MUSARAF HOSSAIN KHAN

v.

BHAGHEERATHA ENGG. LTD AND ORS.

FEBRUARY 24, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

Constitution of India, 1950—Article 227—Territorial jurisdiction against order of sub—ordinate court—Held: Only that High Court within whose jurisdiction order of sub—ordinate court was passed has jurisdiction to entertain application under Article 227 of Constitution of India unless it is established that an earlier cause of action arose within jurisdiction thereof.

Negotiable Instruments Act 1881—Section 138—Constitution of India, 1950—Articles 226 and 227—Cheque deposited in a back in State of West Bengal, and on their bouncing, criminal complaint filed in that State itself— However, against order of cognisance and issuance of summons, drawer of cheque filing writ petition in State of Kerala, claiming that as cheques were issued from their registered office in that State, a part of cause of action had arisen there—Grant of interim relief by High Court—Jurisdiction for—Held: Kerala High Court had no jurisdiction to entertain the writ petition as ingredients of offence under Section 138 of the Act constituting the cause of action did not arise within its jurisdiction; sending of cheques from State of Kerala or drawer of cheques having an office there did not form an integral part of such cause of action.

Appellant supplied stone chips to respondent for construction work in State of West Bengal. They deposited cheques for payment issued by latter in a bank in Birbhum at Suri in State of West Bengal. On bouncing of these cheques, they filed a criminal complaint under Section 138 of Negotiable Instruments Act 1881 before Chief Judicial Magistrate at the same place. Cognisance of complaint was taken and summons issued to respondent were received by them at Kolaghat, Midnapore, West Bengal. In response, respondents filed a writ petition in Kerala High Court. Interim relief of stay of further proceedings pursuant to the above complaint was granted by the High Court. Hence the present appeal.

The question before the Court was whether the Kerala High Court had the

A jurisdiction in the matter. Respondent contended the cheques were issued from their registered office in State of Kerala, so a part of the cause of action had arisen therein, therefore High Court there had the jurisdiction.

Allowing the appeal, the Court

B HELD: 1. Only such High Court within whose jurisdiction the order of sub-ordinate court has been passed would have the jurisdiction to entertain an application under Article 227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof. [608-G]

2.1. Kerala High Court had no jurisdiction to entertain the writ petition as C no part of the cause of action arose within its jurisdiction. [612-E]

Union of India and Ors. v. *Adani Exports Ltd. and Anr.*, [2002] 1 SCC 567, *Kusum Ingots and Alloys Ltd.* v. *Union of India and Anr.*, [2004] 6 SCC 254 and *Mayank (H.K.) Ltd. and Ors.* v. *Owners and Parties Vessel M.V. Fortune Express and Ors.*, (2006) 2 Scale 30, referred to.

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Nakul Deo Singh v. *Deputy Commandant*, (1999) 3 KLT 629, approved.

2.2. The averments made in the writ petition filed by the respondent even if given face value and taken to be correct in their entirety would not confer any E jurisdiction upon the Kerala High Court. The agreement was entered into within the jurisdiction of the Calcutta High Court. The project for which the supply of stone chips and transportation was being carried out was also within the State of West Bengal. Payments were obviously required to be made within the jurisdiction of the said court where either the contract had been entered into or where payment was to be made. [611-C-E]

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3.1. For the purpose of proving the ingredients of the offence under Section 138 of the Act, the complainant was required to prove facts constituting the cause of action therefor none which arose within the jurisdiction of the Kerala High Court. [612-D-E]

G *Goa Plast (P) Ltd.* v. *Chico Ursula D'Souza*, [2004] 2 SCC 235, *Monaben Ketabhai Shah and Anr.* v. *State of Gujarat and Ors.*, [2004] 7 SCC 15 and *Prem Chand Vijay Kumar* v. *Yashpal Singh and Anr.*, [2005] 4 SCC 417, referred to.

Augustine v. *Omprakash Nanakram*, (2001) 2 KLT 638, approved.

