OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (SOUTH-WEST)
DWARKA COURTS, NEW DELHI.

No. 1698-1797 /Misc/Endst/Genl/DWK/2025 Dated 12/01/26

Sub: Judgment dated 28.11.2025 passed by Hon'ble Supreme Court of India in Transfer Petition (Crl.) No. 1099 of 2025 with Transfer Petition (Crl.) No. 1100-02 of 2025 titled as "Jai Balaji Industries Ltd. and Ors. Vs. M/s Heg Ltd."

As directed by the Ld. Principal District & Sessions Judge (S-W), a copy of email dated 09.01.2026 alongwith letter no. 121-133/DHC/Gaz.IB/G-2/SC-Judgment/2026 dated 09.01.2026 received from Hon'ble High Court of Delhi alongwith copy of judgment dated 28.11.2025 passed by Hon'ble Supreme Court of India in Transfer Petition (Crl.) No. 1099 of 2025 with Transfer Petition (Crl.) No. 1100-02 of 2025 titled as "Jai Balaji Industries Ltd. and Ors. Vs. M/s Heg Ltd.", is being forwarded herewith for information and necessary compliance to:

1 All the Ld. Judicial Officers posted at Dwarka Courts Complex, New Delhi. (Through email & Whatsapp).

2 Ld. Principal District & Sessions Judge's Secretariat (S-W), Dwarka Courts, New Delhi, for information. (through E-mail).

3 Branch Incharge, Judicial Branch, Dwarka Courts, New Delhi for information & follow up action, if any (through email).

(GURMOHINA KAUR)
Officer Incharge (General Branch)
Additional Sessions Judge-05
Dwarka Courts : New Delhi.

Gen/B

Judgment dated 28.11.2025 passed by Hon'ble Supreme Court of India in Transfer Petition (Crl.) No. 1099 pf 2025 with Transfer Petition (Crl.) No. 1100-02 of 2025 titled as "Jai Balaji Industries Ltd. And Ors Vs. Ms Heg Ltd.

2 emails

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09/1/26

(1)

Vinay Sharma < ar-gazette1b.dhc@gov.in >

Fri, 09 Jan 2026 12:38:10 PM +0530

To "ROBIN SHARMA"<pdj-central@ddc.nic.in>,"VIKAS BHARDWA."<pdj-west@ddc.nic.in>,"ANIL KUMAR"<pdj-racc@ddc.nic.in>,"Mr JITE.NDER"<pdj-newdelhi@ddc.nic.in>,"SARITA VATS"<pdj-shahdara@ddc.nic.in>,"Secretariat SJ"<pdj-southwest@ddc.nic.in>,"LAKPA TSHERING"<pdj-southeast@ddc.nic.in>,"DAMAN SINGH"<pdj-east@ddc.nic.in>,"KULVEER KUMAR"<pdj-north@ddc.nic.in>,"RAM SINGH"<pdj-south@ddc.nic.in>,"NEERU JAGGI"<pdj-northeast@ddc.nic.in>,"Puneet Luthra"<pdj-northwest@ddc.nic.in>,"delhifamilycourts"<delhifamilycourts@gmail.com>

Sir/Madam,

I am directed to forward herewith a copy of Judgment dated 28.11.2025 passed by Hon'ble Supreme Court of India in Transfer Petition (Crl.) No. 1099 pf 2025 with Transfer Petition (Crl.) No.
1100-02 of 2025 titled as "Jai Balaji Industries Ltd. And Ors Vs. Ms Heg Ltd. and to request you to download the same and circulate amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Regards,
Deputy Registrar (Gaz.IB),
High Court of Delhi

Both emails be forwarded to General Branch (SW) for information and N/A

Officiating PDJ & SJ (SW)
09/01/26

1 Attachment(s)

Judgment jai balaji vs. Heg.pdf
1.1 MB

(2)

Vinay Sharma < ar-gazette1b.dhc@gov.in >

Fri, 09 Jan 2026 12:33:58 PM +0530

To "ROBIN SHARMA"<pdj-central@ddc.nic.in>,"VIKAS BHARDWA."<pdj-west@ddc.nic.in>,"ANIL KUMAR"<pdj-racc@ddc.nic.in>,"Mr JITE.NDER"<pdj-newdelhi@ddc.nic.in>,"SARITA VATS"<pdj-shahdara@ddc.nic.in>,"Secretariat SJ"<pdj-southwest@ddc.nic.in>,"LAKPA TSHERING"<pdj-

southeast@ddc.nic.in>,"DAMAN SINGH"<pdj-east@ddc.nic.in>,"KULVEER KUMAR"<pdj-north@ddc.nic.in>,"RAM SINGH"<pdj-south@ddc.nic.in>,"NEERU JAGGI"<pdj-northeast@ddc.nic.in>,"Puneet Luthra"<pdj-northwest@ddc.nic.in>,"delhifamilycourts"<delhifamilycourts@gmail.com>

Sir/Madam,

I am directed to forward herewith a copy of Judgment dated 15.12.2025 passed by Hon'ble Supreme Court of India in Civil Appeal No. 14761 of 2025 (@ SLP(Civil.) No. 14461 of 2019) titled as "Danesh Singh And Ors. Vs. Har Pyari (Dead) Thr. Lrs, and Ors," and to request you to download the same and circulate amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Regards,
Deputy Registrar (Gaz.IB),
High Court of Delhi

1 Attachment(s)

Judgment Danesh Singh vs. H...
1.4 MB

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 121-133 /DHC/Gaz.IB/G-2/SC-Judgment/2026 Dated: 09.01.2026

From :

The Registrar General,
High Court of Delhi,
New Delhi.

To

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
3. The Principal District & Sessions Judge (South), Saket Courts Complex, New Delhi
4. The Principal District & Sessions Judge (South-East), Saket Courts complex, Delhi.
5. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
6. The Principal District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
7. The Principal District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
8. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
9. The Principal District & Sessions Judge (South-West), Dwarka Courts Complex, New Delhi.
10. The Principal District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
11. The Principal District & Sessions Judge (North), Rohini Courts Complex, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka, New Delhi.

Sub : **Judgment dated 28.11.2025 passed by Hon'ble Supreme Court of India in Transfer Petition (Crl.) No. 1099 pf 2025 with Transfer Petition (Crl.) No. 1100-02 of 2025 titled as "Jai Balaji Industries Ltd. And Ors Vs. M/s Heg Ltd."**

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Yours faithfully,

(Ashok Sharma)
Assistant Registrar (Gazette-IB)
For Registrar General.

134-146

IN THE HIGH COURT OF DELHI AT NEW DELHI

No._____/DHC/Gaz.IB/G-2/SC-Judgment/2026 Dated: 09.01.2026

From :

The Registrar General,
High Court of Delhi,
New Delhi.

To

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
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Yours faithfully,

Sharma

(Ashok Sharma)
Assistant Registrar (Gazette-IB)
For Registrar General.

(2)

2025 INSC 1362

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRL.) NO. 1099 OF 2025
(ARISING OUT OF TRANSFER PETITION (CRL.) D. NO. 24362 OF 2025)

JAI BALAJI INDUSTRIES LTD. AND ORS. ...PETITIONER(S)

Versus

M/S HEG LTD. ...RESPONDENT(S)

WITH

TRANSFER PETITION (CRL.) NO. 1100 OF 2025
(ARISING OUT OF TRANSFER PETITION (CRL.) D. NO. 24506 OF 2025)

TRANSFER PETITION (CRL.) NO. 1101 OF 2025
(ARISING OUT OF TRANSFER PETITION (CRL.) D. NO. 24500 OF 2025)

TRANSFER PETITION (CRL.) NO. 1102 OF 2025
(ARISING OUT OF TRANSFER PETITION (CRL.) D. NO. 24493 OF 2025)

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:

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1. Since the issues raised in all the captioned transfer petitions are the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Transfer Petition (Criminal) Diary No. 24362 of 2024 is treated as the lead matter.

3. This transfer petition filed under Section 446 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "BNSS") read with Order XXXIX of the Supreme Court Rules, 2013 is at the instance of a private limited company through its directors, praying for transfer of the Complaint Case No. RCT 2501046/2017 titled as "M/s HEG Limited vs Jai Balaji Industries Ltd. & Ors" pending in the court of Judicial Magistrate First Class, Bhopal to the Court of Metropolitan Magistrate, Kolkata. The transfer is prayed for on the ground that this Court, in ***Dashrath Rupsingh Rathod v. State of Maharashtra*** reported in **(2014) 9 SCC 129** had held that cases where the trial had reached the stage of summoning, appearance of accused, and the recording of evidence had commenced as per Section 145(2) Negotiable Instruments Act, 1881 (for short, the "**Act, 1881**"), those should continue in the same court where the trial was ongoing.

