

Cheque Dishonour : SC settles jurisdictional issues

AUTHOR Shrishail Kittad

PUBLISHED 5 August 2014

DASHRATH JUDGMENT: CHEQUE DISHONOR COMPLAINTS TO BE FILED AFRESH IN LAKHS OF CASES

In *Dashrath Rupsingh Rathod vs. Bank of Maharashtra & Anr.* case, the Supreme Court overruled its earlier judgment on jurisdiction of courts in Sec. 138 cases of dishonor of cheques and held that the complaint can only be filed in the court within whose jurisdiction the bank that dishonored the cheque is situated.

In this case, the Supreme Court has given the decision on eight appeals arising out of Special Leave Petitions and adopted the same view in all of them. To talk about one of them, the cheque was drawn on the UCO Bank, Tangi, Orissa but it was presented by the Complainant at State Bank of India, Ahmednagar Branch at Ahmednagar, Maharashtra. The complaint was filed in Ahmednagar. The Supreme Court, upholding the view taken by the High Court, held that the court at Tangi where the bank that has dishonored the cheque is situated will have the jurisdiction.

In *Dashrath Rupsingh case*, the Supreme Court has supported the view taken by the two-judge bench in the case of [*Harman Electronics Pvt.Ltd. v. National Panasonic India Pvt. Ltd. \(2009\) 1 SCC 720*](#) that the provisos are only the ingredients of the offence and not the offence itself. Offence is the dishonor of cheque and only that court where the bank dishonoring the cheque is situated will have the jurisdiction. Based on the Harman reasoning, the Supreme court overruled the view taken by the two-judge bench in the case of [*K. Bhaskaran v. Sankaran Vaidhyan Balan \(1999\) 7 SCC 510*](#) wherein court held that the complaint can be filed at any of the four places, namely (1). Where cheque is drawn; (2) where it is presented; (3) where the cheque is dishonored or (4) where the notice is sent to the drawer to pay the amount within 15 days.

The Supreme Court clearly mentioned that where the complainant chooses to present the cheque for encashment is not relevant, only the place where the bank dishonoring the cheque is situated is relevant. Accordingly, Justice Thakur has laid down the following principles in the Dashrath Rupsingh case:

1. The offence is committed as soon as the cheque is returned by the bank due to insufficiency of balance.
2. The provisos to Sec. 138 of the Negotiable Instruments Act, 1881 are only the pre-conditions which should be duly adhered to before filing the complaint. They are not the offence itself.
3. The cause of action will only arise at that place where the cheque is dishonored and not at the place where it is presented for encashment.

Consequences of the Judgment

This decision will have a far reaching impact on Banking and Non Banking Financial Institutions. Pursuant to this judgment, in the cases where the complaint is not filed within the jurisdiction of the court where the bank that dishonored the cheque is situated, the same will be returned to the complainants for filing a fresh complaint. The Supreme Court clearly mentioned in its judgment in Dashrath Rupsingh case that they are aware of the impact this judgment will have on lakhs of cases pending in different courts. The Apex Court reasoned that taking the prospective approach will keep putting the respondents to bear hardships of traveling long distance. However, the Supreme Court clearly mentioned that, those case in which the proceedings have reached to the stage of recording evidences as U/S 145(2) of the Negotiable Instruments Act, 1881 will remain only in those courts where they are pending now.