H 3.2. A bare perusal of the complaint petition would clearly go to show that

according to the complaint the entire cause of action arose within the jurisdiction of the district courts of Birbhum and in that view of the matter it is that court which will have jurisdiction to take cognisance of the offence. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 of the Code of Criminal Procedure Code is attracted, the court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter. [609-D-E] A B

3.3. Sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of the cause of action for which the complaint petition was filed by the appellant and cognisance of the offence under Section 138 of the Negotiable Instrument Act, 1881 was taken by the Chief Judicial Magistrate at Suri. [609-F-G] C

State of Rajasthan and Ors v. *Swaika Properties and Anr.*, [1985] 3 SCC 217, *Aligarh Muslim University and Anr.* v. *Vinay Engineering Enterprises Pvt. Ltd. and Anr.*, [1994] 4 SCC 710; *Oil and Natural Gas Commission* v. *Utpal Kumar Basu and Ors.*, [1994] 4 SCC 711 and *Om Hemrajani* v. *State of U.P. and Anr.*, [2005] 1 SCC 617, referred to. D

4.1. Under Articles 226 and 227 of the Constitution High Courts should not ordinarily interfere with an order taking cognisance passed by a competent court of law except in a proper case. [608-F-G] E

Surya Dev Rai v. *Ram Chander Rai and Ors.*, [2003] 6 SCC 675, *Rupa Ashok Hurra* v. *Ashok Hurra*, [2002] 4 SCC 388 and *Ranjeet Singh* v. *Ravi Prakash*, [2004] 3 SCC 692, referred to.

4.2. In a criminal matter High Court may exercise its extra-ordinary writ jurisdiction but interference with an order of Magistrate taking cognisance under Section 190 of the Code of Criminal Procedure will stand on somewhat different footing as an order taking cognisance can be subject matter of revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. [606-A-B] F G

Naresh Mirajkar and Ors. v. *State of Maharashtra and Anr.*, AIR (1967) SC 1 and *State of U.P. and Ors.* v. *Surendra Kumar*, [2005] 9 SCC 161, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1269 of 2006. H

A From the Judgment and Interlocutory Order dated 25.1.2005 of the Kerala High Court in Writ Petition (C) No. 2666/2005.

Chanchal Kumar Ganguli for the Appellant.

Satish Vig, Ramesh Babu M.R. and K. Rajeev for the Respondent

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The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

The appellant herein filed a complaint petition in the court of Chief C Judicial Magistrate, Birbhum at Suri being CC No. 339 of 2004 alleging inter alia therein that several cheques of diverse sums issued by the respondent herein had been dishonoured, and, thus, they committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the Act').

D The appellant herein entered into a contract with the Respondent No. 1 herein (Company) for supply of stone chips. The company used to hand over post-dated cheques to the appellant towards the price of stone chips as also transport, handling, postage and other charges. The Company had issued six cheques of the following description in favour of the appellant:

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Sl.No.	Cheque No.	Dated	Amount
1.	455997	10.06.2004	Rs. 5,33,795
2.	455998	10.07.2004	Rs. 5,33,795
F 3.	455999	10.08.2004	Rs. 5,33,795
4.	455993	10.06.2004	Rs. 6,49,085
5.	455994	10.07.2004	Rs. 6,49,085
G 6.	455995	10.08.2004	Rs. 6,49,085
		Total:	Rs. 35,48,640

The aforementioned cheques were deposited with "Mayurakhi Gramin Bank" Suri branch but they were returned by the Banker stating "full cover H not received". A demand notice was sent by the appellant demanding payment

of the said cheque to the respondent in September, 2004. Out of the aforementioned sum of Rs. 35,48,640/- a sum of Rs. 5,33,795/- was paid by respondent No. 4 on or about 15.9.2004. The appellant alleged that a sum of Rs. 30,14,845/- is still due and owing to him from the respondents. The respondents admit the claim of the appellant. They are said to have assured him that the rest of the amount shall be paid, but the same has not been done.