A. FACTUAL MATRIX

4. The petitioner no. 1 herein (Jai Balaji Industries Ltd.) is the original accused no. 1 (hereinafter referred to as the "**accused company**"), while the other petitioners are the directors of the accused company. The respondent (M/s HEG Limited), is the original complainant (hereinafter referred to as the "**complainant company**" or "**complainant**").

5. A cheque for the amount of Rs. 19,94,996/- was drawn by the accused company through its directors, against an invoice generated by the complainant company, dated 23.03.2014. The cheque was drawn by the accused on the State Bank of Bikaner and Jaipur, Kolkata and the same was deposited by the complainant on 19.06.2014 in its account maintained with the State Bank of India, Bhopal branch.

6. The cheque referred to above came to be dishonoured due to insufficiency of funds on 20.06.2025 pursuant to which, the complainant issued the statutory notice dated 11.07.2014 to all the accused persons through registered speed post A/D, demanding that the sum of Rs. 19,94,996/- be paid within a period of 15 days as prescribed under Section 138 of the Act, 1881 in lieu of the dishonoured cheque. The said notice was delivered on 14.07.2014.

7. The accused company replied *vide* the letter dated 26.07.2014 which was received by the complainant on 30.07.2014, wherein all the accused persons took the defence that the said cheque had been issued as a 'Security Deposit' and not in discharge of any enforceable debt. As a result, the complainant company filed the Complaint Case No. 406978 of 2014 in the court of the Metropolitan Magistrate, Kolkata (the "**MM, Kolkata**") on 16.08.2014. The same was registered on 29.01.2015 and summons were issued to the accused company and other accused persons on 29.01.2015. Consequently, the MM, Kolkata proceeded to frame charge to which the accused persons pleaded not guilty and claimed to be tried. On 27.04.2015, the affidavit of evidence-in-chief of the complainant company's officer was taken on record by the MM, Kolkata.

8. While the case was pending before the MM, Kolkata, the Government enacted the Negotiable Instruments (Amendment) Act, 2015 (the "**Amendment Act, 2015**") on 26.12.2015. In accordance with the terms of the amendment to the Act, 1881, more particularly, Section 142 thereof, the territorial jurisdiction for prosecution and trial of cases registered under Section 138 was stipulated to be at the place where the payee or holder maintains his bank account. In this case, the payee, i.e., the complainant company maintained its bank account with the State Bank of India, Bhopal branch.

9. Upon request made by the complainant company, the MM, Kolkata returned the complaint to the respondent *vide* order dated 28.07.2016 observing that it lacked the jurisdiction to conduct trial for the case in hand and allowed the complainant to present the matter before the court of competent jurisdiction.

10. In such circumstances referred to above, the complainant company got the complaint for dishonour of cheque registered in the court of the Judicial Magistrate First Class, Bhopal (the "**JMFC, Bhopal**") bearing Complaint Case No. RCT 1501046 of 2017. The accused company raised an objection as regards the territorial jurisdiction of the JMFC, Bhopal to try the offence relying on the provisions of the Code of Criminal Procedure, 1973 (the "**Act, 1973**"). Besides according to the accused persons, the MM, Kolkata could not have returned the complaint once the recording of evidence as per Section 145(2) had already commenced. However, the said objections were rejected by the JMFC, Bhopal. The same was then challenged by the accused persons *vide* Criminal Revision before the Sessions Court, Bhopal which is still pending adjudication.

11. Be that as it may, the question before us is not one relating to the merits of the claims of the parties herein. What is discernible is the fact that the cheque so issued was dishonoured, and the sum for which such cheque was drawn was not made good by the accused despite a statutory notice. This

conspectus of facts has enabled the complainant to prosecute the accused and the sole controversy before us is as to which court has the territorial jurisdiction to try the accused persons for the offence punishable under Section 138 of the Act, 1881.

B. ISSUES FOR DETERMINATION

12. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following two questions fall for our consideration:

i. Whether after the enactment of the Amendment Act, 2015, the court within whose local jurisdiction the drawee bank is situated, has the jurisdiction to try a complaint under Section 138?

ii. Whether after the enactment of the Amendment Act, 2015, a complaint under Section 138 of the Act, 1881 can be transferred to the court within whose local jurisdiction the drawee bank is situated, if the recording of evidence under Section 145 has already commenced in the said court?

C. ANALYSIS

13. Before adverting to the conspectus of facts before us, we must discuss or rather clarify the position of law as regards jurisdiction of courts to entertain complaints under Section 138 of the Act, 1881 especially after the

introduction of Sections 142(2) and 142A respectively by the Amendment Act, 2015. For that, we must look into few judgments of this Court to better understand the legal backdrop in which the present dispute has arisen.

(i) Position of law as regards jurisdiction of courts prior to the Amendment Act, 2015

14. Prior to the enactment of the Amendment Act, 2015, the issue relating to territorial jurisdiction was quite complex. With a view to dispel any doubt and lend clarity, this Court, in several of its judgments, had addressed the issue of jurisdiction.

a. Analysis of the observations of this Court in ***Bhaskaran***

15. In ***K. Bhaskaran v. Sankaran Vaidhyan Balan*****,** reported in **(1999) 7 SCC 510**, this Court addressed itself on the issue of territorial jurisdiction in detail.

16. In the said case, the cheque was issued by the accused at Adoor, Kerala and the same was presented by the complainant at the bank in Kayamkulam, Kerala, for encashment. The drawee bank dishonoured the cheque due to funds being insufficient in the account of the accused. Consequently, the complainant therein issued the statutory notice as required under Section 138 of the Act, 1881 but the same remained unclaimed and not delivered to the accused as the addressee (the accused) was not found at the address

mentioned in the notice. The complainant proceeded to file the complaint before the Court of the Judicial Magistrate, First Class, Adoor ("JMFC, Adoor").

17. The accused questioned the jurisdiction of the JMFC, Adoor on the ground that the cheque was dishonoured at the bank situated in Kayamkulam where the complainant had presented the cheque for encashment and therefore, there was no occasion for the complainant to file a case at Adoor. The JMFC, Adoor accepted the said submission canvassed by the accused and held that he had no territorial jurisdiction to try the case as the cheque was dishonoured in a different district of Kerala. On the other hand, the High Court set aside the trial court's judgment and held that since the cheque was issued at Adoor, i.e., within the territorial jurisdiction of the JMFC, Adoor, he was competent to conduct the trial in respect of the complaint.

18. This Court took the view that the JMFC, Adoor had erroneously held that the trial of the complaint was outside its jurisdiction. It was observed that although Section 177 of the Code of Criminal Procedure, 1973 (the "**CrPC**") lays down the rule that every offence must be tried by a court within whose jurisdiction it was committed, yet this rule was not invariable. Situations that may present uncertainty as regards the question of jurisdiction are accounted

for by the CrPC, more particularly Section 178 thereof. Section 178 reads thus:

> *"178. Place of inquiry or trial.*
> *(a) When it is uncertain in which of several local areas an offence was committed, or*
> *(b) where an offence is committed partly in one local area and partly in another, or*
> *(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or*
> *(d) where it consists of several acts done in different local areas,*
> *it may be inquired into or tried by a Court having jurisdiction over any of such local areas."*

19. The plain reading of Section 178(d) referred to above clarifies that when it is not possible to answer the question of jurisdiction with certainty due to several acts having been done in different local areas, the offence could be tried in a court having jurisdiction over any of such local areas.

20. This Court highlighted that the offence under Section 138 is a consequence of the dishonour of cheque but such dishonour by itself does not result in the offence unless and until the following acts are established:

(i) Drawing of the cheque,

(ii) Presentation of the cheque to the bank,

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

(iv) Issuing 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.

21. This Court held that the complainant may choose to lodge his complaint in any court exercising jurisdiction over the localities where the aforesaid acts may have been done. The relevant portion of the judgment is reproduced below:

> *"11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act.*

12. Even otherwise the rule that every offence shall be tried by a court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word "ordinarily" to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. It reads thus:

> *"179. Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be enquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."*

13. The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the courts to try the offence was sought to be determined.

14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

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:

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

(d) where the offence consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas."

