviso (b) to Section 138 of the NI Act means '*sending of notice'* whereas in *Harman*'s case (supra) it was held that the said expression means '*receipt of notice'*.

33. A careful reading of the two decisions shows that there is no conflict between the said decisions inasmuch as they have been rendered in different contexts. The decision in *Bhaskaran*'s case (supra) was rendered in the context of starting point of limitation period of 15 days prescribed in proviso (b) to Section 138 of the NI Act and it was in that context i.e. the context of limitation that it was held by the Supreme Court that the expression *giving of notice'* occurring in proviso (b) to Section 138 of the NI Act means '*sending of notice'*. The decision in *Harman*'s case (supra) was rendered in the context of cause of action for filing a complaint under Section 138 NI Act within jurisdiction of a particular court and in that context it was held by the

Supreme Court that the expression *giving of notice'* occurring in proviso (b) to Section 138 of the NI Act means '*receipt of notice'*.

34. Now, same expression can have different meanings in different context as held by the Supreme Court in the decision reported as *Malik Lal Majumdar v Gouranga Chandra Dey* (2004) 12 SCC 448 wherein it was observed that a word occurring in a statutory provision can have different meanings in different context within the same statute.

35. Thus, the inevitable conclusion would be that the 4th act contemplated as an ingredient of the offence as highlighted in *Bhaskaran*'s case i.e. '*giving notice in writing to the drawer of cheque' demanding payment of the cheque amount,* for purposes of limitation would have a meaning as explained in *Bhaskaran*'s case and for purposes of jurisdiction would have a meaning as explained in *Ishar Alloy*'s case (supra).

36. Before concluding I would be failing not to lodge a caveat. With electronic banking and facility payable at par of clearance provided by bankers and especially in metropolitan cities, where cheques are cleared by not being presented to the drawee bank but at nodal branches of the concerned banks, the subject matter of jurisdiction may have to be decided keeping in view that the drawee bank has created an agency where the cheque in question is transmitted for clearance and the situs where the clearance takes place would then arguably become the place where

the cheque would be required to be treated as presented to 'the bank' i.e. the drawee bank. But, in such circumstances, properly constituted pleadings have to be found in a complaint and lodging the caveat, I leave it at that for the debate to be properly argued in an appropriate case with the necessary relevant pleadings.

37. I hold that on the pleadings in the complaint(s), no part of cause of action can be said to have accrued to the complainant at Delhi; that the notice demanding payment was posted from Delhi and that the cheque was deposited with the payee bank at Delhi would not constitute the acts contemplated as ingredients of an offence punishable under Section 138 NI Act and thus I dispose of the petitions quashing the impugned order(s) dated 14.2.2011 and direct the learned ACMM to return the complaint(s) to the respondents for filing in a Court having territorial jurisdiction.

38. No costs.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 21, 2011
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