The appellant on the aforementioned allegations filed a complaint petition in the court of Chief Judicial Magistrate, Birbhum at Suri which was registered as CC No. 339 of 2004. By an order dated 10.11.2004 the Chief Judicial Magistrate upon examining the appellant on oath took cognizance of the said offence stating:

> ".....Hd. Considered. Cog. Is taken.
>
> Examined the complainant Mosaraf Hossain on S/A.
>
> A *Prima facie* case has been made out against the accused persons u/s. 138 N.I. Act.
>
> Issue summons upon the accused Persons at once. To 3/2/05 for S/R & appear...."

The respondents allegedly received the summons sent to them at Kolaghat, Midnapore, West Bengal.

Despite receipt of the summons instead of appearing before the Court of the Chief Judicial Magistrate, Birbhum at Suri, the respondents filed a writ petition in the High Court of Kerala at Ernakulam which was registered as W.P. (C) No. 2666 of 2005 praying, *inter alia*, for the following reliefs :

> "(a) declare that the petitioners herein are not liable to be proceeded against on the basis of Ext. P4 complaint;
>
> (b) declare that the petitioners herein are not liable to be proceeded against on the basis of Ext. P4 complaint;
>
> (c) issue an appropriate writ, order or direction quashing Ext. P4 complaint; "

Interim relief by way of stay of all further proceedings pursuant to the said complaint petition including the arrest of the petitioners; pending final disposal of the said writ petition was also prayed for.

A A learned Single Judge of the Kerala High Court on 25.1.2005 passed the following order:

"Notice and interim stay for six months."

The said order of stay is said to have been extended from time to time.

B

It is not disputed that the respondents herein undertook the work of construction of major bridges between Dhankuni & Kharagpur in the State of West Bengal as a part of ongoing project of the National Highway Authority of India to widen and strengthen the National Highway. It is furthermore not in dispute that for the purpose of executing the said work the company entered into an engineering contract with the National Highway Authority of India.

C

In the writ petition, it was stated:

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"The 1st respondent herein a stone quarry owner, is a person who supplied crushed stone aggregates a raw material that was needed for the aforesaid work undertaken by the 1st petitioner company. He along with another had entered into an agreement with the 1st petitioner company in that behalf, pursuant to which the supply was made. The 1st petitioner company gave good business to the 1st respondent, paying him for than Rs. 3 crores in the transaction. However, towards the end of the transactions, due to the aforesaid financial imbroglio in which the 1st petitioner company was placed in, an outstanding amount of about 35 lakhs remained payable to the 1st respondent herein. *There is no question of the 1st petitioner company running away from its responsibility of paying the amount due but it needed some time to augment its resources in the context of the aforementioned financial entanglement it found itself in.*"

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[Emphasis supplied]

G It was accepted that for securing the payment for supply of stone chips post-dated cheques used to be given. The reason for bouncing of the said cheques is said to be that all of them were presented without prior information to the Company. The respondents further averred in the writ petition that the National Highway Authority had not paid them a sum of Rs. 5.5 crores. However, the statements made in the complaint petition to the effect that a payment of a sum of Rs. 5,33,795/- out of the total demand of Rs.35,48,640/

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was made, had been admitted. Some purported questions of law have been raised in the said writ petition contending as to why the order taking cognizance was bad in law including that in term of Section 219 of the Code of Criminal Procedure the first respondent could not file one complaint in respect of all the dishonoured five cheques.

The contention of the learned counsel appearing on behalf of the respondent is that as the cheques having been issued from the registered office of the respondent company, a part of cause of action arose within the jurisdiction of the Kerala High Court. Strong reliance in this behalf has been placed on by the learned counsel in *Navinchandra N. Majithia* v. *State of Maharashtra,* [2000] 7 SCC 640 and a decision of the learned Single Judge of the Kerala High Court in *Augustine* v. *Omprakash Nanakram* (2001) 2 KLT 638.

The primary question, which arises for consideration, is as to whether the Kerala High Court had jurisdiction in the matter.