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)

22. The decision in ***Bhaskaran*** *(supra)* took into account or rather highlighted that Section 138 would get attracted upon commission of multifarious acts. Such acts may not always share local areas and might have been done in different jurisdictions. It was recognized that the special nature of the offence contained in the said section gave rise to jurisdictional ambiguity which was hindering the complainants' litigations to recover their money. To remedy the mischief that was being perpetuated by the absence of a specific jurisdiction, this Court held that the amplitude of the offence under

Section 138 was so wide as to confer jurisdiction on all the courts in whose territorial jurisdiction any of the five acts as mentioned above, might have been committed.

b. Analysis of the observations of this Court in ***Harman Electronics***

23. In ***Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.***, reported in **(2009) 1 SCC 720**, the cheque was issued by the drawer in Chandigarh and was presented by the complainant in Chandigarh itself. The complainant sent the statutory notice under Section 138 from Delhi which was admittedly served on the drawer in Chandigarh. Upon non-clearance of dues, the complainant filed a complaint under Section 138 before the Additional Sessions Judge, New Delhi (the "**ASJ, Delhi**").

24. It was the grievance of the accused therein that although most of the acts required to constitute an offence under Section 138 were committed in Chandigarh, yet the complainant had filed the complaint in the court at New Delhi only on the strength of the fact that the statutory notice was issued in Delhi. The accused therein had contended that this by itself would amount to absurdity if the complaint was entertained in Delhi.

25. The ASJ, Delhi held that the court in Delhi had the territorial jurisdiction to conduct trial in respect of the complaint as the statutory notice was sent by the complainant from Delhi. The High Court of Delhi affirmed the decision

of the ASJ, Delhi saying that this Court's judgment in ***Bhaskaran*** *(supra)* had clarified that if five different acts constituting the offence under Section 138 were found to have been done in five different localities, any one of the courts exercising jurisdiction in one of such five areas could become the place of trial. The High Court held that the issuance of statutory notice being one of the acts mandatory for the completion of an offence under Section 138, the court in Delhi exercising territorial jurisdiction over the place from which the statutory notice was issued, would have the jurisdiction to try the complaint.

26. The question that fell for the consideration of this Court was whether the sending of notice from Delhi, by itself would give rise to a cause of action for taking cognizance under Section 138.

27. This Court held that the cause of action for proceeding against an accused person under Section 138 would arise not from the mere sending of the statutory notice but rather from its receipt by the accused person. The object behind sending of notice was considered by this Court and it was observed that it is only upon receipt of the notice that an accused person may elect to either pay the amount due and payable within a period of 15 days or not to pay the same. Therefore, issuance of notice by itself would not give rise to

a cause of action. The service of notice is imperative as it is only when the communication thereof is complete that the cause of action arises.

28. This Court also noted that allowing multitudinous courts the jurisdiction to try a single complaint would enable or rather place a complainant in the position to misuse the law and cause harassment to the accused.

29. In light of such considerations, this Court held that though the statutory notice was sent from Delhi, yet its receipt was recorded in Chandigarh. As the cause of action accrued in Chandigarh, it was held that the court in Delhi had no jurisdiction to try the matter. The relevant portions of the judgment are reproduced below:

> "*12. The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for collection of the cheque admittedly was available at Chandigarh and the said facility was availed of. The certificate dated 24-6-2003, which was not produced before the learned court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi branch of Citibank. We, therefore, have no other option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonour of the cheque also took place at Chandigarh. 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.

---xxx---

17. Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. The court ordinarily will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary. (...)

---xxx---

19. Presumption raised in support of service of notice would depend upon the facts and circumstances of each case. Its application is on the question of law or the fact obtaining. Presumption has to be raised not on the hypothesis or surmises but if the foundational facts are laid down therefor.

Only because presumption of service of notice is possible to be raised at the trial, the same by itself may not be a ground to hold that the distinction between giving of notice and service of notice ceases to exist.

20. Indisputably all statutes deserve their strict application, but while doing so the cardinal principles therefor cannot be lost sight of. 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. [(2001) 6 SCC 463 : 2001 SCC (Cri) 1163 : AIR 2001 SC 676] emphasis has been laid on service of notice.

21. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure."

(Emphasis supplied)

30. This Court, while applying the principles relating to jurisdiction as laid down in ***Bhaskaran*** *(supra)*, explained the legal effect of the act of sending the statutory notice under Section 138 for the purpose of determining the jurisdiction to try a complaint thereunder. It was recognized that conferring jurisdiction on the locality from where the notice was sent would give unfettered powers to a complainant to set jurisdiction at a particular location that may be inconvenient or cause undue hardship to the accused person. Thus, the dictum in ***Harman Electronics*** *(supra)* curtailed the wide jurisdictional empowerment expounded in ***Bhaskaran*** *(supra)* to some extent.

c. Analysis of the observations of this Court in ***Dashrath Rupsingh Rathod***

31. This Court, in its landmark decision in ***Dashrath Rupsingh*** *(supra)*, was faced with the conundrum of jurisdictional ambiguity for trial of offence under Section 138 of the Act, 1881 posed by the differing interpretations thereof expounded in ***Bhaskaran*** *(supra)*, ***Harman Electronics*** *(supra)* and ***Shri Ishar Alloy Steels Ltd. v. Jayaswals*** respectively and several other judgments.

32. A three-Judge Bench recognized the position of law in this regard as settled by ***Bhaskaran*** *(supra)*, as well as the limits placed on wide jurisdiction by ***Harman Electronics*** *(supra)*. While analysing these decisions, this Court

observed that ***Bhaskaran*** *(supra)* adopted a liberal approach influenced by a curial compassion towards the unpaid payee. It was also noted that such approach was prone to abuse and had resulted in miscarriage of justice over the years.

33. This Court was of the view that for the purpose of determining jurisdiction, the commission of crime ought to be distinguished from its prosecution. It was held that though the five concomitants of Section 138 enabled prosecution of the offence thereunder, yet the offence itself came to be committed as soon as the cheque was dishonoured by the drawee bank. As a natural consequence, only the court exercising jurisdiction over the territory where the offence, i.e., the dishonour of cheque, was committed, was clothed with the power to try a complaint in respect of such offence. The relevant portions of the judgment in ***Dashrath Rupsingh*** *(supra)* are reproduced below:

> "*10. It is axiomatic that when a court interprets any statutory provision, its opinion must apply to and be determinate in all factual and legal permutations and situations. We think that the dictum in Ishar Alloy [Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609 : 2001 SCC (Cri) 582] is very relevant and conclusive to the discussion in hand. It also justifies emphasis that Ishar Alloy [Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609 : 2001 SCC (Cri) 582] is the only case before us which was decided by a three-Judge Bench and, therefore, was binding on all smaller Benches. <u>We ingeminate that it is the drawee</u>*

Bank and not the complainant's bank which is postulated in the so-called second constituent of Section 138 of the NI Act, and it is this postulate that spurs us towards the conclusion that we have arrived at in the present appeals. There is also a discussion of Harman [Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610] to reiterate that the offence under Section 138 is complete only when the five factors are present. It is our considered view, which we shall expound upon, that the offence in the contemplation of Section 138 of the NI Act is the dishonour of the cheque alone, and it is the concatenation of the five concomitants of that section that enable the prosecution of the offence in contradistinction to the completion/commission of the offence.

11. We have also painstakingly perused Escorts Ltd. [Escorts Ltd. v. Rama Mukherjee, (2014) 2 SCC 255 : (2014) 1 SCC (Civ) 789 : (2014) 1 SCC (Cri) 808] which was also decided by the Nishant [Nishant Aggarwal v. Kailash Kumar Sharma, (2013) 10 SCC 72 : (2013) 4 SCC (Civ) 627 : (2013) 3 SCC (Cri) 189] two-Judge Bench. Previous decisions were considered, eventually leading to the conclusion that since the cheque concerned had been presented for encashment at New Delhi, its Metropolitan Magistrate possessed territorial jurisdiction to entertain and decide the subject complaint under Section 138 of the NI Act. Importantly, in a subsequent order, in FIL Industries Ltd. v. Imtiyaz Ahmed Bhat [(2014) 2 SCC 266 : (2014) 1 SCC (Civ) 800 : (2014) 4 SCC (Cri) 58] passed on 12-8-2013, it was decided that the place from where the statutory notice had emanated would not of its own have the consequence of vesting jurisdiction upon that place. Accordingly, it bears repetition that the ratio in Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] has been drastically diluted in that the situs of the notice, one of the so-called five ingredients of Section 138, has now been held not

to clothe that court with territorial competency. The conflicting or incongruent opinions need to be resolved."

(Emphasis supplied)

34. The aforesaid exposition stands fortified by the plain language of Section 138 of the Act, 1881. The primary part of the Section delineates the return of a cheque unpaid by the person who issued such cheque as an offence. However, the conditions stipulated in the proviso to the Section indicate that though the offence may come into existence upon dishonour of cheque, the consequences arising therefrom would be kept in abeyance till the time the concomitants contained in the provisory portion of the Section are also completed. In other words, the ingredients contained in the provisory portion of Section 138 are necessarily to be fulfilled to successfully initiate prosecution in respect of the offence of dishonour of cheque which is committed when the cheque is returned unpaid by the drawee bank. The relevant paragraphs of the judgment read thus:

"*18. Section 138 of the NI Act is structured in two parts—the primary and the provisory. It must be kept in mind that the legislature does not ordain with one hand and immediately negate it with the other. The proviso often carves out a minor detraction or diminution of the main provision of which it is an appendix or addendum or auxiliary. Black's Law Dictionary states in the context of a proviso that it is*

"[a] limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one

shall not operate, or the other be exercised, unless in the case provided.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent".

It should also be kept in perspective that a proviso or a condition are synonymous. In our perception in the case in hand the contents of the proviso place conditions on the operation of the main provision, while it does (sic not) form a constituent of the crime itself, it modulates or regulates the crime in circumstances where, unless its provisions are complied with, the already committed crime remains impervious to prosecution. The proviso to Section 138 of the NI Act features three factors which are additionally required for prosecution to be successful. In this aspect Section 142 correctly employs the term "cause of action" as compliance with the three factors contained in the proviso are essential for the cognizance of the offence, even though they are not part of the action constituting the crime. To this extent we respectfully concur with Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] in that the concatenation of all these concomitants, constituents or ingredients of Section 138 of the NI Act, is essential for the successful initiation or launch of the prosecution. We, however, are of the view that so far as the offence itself the proviso has no role to play. Accordingly a reading of Section 138 of the NI Act in conjunction with Section 177 CrPC leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed.

19. In this analysis we hold that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located. The law

should not be warped for commercial exigencies. As it is Section 138 of the NI Act has introduced a deeming fiction of culpability, even though, Section 420 is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be imparted to Section 138 which will render it as a device of harassment i.e. by sending notices from a place which has no causal connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account. In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience. Today's reality is that every Magistracy is inundated with prosecutions under Section 138 of the NI Act, so much so that the burden is becoming unbearable and detrimental to the disposal of other equally pressing litigation. We think that courts are not required to twist the law to give relief to incautious or impetuous persons; beyond Section 138 of the NI Act."

(Emphasis supplied)

35. It was further observed in ***Dashrath Rupsingh*** *(supra)* that the infusion of the concept of 'cause of action' in criminal proceedings as done by ***Bhaskaran*** *(supra)* perpetuated ambiguity relating to jurisdiction by allowing filing of a complaint under Section 138 at multiple venues. This Court held that the interpretation of Sections 177 and 178 of the CrPC respectively, set forth in the said judgment ran counter to the approach of

simplifying law. It was observed that Section 178 despite being an exception to Section 177 which informs about criminal jurisdiction ordinarily, did not envisage the concept of 'cause of action' as being a consideration germane for determining territorial jurisdiction in criminal trials. Therefore, the plain meaning obtained from Sections 177 and 178 respectively ought not to be warped for commercial exigencies and the logical conclusion flowing therefrom can only be that territorial jurisdiction was anchored at the place where the offence was committed. The relevant portions of the judgment are reproduced below:

> "*16.1. Unlike civil actions, where the plaintiff has the burden of filing and proving its case, the responsibility of investigating a crime, marshalling evidence and witnesses, rests with the State. Therefore, while the convenience of the defendant in a civil action may be relevant, the convenience of the so-called complainant/victim has little or no role to play in criminal prosecution. Keeping in perspective the presence of the word "ordinarily" in Section 177 CrPC, we hasten to adumbrate that the exceptions to it are contained in CrPC itself, that is, in the contents of the succeeding Section 178. CrPC also contains an explication of "complaint" as any allegation to a Magistrate with a view to his taking action in respect of the commission of an offence; not being a police report. Prosecution ensues from a complaint or police report for the purpose of determining the culpability of a person accused of the commission of a crime; and unlike a civil action or suit is carried out (or "prosecuted") by the State or its nominated agency. The principal definition of "prosecution" imparted by Black's Law Dictionary, 5th Edn. is*

"[a] criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime".

These reflections are necessary because Section 142(b) of the NI Act contains the words, "the cause of action arises under clause (c) of the proviso to Section 138", resulting arguably, but in our opinion irrelevantly, to the blind borrowing of essentially civil law attributes onto criminal proceedings.

16.2. We reiterate that Section 178 admits of no debate that in criminal prosecution, the concept of "cause of action", being the bundle of facts required to be proved in a suit and accordingly also being relevant for the place of suing, is not pertinent or germane for determining territorial jurisdiction of criminal trials. Section 178 CrPC explicitly states that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 179 is of similar tenor. We are also unable to locate any provision of the NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the prosecution has to be conducted. In fact, since cognizance of the offence is subject to the five Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] components or concomitants the concatenation of which ripens the already committed offence under Section 138 of the NI Act into a prosecutable offence, the employment of the phrase "cause of action" in Section 142 of the NI Act is apposite for taking cognizance, but inappropriate and irrelevant for determining commission of the subject offence. There are myriad examples of the commission of a crime the prosecution of which is dependent on extraneous contingencies such as obtainment of sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988. Similar situation is

statutorily created by Section 19 of the Environment (Protection) Act, 1986; Section 11 of the Central Sales Tax Act, 1956; Section 279 of the Income Tax Act; Sections 132 and 308 CrPC; Section 137 of the Customs Act, etc. It would be idle to contend that the offence comes into existence only on the grant of permission for prosecution, or that this permission constitutes an integral part of the offence itself. It would also be futile to argue that the place where the permission is granted would provide the venue for the trial. If sanction is not granted the offence does not vanish. Equally, if sanction is granted from a place other than where the crime is committed, it is the latter which will remain the place for its prosecution."

(Emphasis supplied)

36. It is abundantly clear from the aforesaid that in ***Dashrath Rupsingh*** *(supra)*, this Court viewed the question of jurisdiction strictly from the lens of 'territoriality of offences'. In other words, the payee cannot select the jurisdiction for trial of an offence under Section 138 by presentation of the cheque at a location of his choosing. Though the presentation of cheque at any branch of the payee's bank is permitted by the Act, 1881 for the purposes of commercial convenience, yet it cannot be said that such act of presentation confers jurisdiction on the court within whose territorial jurisdiction the said bank branch may be situated.

37. Since an offence under Section 138 could be said to be committed upon dishonour of cheque by the drawee bank, it was held that such offence would be localised at the place where the drawee bank is situated. Therefore, only

the court within whose territorial jurisdiction the drawee bank is situated, is empowered to proceed against an accused person under Section 138.

(ii) Position of law as regards jurisdiction of courts after the enactment of the Amendment Act, 2015

38. The exposition of law in ***Dashrath Rupsingh*** *(supra)* resulted in several representations from the commercial sector to the government, registering protests against the accused-centric interpretation of the jurisdictional issue adopted by this Court. Such representations were considered by the Parliament and the Negotiable Instruments (Amendment) Act, 2015 was enacted by the Parliament to *inter alia*, clarify the issue of jurisdiction to try the offence under Section 138.

39. The Amendment Act, 2015 introduced sub-section (2) to Section 142 of the Act, 1881. The amended Section 142 reads thus:

> "*142. Cognizance of offences.*
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),*
> *(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;*
> *(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:*

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;
(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(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."

(Emphasis supplied)

40. A bare textual reading of the amended Section 142 indicates that the jurisdiction to try the offence under Section 138 has been specified in two circumstances: *first*, when the cheque is delivered for collection through an account, and *secondly*, when the cheque is presented for payment otherwise through an account. It is also worth noting that the Explanation to Section 142(2)(a) further clarifies the question of jurisdiction by taking into account

the realities of negotiating by way of cheques and the technological advancement in the field. However, this Court as well as the High Courts have been divided over the conjoint reading of Section 142(2)(a) and the Explanation thereto.