In the writ petition, the jurisdiction of the High Court was invoked stating:

> "It is in these circumstances that the petitioners herein are approaching this Hon'ble court with a prayer to quash Ext. P4 complaint. It is respectfully that this Hon'ble Court has the necessary jurisdiction to interfere in the matter in as much as part of the cause of action arose within the territorial jurisdiction of this Hon'ble court. The registered and Head Office of the 1st Petitioner Company is at Vazhakkala, Kakkanad, Ernakulam and the amount due under the cheques that are the subject matter of Ext. P4 complaint was meant to be payable at Ernakulam. In fact out of the 6 dishonoured cheques, payment in respect of one cheque was sent from Ernakulam along with Ext. P2 reply."

In *Navinchandra N. Majithia* (supra) a contract was entered into by and between a company, Indian Farmers Pvt. Ltd. (IFPL) and Chinar Exort Ltd. (CEL). The appellant therein was the Managing Director of the IFPL company. CEL entered into an agreement with IFPL for purchase of the entire shares of IFPL for which it paid earnest money. It, however, failed to fulfil its commitment to pay the balance purchase price within the specified time. The IFPL terminated the agreement. A suit was filed by CEL in the High Court of Bombay for specific performance of the said agreement. Two shareholders of

A CEL took over management and control of the company as Directors and they formed another company named JBHL at Shilong in the State of Meghalaya. Later the said suit was withdrawn upon the appellant's returning the amount paid by CEL which was earlier forfeited by the appellant. Pursuant to the said agreement JBHL made payments for the purchase of shares of IFPL. But the appellant therein contended that as JBHL committed default in making the B balance payment and thereby committed breach of the agreement, the said agreement stood terminated and the earnest money stood forfeited as stipulated in the agreement. In the aforementioned situation a complaint was filed by the JBHL against the appellant at Shillong. The maintainability of the said complaint came to be questioned by Majithia by filing a writ petition before the Bombay C High Court which was dismissed. Writ jurisdiction under Article 226 of the Constitution was invoked on the ground that the entire transaction on which the complaint was based had taken place at Mumbai and not at any other place outside the said town, much less at Shillong. It was further contended that the jurisdiction to investigate into the contents of the complaint was only with the police/courts in Mumbai. The prayers made in the said writ petition D were:

> "(a) to quash the complaint lodged by JBHL or in the alternative to issue a writ of *mandamus* directing the State of Maghalaya to transfer the investigation being conducted by the officers of CID at Shillong to the Economic Offences Wing, General Branch of CID, Mumbai or E any other investigating agency of the Mumbai Police, and
>
> (b) to issue a writ of prohibition or any other order or direction restraining the Special SP Police, CID, Shillong and/or any investigating agency of the Meghalaya Police from taking any further step in F respect of the complaint lodged by JBHL with the police authorities at Shillong."

The said writ petition, as indicated hereinbefore, was dismissed by the Bombay High Court. This Court reversed the said order opining that the entire cause of action arose within the jurisdiction of the High Court of Bombay. G Upon noticing some earlier decisions of this Court, it was observed :

> "Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the H writ petition, on the ground of lack of territorial jurisdiction. The Court

based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a *mala fide* move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court."

In *Augustine* (supra) a learned Single Judge of the Kerala High Court again on arriving at a finding of fact obtaining therein was of the opinion that the cause of action, therefore, arose within the jurisdiction of the Kerala High Court. It was, however, rightly held:

"So far as the question of territorial jurisdiction with reference to a criminal offence is concerned, the main factor to be considered is the place where the alleged offence was committed."

Cause of action within the meaning of clause (2) of Article 226 shall have the same meaning as is ordinarily understood. The expression 'Cause of action' has a definite connotation. It means a bundle of facts which would be required to be proved.

In *State of Rajasthan & Ors.* v. *M/s Swaika Properties & Anr.*, [1985] 3 SCC 217 this Court observed that service of notice was not an integral part of 'cause of action' within the meaning of Article 226 (2) of the Constitution of India.