41. We find it necessary to resolve this controversy and eliminate divergent positions in this regard, and for that we must understand the true import of the amendments made to Section 142. In such view of the matter, it is apposite to consider the following definitions:

- "Drawer" refers to the maker of a bill of exchange or cheque [See: Section 7 of the Act, 1881].
- "Drawee" refers to the person who is directed to pay the amount specified in the bill of exchange or cheque made by the drawer [See: Section 7 of the Act, 1881].
- "Payee" refers to the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid [See: Section 7 of the Act, 1881].

The relevant provision reads thus:

> "*7. "Drawer".-- The maker of a bill of exchange or cheque is called the drawer; the person thereby directed to pay is called the drawee.*

"Drawee in case of need". -- When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".

"Acceptor". -- After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour". -- When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Payee". -- The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".''

(Emphasis supplied)

a. Meaning of the expressions "*delivered for collection through an account*" and "*presentation for payment otherwise through an account*"

42. The expression "*delivered for collection through an account*" is an integral part of Section 142(2)(a) and distinguishes it from the provision in Section 142(2)(b) which comes into operation when a cheque is "*presented for payment otherwise through an account*". We find it apposite to clarify that the expressions "delivered for collection" and "presented for payment" respectively, are distinct. They operate in separate stages of discharging a liability by way of a cheque.

43. The word "delivery" is defined in Section 46 of the Act, 1881 and reads thus:

> "*46. Delivery.*
> *The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.*
>
> *As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.*
>
> *As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.*
>
> *A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.*
>
> *A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.*"
>
> (Emphasis supplied)

44. What is discernible from the aforesaid is that the "making" of a cheque is complete only upon delivery of the same by the drawer. The act of "delivery" thus, creates a relationship between the drawer and the payee Such relationship is what describes the entitlement of the payee to the amount of money for which the cheque is drawn and enables the payee to encash the same.

45. Upon perusal of Section 142(2)(a), we are of the considered opinion that the terms "delivered" and "for collection through an account" are to be read in such a manner that the latter describes the nature of delivery. The plain reading of Section 46 supports this line of argument as the definition contained therein indicates that the making of the cheque is complete upon the act of delivery. Therefore, the nature of the cheque becomes crystallized as an account payee cheque once the drawer delivers it to the payee who further delivers it to the bank in which he maintains his account. Once the cheque is delivered by the payee to his bank, the "making" of the cheque is said to be complete. The inclusion of the expression "for collection through an account" in Section 142(2)(a) is only to indicate the intention of the drawer to "make" the cheque in such a manner that it can only result in a transaction between the bank accounts of the drawer and the payee.

46. Presentment, on the other hand, is the stage that immediately succeeds "delivery". The expression "presentment for payment" is defined under Section 64 of the Act, 1881. It stipulates that a cheque must be presented for payment to the maker of such cheque (the drawer) or the person to whom directions are given to pay the amount specified in the cheque (the drawee). Such presentment must be by or on behalf of the payee. The relevant provision reads thus:

> "*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.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.--Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

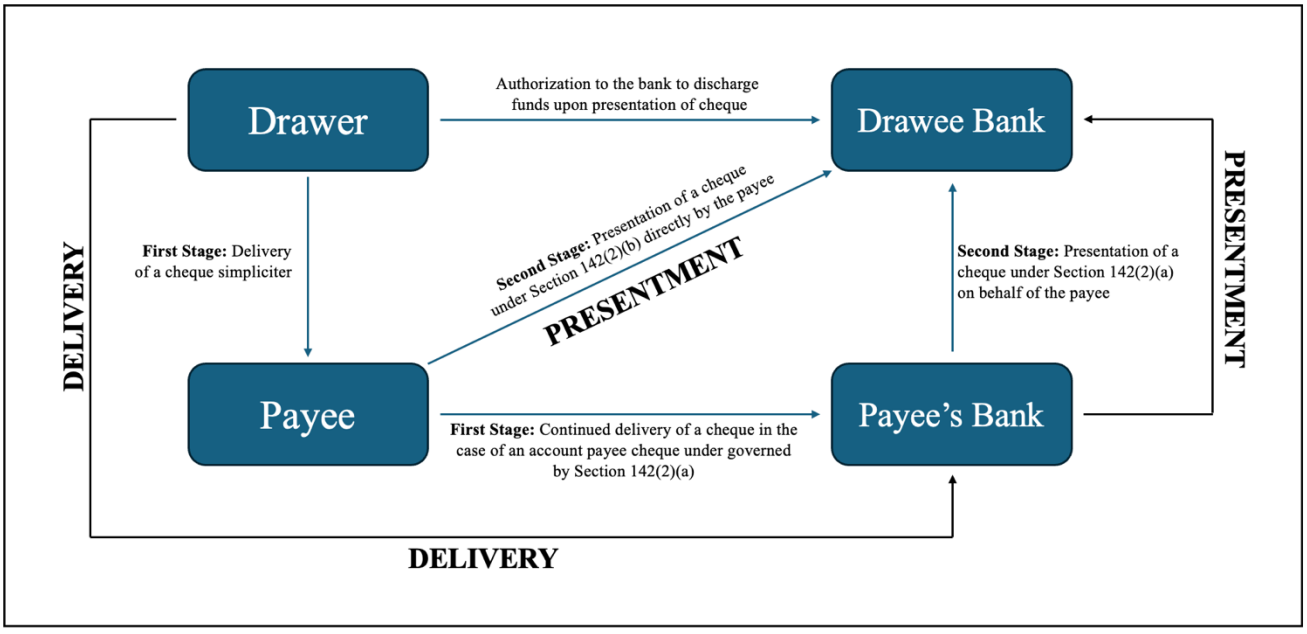
(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly."

(Emphasis supplied)

47. Therefore, presentment creates a relationship between the drawee bank and the payee (in case of an account bearer cheque) or the payee's bank (in case of an account payee cheque).

48. We may with a view to obviate any confusion, clarify at the threshold that presentment under Section 64 of the Act, 1881 and presenting of cheque by the payee to his bank are two distinct acts. The presentation of cheque by a payee to the payee's bank is included in the concept of "delivery" defined under Section 46 of the Act, 1881. It is nothing but an extension of delivery in the case of non-transferable account payee cheques. The jurisdiction in such cases has been anchored by Section 142(2)(a) at the place where branch of the bank in which the payee maintains an account is situated. The sketch below explains the concepts of "delivery" and "presentment":



b. Meaning of the expression "*maintains an account*" under Section 142(2)

49. Having discussed the bifurcation created by the legislature for the purposes of determining jurisdiction as regards any dispute pertaining to account payee cheques and account bearer cheques respectively, we may now explain the meaning of the expression "*the branch of the bank where the payee or holder in due course, as the case maybe, maintains the account"*.

50. This Court in ***Bijoy Kumar Moni v. Paresh Manna*****,** reported in **2024 SCC OnLine SC 3833**, had the occasion to provide an exhaustive explanation for the expression "maintains an account" as it appears in Section 138 of the Act, 1881. The issue therein was whether it was permissible for a third party to draw a cheque on the bank account of the company of which he was a director, to discharge his individual liability. This Court observed that the expression "on an account maintained by him with a banker" describes an intrinsic relationship between an account holder and the bank in which he holds such account. Such relationship could not be altered by a delegation of authority. Therefore, even though a person may draw a cheque on the bank account of another person, it is not possible to hold such a person who draws the cheque, liable for the offence under Section 138 as he is not the one who maintains the account with the bank. The relevant portion of the judgment in ***Bijoy Kumar Moni*** *(supra)* is reproduced below:

> "*45. It is of vital importance to understand the import of the expression "on an account maintained by him with a banker" used in Section 138 of the NI Act. The expression, in our considered opinion, describes the relationship between the account holder and the banker. This relationship is fundamental to the application of Section 138. The act of maintaining an account is exclusively tied to the account holder and does not extend to any third party whom the account holder may authorize to manage the account on its behalf. Therefore, any delegation of authority to manage the account does not alter the intrinsic relationship existing between the account holder and the banker as envisaged under the NI Act. Corporate persons like companies, which are mere legal entities and have no soul, mind or limb to work physically, discharge their functions through some human agency recognised under the law to work. Therefore, if some function is discharged by such human agency for and on behalf of the company it would be an act of the company and not attributable to such human agent. One such instance of discharge of functions could be the authority to manage the bank accounts of the company, issue and sign cheques on its behalf, etc. which may be delegated to an authorised signatory. However, such authorisation would not render the authorised signatory as the maker of those cheques. It is the company alone which would continue to be the maker of these cheques, and thus also the drawer within the meaning of Section 7 of the NI Act.*
>
> (Emphasis supplied)

51. It is abundantly clear from the aforesaid exposition that when a person maintains an account with a bank, he establishes a relationship with such bank for the management of his money. The scheme of the Act, 1881 leaves

no manner of doubt in our minds that such relationship forms the substructure of all transactions in respect of the account so maintained.

52. Having clarified the meaning of the expression "maintains an account", we may proceed to determine the precise details of the relationship between a person and the bank in which he maintains an account. A bare perusal of Section 138 indicates that for an offence to be made out thereunder, a person must draw a cheque on an account maintained by him with a bank. There is no further stipulation as regards the nature of such account or requirement of any other details of the bank that may be relevant for the purpose of adjudication. Therefore, what Section 138 describes by use of the expression "on an account maintained by him with a banker" is a simpliciter relationship between a person and his banker.

53. Sub-section (2) of Section 142 adopts a similar language, to indicate the same relationship as described in Section 138. However, it does so with a slight modification. The expressions "*the branch of the bank where the payee or holder in due course, as the case maybe, maintains the account"* or alternatively "*the branch of the drawee bank where the drawer maintains the account*" include the word "branch". This indicates that the payee or drawer, by maintaining the account in a particular branch of the bank, share a relationship not with the bank as a whole but with the specific branch

thereof (we may refer to this specific branch as the "home branch" for ease of exposition). Therefore, the inclusion of "branch" in Sections 142(2)(a) and (b) places an additional condition for determining the place where the payee or drawer maintains the account. This additional condition is placed on the relationship between a person and his banker, in order to decide the question of jurisdiction and streamline the process of adjudication. In other words, for deciding jurisdiction, it is not sufficient to establish whether a person maintains an account in a particular bank. It is necessary to also ascertain the specific branch of the bank in which he maintains the account to completely and unambiguously decide the said question.

c. Conjoint reading of Section 142(2)(a) and the Explanation thereto

54. It is limpid from the aforesaid discussion that the necessary corollary of including 'branch' as a factor that shapes the relationship between the payee/drawer and their bank, is that a complaint under Section 138 would be triable only by the court in whose local jurisdiction the branch of the bank where the payee/drawer maintain their account, is situated.

55. Before we explain the Section 142(2)(a), we deem it fit to briefly discuss Section 142(2)(b). In the case of account bearer cheques governed by Section 142(2)(b), the provision of jurisdiction by way of the Amendment Act, 2015 is partially reinforced by the position of law expounded in

Dashrath Rupsingh *(supra)*. Section 142(2)(b) confers jurisdiction on the court within whose local area the drawee bank is situated and upon presentation, the cheque comes to be dishonoured. It is, however, worth noting that since the introduction of 'payable at par' cheques, the encashment of cheques can happen at any branch of the drawee bank. It is not necessary that the branch which is honouring or dishonouring the cheque may be that particular branch in which the drawer maintains the account. Therefore, the technological advancements in the banking sector have made it so that the offence of dishonour of cheque can be committed at any branch of the drawee bank. In such a case, if the law as explained in ***Dashrath Rupsingh*** *(supra)* is applied strictly then the jurisdiction would be fixed at the branch of the drawee bank where the cheque was actually dishonoured. Such branch may not necessarily be the branch in which the drawer maintains an account. Having taken into account this possibility, we recognize that the Amendment Act, 2015 has worded Section 142(2)(b) in such a manner that even if a cheque is dishonoured elsewhere, the jurisdiction for trial of the complaint under Section 138 would lie with the court within whose local jurisdiction the branch of the drawee bank in which the drawer maintains the account, is situated.

56. The legislature has adopted a similar route under Section 142(2)(a) to determine jurisdiction in cases pertaining to the dishonour of account payee

cheques. The distinction between Section 142(2)(a) and (b) respectively is not only limited to the nature of the cheque sought to be encashed but also the stage at which jurisdictional ambiguity may arise, i.e., at the stage of delivery or presentment in the case of account payee cheque and account bearer cheque respectively. In the case of an account payee cheque, the jurisdictional uncertainty may arise in the first stage of delivery itself. As discussed in the aforesaid, "delivery" is continued by the payee to also include delivery of the cheque to the payee's bank. In such a case, the act of making of the cheque is influenced by the payee allowing him to deliver the cheque for collection at any branch of the bank in which he maintains an account.

57. If the aforesaid be so and the jurisdiction is to be decided on the basis of the place where the cheque was delivered to the bank of the payee, the same would lead to conferring unbridled power to the payee in deciding jurisdiction which may be misused for the purposes of forum shopping. We are cognizant of the fact that the dictum in ***Dashrath Rupsingh*** *(supra)* sought to minimize such abuse of law that arose from the wide ambit of jurisdiction specified in ***Bhaskaran*** *(supra)*. While a bare perusal of the amended Section 142 and the Statement of Objects and Reasons of the Amendment Act, 2015 shows that the Parliament has made a departure from the offence-centric understanding of jurisdiction in ***Dashrath Rupsingh***

(supra), yet we find it difficult to accept that the legislature would relegate the position of law back to a situation that would facilitate its manipulation.

58. At this juncture, it is relevant to refer to the Explanation to Section 142(2)(a). A bare textual reading of the provision indicates that the Explanation creates a legal fiction that a cheque, when delivered for collection through an account, at 'any branch' of the bank in which the payee maintains the account, would be deemed to have been delivered to the particular branch of the bank in which the payee maintains his account, i.e., the home branch of the payee. Therefore, by way of Explanation, the legislature ensures convenience of transaction by recognizing that a payee may deliver a cheque at 'any branch' of his bank. However, in a situation where such cheque comes to be dishonoured, it would be deemed that the cheque was delivered at the home branch so as to empower the court, within whose local territorial jurisdiction the said branch falls, to try the complaint in this regard.

59. We may advert to the following illustrative table to lend further clarity to the aforesaid exposition:

Payee's Home Branch: **DELHI**	Drawer's Home Branch: **MUMBAI**
Drawer issues the cheque in **Ahmedabad**.	
SECTION 142(2)(a)	SECTION 142(2)(b)
In case of an account payee cheque (governed by Section 142(2)(a)), Payee delivers the cheque for collection in branch of the payee's bank situated in **CHENNAI**.	In case of an account bearer cheque (governed by Section 142(2)(b)), Payee presents the cheque in branch of the drawee bank situated at **BANGALORE**.
Jurisdiction in case of account payee cheque, under Section 142(2)(a) is vested with the courts at **DELHI**.	Jurisdiction in case of account bearer cheque, under Section 142(2)(b) is vested with the courts at **MUMBAI**.
Reason: The legal fiction created in the Explanation to Section 142(2)(a) stipulates that jurisdiction would lie at the Home Branch of the Payee (**DELHI**) irrespective of where the cheque has been *delivered* by the Payee (in this case at **Chennai**).	Reason: The plain language of Section 142(2)(b) indicates that jurisdiction in cases of account bearer cheques would lie at the Home Branch of the Drawer (**MUMBAI**) irrespective of where the cheque has been *presented* by the Payee (in this case, at **Bangalore**).

60. This Court had the occasion to apply the principles of jurisdiction laid down in Section 142(2)(a) for the first time in ***Bridgestone India (P) Ltd. v. Inderpal Singh*****,** reported in **(2016) 2 SCC 75** wherein it was observed that the legal position declared in ***Dashrath Rupsingh*** *(supra)* has been

overturned by the Negotiable Instruments (Amendment) Second Ordinance, 2015 whereby Section 142 was amended such that the jurisdiction would be fixed at the place where the cheque is delivered for collection, i.e., the branch of the bank in which the payee maintains an account. The relevant portions of the judgment in ***Bridgestone*** *(supra)* are reproduced below:

> "*11. In order to overcome the legal position declared by this Court in Dashrath Rupsingh Rathod case [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] , the 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 15-6-2015. 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 142-A was inserted into the Negotiable Instruments Act.*
>
> ***---xxx---***
>
> *13. 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.*"
>
> (Emphasis supplied)

61. We are of the considered view that the paraphrasing of Section 142(2)(a) as done in ***Bridgestone*** *(supra)* bears some relevance and requires explanation. This Court applied the provision as intended by the language of Section 142(2)(a), however, in the process of exposition, rephrased the same and the Explanation thereto in a manner that gives primacy to the expression "for collection" without indicating the complete context in which it occurs in the provision. A perusal of Section 142(2)(a) reflects that the expression "for collection through an account" is employed by the legislature to identify the nature of the cheque as an account payee cheque. Therefore, the use of the phrase "delivered for collection" with incomplete context in ***Bridgestone*** *(supra)* gave rise to a cleavage of opinion. This is evident from this Court's decision in ***Yogesh Upadhyay v. Atlanta Ltd.*****,** reported in **(2023) 19 SCC 404**.