In *Aligarh Muslim University & Anr.* v. *Vinay Engineering Enterprises Pvt. Ltd. & Anr.*, [1994] 4 SCC 710 a three Judge Bench opined that only because the office of the firm was at Calcutta, the High Court of Calcutta could not exercise any jurisdiction, stating :

"...We are constrained to say that this is a case of abuse of jurisdiction

A and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

Yet again in *Oil and Natural Gas Commission* v. *Utpal Kumar Basu & Ors.*, [1994] 4 SCC 711 it was held that a party becoming aware of the contract B to be given to a successful bidder "ONGC" on reading the advertisement, which appeared in the *Times of India* at Calcutta or sending representations or fax messages submitting tender from its Calcutta Office pursuant to the said advertisement, would not confer any cause of action on the Calcutta C High Court, stating:

"Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding D justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, E merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute F an integral part of the cause of action."

In *Nakul Deo Singh* v. *Deputy Commandant* (1999) 3 KLT 629, a Full Bench of the Kerala High Court speaking through one of us, P.K. Balasubramanyan, J., while considering the question as to whether receipt of an order passed by an appellate authority in a disciplinary proceeding would G constitute cause of action, upon noticing the definition thereof as stated in Mulla's Code of Civil Procedure, 15th Edn., Vol. 1 at page 251 and a decision of the Court of Appeal in *Paragon Finance* v. *D.B. Thakerar & Co.*, [1999] 1 All ER 400, opined :

"...The fact that a person who was dismissed from service while he H was in service outside the State would have to suffer the consequence

of that dismissal when he is in his native place by being rendered jobless, is not a fact which constitutes the bundle of facts giving rise to a cause of action in his favour to challenge his dismissal. That right accrued to him earlier when he was dismissed from service outside the State and he lost his employment. Similarly, when an appeal is filed by him to an appellate authority who is outside the jurisdiction of this High Court and that appeal is dismissed by the appellate authority, the merger in the decision of the Appellate Authority takes place when the appeal is dismissed and not when the appellant receives the order. What a writ petitioner need plead as a part of his cause of action is the fact that his appeal was dismissed wholly or in part and not the fact that the order was communicated to him. That plea is relevant only to show when the right of action arose in his favour. The receipt of the order only gives him a right of action on the already accrued cause of action and enables him to meet a plea of laches or limitation raised in opposition. That the consequences of a proceeding in the larger sense are suffered by a person in his native place is not a ground to hold that the High Court within the jurisdiction of which the native place is situate is also competent to entertain a Writ Petition under Art. 226 of the Constitution. When a person is dismissed or reduced in rank, he suffers the consequences where he was employed at the relevant time and not in his native place to which he might have retired on his dismissal."

In *Union of India and Ors.* v. *Adani Exports Ltd. and Anr.*, [2002] 1 SCC 567, this Court observed :

"It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned"

A It is no doubt true that in a criminal matter also the High Court may exercise its extra-ordinary writ jurisdiction but interference with an order of Magistrate taking cognizance under Section 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognizance can be the subject matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of B certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution of India against a Judicial Officer. [See *Naresh Shridhar Mirajkar & Ors.* v. *State of Maharashtra & Anr.*, AIR (1967) SC 1 : [1966] 3 SCR 744. However, we are not oblivious of a decision of this Court in *Surya Dev Rai* v. *Ram Chander Rai & Ors.*, [2003] 6 SCC 675 wherein this court C upon noticing *Naresh Shridhar Mirajkar* (supra) and also relying on a Constitution Bench of this Court in *Rupa Ashok Hurra* v. *Ashok Hurra,* [2002] 4 SCC 388 opined that a Judicial Court would also be subject to exercise of writ jurisdiction of the High Court. The said decision has again been followed in *Ranjeet Singh* v. *Ravi Prakash* [2004] 3 SCC 692. It is, however, not necessary to dilate on the matter any further. The jurisdiction of the High D Court under Section 482 of Code of Criminal Procedure was noticed recently by this Court in *State of U.P. & Ors.* v. *Surendra Kumar,* [2005] 9 SCC 161 holding that even in terms thereof. the court cannot pass an order beyond the scope of the application thereof. In *Surya Dev Rai* (supra), we may however, notice that this Court categorically stated that the High Court in E issuing a writ of certiorari exercises a very limited jurisdiction. It also made a distinction between exercise of jurisdiction by the High Court for issuance of a writ of certiorari under Article 226 and 227 of the Constitution of India. It categorically laid down that while exercising its jurisdiction under Article 226, the High Court can issue a writ of certiorari only when an error apparent on the face of the record appears as such; the error should be self evident. F Thus, an error according to this Court needs to be established. As regards exercising the jurisdiction under Article 227 of the Constitution of India it was held:

> "....The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed G a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

H In *Kusum Ingots & Alloys Ltd.* v. *Union of India & Anr.*, [2004] 6 SCC

254 a three Judge Bench of this Court clearly held that with a view to determine the jurisdiction of one High Court viz.-a-viz the other the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to a cause of action to invoke the jurisdiction of a court. In that case it was clearly held that only because the High Court within whose jurisdiction a legislation is passed, it would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction. Distinguishing, however, between passing of a legislation by a Legislature of the State and an order passed by the Tribunal or Executive Authority, it was held:

> "When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

Lt. Col. Khajoor Singh v. *Union of India* whereupon the learned counsel appearing on behalf of the appellant placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority which is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to Section 20(c) of the Code of Civil Procedure as Article 226 of the Constitution thence stood, stating: (AIR p.540, para 16)

> "The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that

A the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Article 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

C In *Union of India and Ors.* v. *Adani Exports Ltd. & Anr.*, [2002] 1 SCC 567, this Court observed :

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. ."

We have referred to the scope of jurisdiction under Articles 226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose G jurisdiction the order of subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof.

The High Court, however, must remind themselves about the doctrine H of forum non conveniens also. [See *Mayar (H.K) Ltd.& Ors.* v. *Owners &*

Parties Vessel M.V. Fortune Express & Ors., (2006) 2 SCALE 30] A

In terms of Section 177 of the Code of Criminal Procedure every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 178 provides for place of inquiry or trial in the following terms:

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> "(a) When it is uncertain in which of several local areas an offence was committed, or
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> (b) where an offence is committed partly in one local area and partly in another, or
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> (c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
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> (d) where it consists of several acts done in different local areas."

A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the district courts of Birbhum and in that view of the matter it is that court which will have jurisdiction to take congnizance of the offence. In fact the jurisdiction of the court of CJM, Suri, Birbhum is not in question. It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 of the Code of Criminal Procedure is attracted, the court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter.

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Sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of 'cause of action' for which the complaint petition was filed by the appellant and cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri. We may moreover notice that the situs of the accused wherefor jurisdiction of a court can be invoked and which is an exception to the aforementioned provisions as contained in Section 188 of the Code of Criminal Procedure recently came up for consideration by this court in *Om Hemrajani* v. *State of U.P. & Anr.*, [2005] 1 SCC 617. It was held that the said provisions may be interpreted widely. The law was laid down in the following terms :

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> "Section 177 postulates that ordinarily offence shall be inquired into and tried by a court within whose local jurisdiction it was committed. H

A Section 178, *inter alia*, deals with situations when it is uncertain in which of several local areas, an offence is committed or partly committed in one area and partly in another. The section provides that the offence can be inquired into or tried by a court having jurisdiction over any of the local areas mentioned therein. Under Section 179, offence is triable where act is done or consequences thereof ensued. B Section 180 deals with the place of trial where act is an offence by reason of its relation to other offence. It provides that the first-mentioned offence may be inquired into or tried by a court within whose local jurisdiction either act was done. In all these sections, for jurisdiction the emphasis is on the place where the offence has been C committed. There is, however, a departure under Section 181(1) where additionally place of trial can also be the place where the accused is found, besides the court within whose jurisdiction the offence was committed. But the said section deals with offences committed by those who are likely to be on the move which is evident from the nature of offences mentioned in the section. Section 181(1) is in D respect of the offences where the offenders are not normally located at a fixed place and that explains the departure. Section 183 deals with offences committed during journey or voyage. Section 186 deals with situation where two or more courts take cognizance of the same offence and in case of doubt as to which one of the courts has E jurisdiction to proceed further, the High Court decides the matter. Section 187 deals with a situation where a person within the local jurisdiction of a Magistrate has committed an offence outside such jurisdiction. The Magistrate can compel such a person to appear before him and then send him to the Magistrate which has jurisdiction to inquire into or try such offence.