62. In ***Yogesh Upadhyay*** *(supra)*, the petitioner therein had prayed for transfer of the two complaints filed in Nagpur to Delhi, as the complaint in respect of other four cheques, between the same parties, were registered before the competent court in Delhi. This Court, on a conjoint reading of the Statement of Objects and Reasons of the Amendment Act, 2015 and Para 13 of ***Bridgestone*** *(supra)* respectively, held that the jurisdiction to try an offence under Section 138 will lie with a court within whose local jurisdiction the cheque has been delivered for collection i.e., through an account in the

branch of the bank where the payee maintains an account. The relevant paragraphs of the judgment are reproduced below:

> "*12. Perusal of the Statement of Objects and Reasons in Amendment Act 26 of 2015 makes it amply clear that insertion of Sections 142(2) and 142-A in the 1881 Act was a direct consequence of the judgment of this Court in Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] . Therefore, the use of the phrase:"shall be inquired into and tried only by a court within whose local jurisdiction ..." in Section 142(2) of the 1881 Act is contextual to the ratio laid down in Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] to the contrary, whereby territorial jurisdiction to try an offence under Section 138 of the 1881 Act vested in the court having jurisdiction over the drawee bank and not the complainant's bank where he had presented the cheque. Section 142(2) now makes it clear that the jurisdiction to try such an offence would vest only in the court within whose jurisdiction the branch of the Bank where the cheque was delivered for collection, through the account of the payee or holder in due course, is situated. The newly inserted Section 142-A further clarifies this position by validating the transfer of pending cases to the courts conferred with such jurisdiction after the amendment.*
>
> *13. The later decision of this Court in Bridgestone India (P) Ltd. v. Inderpal Singh [Bridgestone India (P) Ltd. v. Inderpal Singh, (2016) 2 SCC 75 : (2016) 1 SCC (Civ) 588 : (2016) 1 SCC (Cri) 472] affirmed the legal position obtaining after the amendment of the 1881 Act and endorsed that Section 142(2)(a) of the 1881 Act vests jurisdiction for initiating proceedings for an offence under Section 138 in the court where the cheque is delivered for collection i.e. through*

an account in the branch of the bank where the payee or holder in due course maintains an account. This Court also affirmed that Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] would not non-suit the company insofar as territorial jurisdiction for initiating proceedings under Section 138 of the 1881 Act was concerned."

(Emphasis supplied)

63. We also find it apposite to refer to the Statement of Objects and Reasons of the Amendment Act, 2015. The same reads thus:

"*Negotiable Instruments (Amendment) Act, 2015*
Prefatory Note—Statement of Objects and Reasons.—

(…) *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 complaints (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 financial institutions, expressing concerns about the wide 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 introduction 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 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;

(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 I 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 objective 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. (…)"

(Emphasis supplied)

64. What has been conveyed by this Court in ***Yogesh Upadhyay*** *(supra)* is that the account which the payee maintains in a particular branch of the bank, serves only as a conduit for the payee to deliver the cheque at any branch of the bank, for subsequent presentment to the drawee bank. In other words, the payee is only required to maintain an account in a branch of the bank, for the said bank to present the cheque to the drawee bank from any of its branches. Therefore, the act of "maintaining an account in a branch" is to enable the primary action of "delivery for collection". Accordingly, the jurisdiction must lie at the place where the primary action was performed, i.e., the branch of the payee's bank where the cheque was actually delivered for collection, is situated.

65. The reasoning adopted in ***Yogesh Upadhyay*** *(supra)* may find some support in the literal reading of Para 5(i) of the aforesaid Statement of Objects and

Reasons which states that cases would be filed in the court having jurisdiction over the branch of the bank in which the payee presents the cheque for payment. It is apposite to note that, on the face of it, the language used in the Statement of Objects and Reasons is not synonymous with the language of Section 142(2)(a) and the Explanation thereto. Therefore, in our considered view, ***Yogesh Upadhyay*** *(supra)* could not have derived support from the Statement of Objects and Reasons.

66. We say so because no value could have been attached to the language adopted in the Statement of Objects and Reasons for the purpose of discerning the true meaning and effect of a substantive provision occurring in the statute book. This principle of interpretation has been settled by this Court in ***Devadoss v. Veera Makali Amman Koil Athalur*****,** reported in **(1998) 9 SCC 286** wherein it was observed thus:

> "*21. The question arises naturally whether the court can refer to the Statement of Objects and Reasons mentioned in a bill when it is placed before the legislature and even if it is permissible, to what extent the court can make use of the same. On this aspect, the law is well settled. In Narain Khamman v. Parduman Kumar Jain [(1985) 1 SCC 1] it was stated that though the Statement of Objects and Reasons accompanying a legislative bill could not be used to determine the true meaning and effect of the substantive provisions of a statute, it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in*

relation to the statute and the evil which the statute sought to remedy."

(Emphasis supplied)

67. Further, we must also closely scrutinize the reliance placed by ***Yogesh Upadhyay*** *(supra)* on the phrasing of Section 142(2)(a) in ***Bridgestone*** *(supra)*. We say so because the application of Section 142(2)(a) in ***Bridgestone*** *(supra)*, in no manner, supports how the provision was applied in ***Yogesh Upadhyay*** *(supra)*. Though the judgment in ***Yogesh Upadhyay*** *(supra)* does not mention where the branch of the bank was situated in which the payee maintained an account, was situated, yet it is discernible from the decision that this Court gave primacy to the place where the cheque was "delivered for collection" when it upheld the correctness of institution of complaints in Nagpur.

68. In our considered view, the interpretation of jurisdiction under Section 142(2)(a) in ***Yogesh Upadhyay*** *(supra)* is not borne out of the statutory scheme of the Act, 1881. A perusal of the judgment shows that it did not take into account the deeming fiction put forth in the Explanation to Section 142(2)(a) that delivery of a cheque at any branch of the payee's bank will be deemed to have been delivered at the branch of the bank in which the payee maintains the account, i.e., the home branch of the payee. Even though, this Court in ***Yogesh Upadhyay*** *(supra)* does not go so far as to discuss the

meaning and import of the Explanation, yet we may attempt to harmoniously read the language of the Explanation with the reasons provided in the said judgment in the interests of gauging the correct position of law.

69. Therefore, in *arguendo*, we may look at the Explanation from one another angle. The language used in the Explanation may also create a legal fiction that would enable 'any branch' of the payee's bank to be deemed as 'the branch in which the payee maintains an account' (the "**home branch**"). This construction of the Explanation would mean that by virtue of Section 142(2)(a), the court within whose local jurisdiction the home branch is situated, has an inherent power to try a complaint under Section 138 filed by the payee. However, the payee delivered the cheque for collection at another branch instead of the home branch. According to the dictum as laid in ***Yogesh Upadhyay*** *(supra)*, primacy has to be accorded to the action of the payee in "delivery of the cheque for collection" for the purpose of determining jurisdiction. The only understanding that we can obtain from the aforesaid is that the court exercising territorial jurisdiction over the home branch will have to share the inherent powers that it possesses under Section 142(2)(a), with the court in whose jurisdiction such other branch is situated, in which the payee delivered the cheque for collection.

70. Having undertaken the academic exercise of understanding the ways in which the Explanation may be read, we do not have any qualms in saying that the aforesaid construction of Section 142(2)(a) and the Explanation thereto does not appeal to us. We say so for the following two reasons:

(i) ***First***, the understanding of the Explanation in such a manner leads to distorting of the plain language of Section 142(2)(a). This Court, in ***Dashrath Rupsingh*** *(supra)* observed that *"the legislature does not ordain with one hand and immediately negate it with the other*". We find the said principle to be of much significance especially while reading explanations attached to the provisions that seek to clarify the operation of such provision. In our considered view, an explanation cannot be raised to such a high pedestal that the provision which it intends to clarify becomes a mere supporting device.

(ii) ***Secondly,*** a perusal of the Statement of Objects and Reasons to the Amendment Act, 2015 indicates that the legislature intended to change the process of determination of jurisdiction for trial of complaints under Section 138. The inclusion of Section 142(2) in the Act, 1881, which is a special legislation, meant that the jurisdictional vacuum was filled. The natural consequence of such amendment was that there remained no requirement of approaching the issue of jurisdiction from an ordinary criminal perspective as provided in the CrPC, as was done in

Dashrath Rupsingh *(supra).* However, the Statement of Objects and Reasons gives no indication that the said judgment made erroneous observations about the misuse of the wide ambit of jurisdiction by complainants to the inconvenience of the accused persons. In our considered view, it could not have been the intention of the Parliament to let abuse of law go unchecked. It is for this reason that the judgment in ***Yogesh Upadhyay*** *(supra)* does not impress us. If we accept the construction placed on Section 142(2)(a) by the decision in ***Yogesh Upadhyay*** *(supra)*, we will be allowing a payee to manipulate the question of jurisdiction in his favour by letting him decide where he wants to deliver the cheque for collection. We are of the firm opinion that the legislature could not have intended to let misuse perpetuate in such a manner.

71. We find it apposite to also look into the decision rendered in ***Shri Sendhur Agro & Oil Industries v. Kotak Mahindra Bank Ltd.*****,** reported in **2025 SCC OnLine SC 508** wherein this Court placed reliance on both ***Bridgestone*** *(supra)* as well as ***Yogesh Upadhyay*** *(supra)* respectively. The phraseology employed in ***Sendhur Agro*** *(supra)* suggests that this Court was in agreement with the law expounded in ***Yogesh Upadhyay*** *(supra)* in respect of "delivery for collection". However, upon a closer examination, it is clear that this Court understood the term "delivered" and "for collection through

an account" in a disjunct manner which is not in consonance with how ***Yogesh Upadhyay*** *(supra)* perceived Section 142(2)(a). It was observed that presentation of a cheque to the drawee bank will be "through the account" of the payee and that such place would be determinative for the purpose of identifying jurisdiction. The relevant portion of the judgment in ***Sendhur Agro*** *(supra)* is reproduced below:

> "*61. It is clear on a reading of Section 142(2)(a) and the Explanation thereto that, 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.*
>
> *62. A conjoint reading of Section 142(2)(a) along with the explanation thereof, makes the position emphatically clear that, when a cheque is delivered or issued to a person with liberty to present the cheque for collection at any branch of the bank where the payee or holder in due course, as the case may be, maintains the account then, the cheque shall be deemed to have been delivered or issued to the branch of the bank, in which, the payee or holder in due course, as the case may be, maintains the account, and the court of the place where such cheque was presented for collection, will have the jurisdiction to entertain the complaint alleging the commission of offence punishable under Section 138 of the N.I. Act. In that view of the position of law, the word 'delivered' used in Section 142(2)(a) of the N.I. Act has no significance. What is of significance is the expression 'for collection through an account'. That is to say, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the*

payee or holder in due course, and the said place is decisive to determine the question of jurisdiction."

(Emphasis supplied)

72. What is discernible from the aforesaid exposition is that this Court considered the requirement of "maintaining of the account" implicit in "for collection through an account". In other words, once it is identified that the cheque in question is an account payee cheque, the delivery must be to such branch in which the payee maintains the account as it is this branch of the bank that will receive the funds in the account maintained by the payee, from the drawee bank which will debit the drawer's account to send such amount. However, the necessity of delivery of an account payee cheque to the home branch is only legal and not commercial. It is to address commercial exigencies that the legislature enacted the Explanation to Section 142(2)(a). The deeming fiction in the Explanation ensures that even if a cheque is delivered to a branch other than the home branch for commercial convenience, it shall be considered to have been delivered to the home branch for the legal purpose of determining jurisdiction. This understanding is also apparent from this Court's recent judgment in ***Prakash Chimanlal Sheth v. Jagruti Keyur Rajpopat*****,** reported in **2025 SCC OnLine SC 1511**.

73. The aforesaid comparison may be better illustrated through the following diagram depicted hereunder:

Section 142(2)(a) – (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		
Bridgestone *(supra) –* *Section 142(2)(a) of the 1881 Act vests jurisdiction for initiating proceedings for an offence under Section 138 in the court where the cheque is delivered for collection i.e. through an account in the branch of the bank where the payee or holder in due course maintains an account*	***Yogesh Upadhyay*** *(supra) –* *Section 142(2) now makes it clear that the jurisdiction to try such an offence would vest only in the court within whose jurisdiction the branch of the Bank where the cheque was delivered for collection , through the account of the payee or holder in due course, is situated*	***Sendhur Agro*** *(supra) –* *In that view of the position of law, the word 'delivered' used in Section 142(2)(a) of the N.I. Act has no significance. What is of significance is the expression 'for collection through an account'. That is to say, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the payee or holder in*

		due course, and the said place is decisive to determine the question of jurisdiction.

74. The above diagrammatic representation shows that each judgment has considered specific phrases together or disjunct from each other due to which there have been variations in understanding of the provision in Section 142(2)(a) and the Explanation thereto.

75. In such view of the matter, we are constrained to observe that the position of law expounded in ***Yogesh Upadhyay*** *(supra)* is *per incuriam*.

(iii) Determination of the issues framed

a. Whether the MM, Kolkata has the jurisdiction to try the complaint?

76. In view of the aforesaid discussion, it is as clear as a noon day that the jurisdiction to try a complaint filed under Section 138 in respect of a cheque delivered for collection through an account, i.e., an account payee cheque, is vested in the court within whose local jurisdiction the branch of the bank in which the payee maintains the account, i.e., the payee's home branch, is situated. Therefore, we find no force in the petitioner's argument that as per the relevant provisions of the CrPC, the jurisdiction to try the complaint

under Section 138 is vested in the court within whose local bounds the drawee bank is situated where the cheque was dishonoured. We say so because the enactment of the Amendment Act, 2015 and the introduction of Section 142(2) thereby, being a special legislation, occupies the field over a general procedural legislation *viz.* CrPC. Thus, the MM, Kolkata does not have jurisdiction to try the case.

b. Whether a case of transfer of the complaint from the court of JMFC, Bhopal to MM, Kolkata is made out?

77. The petitioner, who is the accused company in the complaint instituted by the respondent-complainant, has prayed for transfer of the complaint on the ground that the MM, Kolkata, before returning the complaint, had already reached the stage of recording of evidence under Section 145(2) of the Act, 1881.

78. It is apposite to note that Section 142A of the Act, 1881 provides for transfer of pending cases under Section 138, to the court having jurisdiction in terms of Section 142(2). We are aware that the jurisdiction to try the complaint in the instant case lied exclusively with the JMFC, Bhopal. If the matter had remained pending at the stage prior to the recording of evidence, there would have been no difficulty in accepting the deemed transfer of the complaint under Section 142A(1) to the court of JMFC, Bhopal from the court of MM, Kolkata. However, much water has floated under the bridge. We were

informed that the court of MM, Kolkata returned the complaint when it had already reached the stage of recording of evidence under Section 145(2) of the Act, 1881. In such view of the matter, we are of the considered opinion that allowing the parties to contest the complaint afresh before the JMFC, Bhopal would amount to a procedural impropriety that may prove to be detrimental to the case of the accused.

79. In ***Dashrath Rupsingh*** *(supra)*, this Court, with a view to obviate and eradicate legal complications, had allowed the category of complaint cases in which proceedings had reached the stage of recording evidence under Section 145(2), to remain in the court where they were pending, despite such courts not being vested with jurisdiction in terms of the judgment. The relevant portion of the judgment is reproduced below:

> "*22. (...) To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is presently pending."*

80. In light of the observations in ***Dashrath Rupsingh*** *(supra)* and to meet the ends of justice, we are of the view that the instant case be transferred to the jurisdiction of MM, Kolkata and the proceedings be resumed from the stage before the order of return of complaint dated 28.07.2016.

D. CONCLUSION

81. Having regard to the pleadings in the memorandum of the transfer petition, we have reached the conclusion that a case has been made out for transfer of the proceedings in question.

82. In the result, the petition succeeds and is hereby allowed. All other connected transfer petitions are also disposed of in the aforesaid terms.

83. The Registry shall forward one copy each of this judgment to all the High Courts.

84. Pending application(s), if any, are disposed of.

……J.
(J.B. PARDIWALA)

……J.
(R. MAHADEVAN)

New Delhi.
28th November, 2025.