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9. Under the aforesaid circumstances, the expression abovenoted in Section 188 is to be construed. The same expression was also there in the old Code. From the scheme of Chapter XIII of the Code, it is clear that neither the place of business nor place of residence of the petitioner and for that matter of even the complainant is of any G relevance. The relevant factor is the place of commission of offence. By legal fiction, Section 188 which deals with offence committed outside India, makes the place at which the offender may be found, to be a place of commission of offence. Section 188 proceeds on the basis that a fugitive from justice may be found anywhere in India. The H finding of the accused has to be by the court where the accused

appears. From the plain and clear language of the section, it is evident that the finding of the accused cannot be by the complainant or the police. Further, it is not expected that a victim of an offence which was committed outside India should come to India and first try to ascertain where the accused is or may be and then approach that court. The convenience of such a victim is of importance. That has been kept in view by Section 188 of the Code. A victim may come to India and approach any court convenient to him and file complaint in respect of offence committed abroad by an Indian. The convenience of a person who is hiding after committing offence abroad and is a fugitive from justice is not relevant. It is in this context, the expression in question has to be interpreted. Section 188 has been the subject-matter of interpretation for about 150 years."

In this case, the averments made in the writ petition filed by the respondent herein even if given face value and taken to be correct in their entirety would not confer any jurisdiction upon the Kerala High Court. The agreement was entered into within the jurisdiction of the Calcutta High Court. The project for which the supply of stone chips and transportation was being carried out was also within the State of West Bengal. Payments were obviously required to be made within the jurisdiction of the said court where either the contract had been entered into or where payment was to be made.

The appellant did not deny or dispute any of the averments made in the complaint petition. In the writ petition it merely wanted some time to make the payment. It is now well known that the object of the provision of Section 138 of the Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. It was also noticed in a number of decisions of this Court that dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. It was also found that the remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

[See *Goa Plast (P) Ltd.* v. *Chico Ursula D'Souza* [2004] 2 SCC 235 and *Monaben Ketanbhai Shah and Anr.* v. *State of Gujarat & Ors.*, [2004] 7 SCC

15].

In *Prem Chand Vijay Kumar* v. *Yashpal Singh & Anr.*, [2005] 4 SCC 417, we may, however, notice that it was held that for securing conviction under Negotiable Instruments Act, 1881 the facts which are required to be proved are:

> "(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;
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> (b) that the cheque was presented within the prescribed period;
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> (c) that the payment made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and
>
> (d) that the drawer failed to make the payment within 15 days of the receipt of the notice."

For the purpose of proving the aforementioned ingredients of the offence under Section 138 of the Act, the complainant-appellant was required to prove the facts constituting the cause of action therefor none of which arose within the jurisdiction of the Kerala High Court. It is, apt to mention that In *Prem Chand Vijay Kumar* (supra) this Court held that cause of action within the meaning of Section 142 (b) of the Act can arise only once.

For the reasons aforementioned, we are of the opinion that the Kerala High Court had no jurisdiction to entertain the writ petition as no part of cause of action arose within its jurisdiction.

For the foregoing reasons this appeal is allowed. The impugned Judgment and order is set aside. Interim orders passed by the High Court shall stand vacated. The respondent shall now appear before the court concerned.

In the facts and circumstances of the case, appellants are entitled to costs which is assessed at Rs. 10,000.

V.S. Appeal allowed.