2025 INSC 328

REPORTABLE

IN THE SUPREME COURT OF INDIA

(CRIMINAL ORIGINAL JURISDICTION)

TRANSFER PETITION (CRL.) NO. 608 OF 2024

M/s Shri Sendhur Agro & Oil Industries ……..Petitioner(s)

Versus

Kotak Mahindra Bank Ltd. ……..Respondent(s)

WITH

T.P.(CRL) NO. 670 OF 2024

T.P.(CRL) NO. 761 OF 2024

T.P.(CRL) NO. 662 OF 2024

T.P.(CRL) NO. 977 OF 2024

T.P.(CRL) NO. 850 OF 2024

J U D G M E N T

Signature Not Verified
Digitally signed by VISHAL ANAND
Date: 2025.07.26 12:11:54 IST
Reason:

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) No. 608 of 2024 is treated as the lead matter.

3. This transfer petition filed under Section 406 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") is at the instance of a proprietary concern through its proprietor with a prayer to transfer Criminal Case No. 4016 of 2021 titled as Kotak Mahindra Bank Limited v. M/s Shri Sendhur Agro and Oil Industries pending in the court of Judicial Magistrate Ist Class, Chandigarh (UT) to the court of Metropolitan Magistrate, Coimbatore, Tamil Nadu, essentially on the ground that no cause of action could be said to have arose for the bank to lodge the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the N.I. Act) in Chandigarh.

4. In the memorandum of the transfer petition the following has been pleaded:

"*That the Petitioner herein seeks the transfer to Metropolitan Magistrate Court, Chennai, Tamil Nadu on the following grounds:*

(a) Because in the facts and circumstance of the present case, the transaction between the Petitioner and the Respondent wholly happened in Coimbatore and the Courts in Coimbatore alone will have the jurisdiction to entertain the present criminal complaint. The Petitioner holds a savings Account in the Respondent's Coimbatore Branch and the loan was also processed in the same branch. All the previous EMI were also deducted from her Bank Account in Coimbatore and credited to the loan account maintained in the Coimbatore Branch. Therefore, the Court in Chandigarh will have no jurisdiction to entertain the present Criminal Complaint.

(b)Because in the facts and circumstances of the Instant/case, under Sec. 142 of the Act the Court within whose jurisdiction the Bank where the Cheque, is presented for collection or where the Cheque is presented for payment alone has the Jurisdiction to entertain the complaint under Sec.138 of the Act. Whereas the present Complaint does not satisfy any of the conditions under the Sec.142.

(c) Because in the facts and circumstances of the present case, there are already pending proceedings between the Petitioner and the Respondent in Coimbatore and the Respondent has purposefully filed the present proceedings in Ahmedabad only to harass the Petitioner with multiple proceedings in different States.

(d)Because in the facts and circumstances of the instant case the ·Court in Chandigarh had no jurisdiction to entertain the criminal complaint as the Respondent's headquarters in Mumbai and it's the branch office in Coimbatore had solely processed the loan of the Petitioner. Hence the Court in Chandigarh where no cause of action arose will not have the jurisdiction to entertain the present proceedings.

(e) Because in the facts and circumstances of the instant case, the Petitioner had opted to repay the EMI through automatic deduction facility and the same gets credited automatically into the loan account maintained by the Branch office in Chennai. The automatic deduction for the EMI is not branch specific. Therefore, the same does not satisfy the conditions under Sec. 142 for filing the complaint under Sec. 138 of the Act in Ahmedabad.

(f) Because in the present circumstances the present proceedings are initiated solely with an intent to harass the Petitioner to travel all the way to Chandigarh from Kangeyum only to attend the court proceedings. The Petitioner has been harassed by the Respondent for over 5 years by using anti-social elements therefore the Petitioner fears his safety to travel alone to Chandigarh to attend the proceedings.

(g) Because in the facts and circumstances of the instant case, the Petitioner doesn't Know anyone in Chandigarh and does not even know the local language to effectively defend himself in the criminal proceedings initiated by the Respondent.

(h) Because in the facts and circumstances of the instant case, the Respondent Bank has already initiated Sarfaesi proceedings for the recovery of entire loan amount. The Respondent and its employees have colluded and sold the properties of the Petitioner without any information. The Petitioner has already filed appropriate proceedings against the Respondent in Coimbatore. In the said circumstances, the Criminal Complaint under Section 138 of Negotiable Instruments Act is abuse of process of law."

ORDER PASSED BY THIS COURT

5. On 22nd July 2024, this Court passed the following order:

"*Mr. Nikhil Goel, learned senior counsel appearing for the petitioner submits that the petitioner concern is engaged in the business of producing coconut oil, selling coconut oil and its byproducts and is situated at Coimbatore; that the petitioner availed over-draft limits and terms from the respondent-Bank at its R.S. Puram branch at Coimbatore; that a loan was granted against the equitable mortgage of properties located at Coimbatore and the money was also disbursed at Coimbatore. The learned senior counsel submits that only for the presentation of the cheque the Bank has proceeded to Chandigarh. Issue notice, returnable in four weeks. In the meantime, there shall be stay of further proceedings in Complaint Case No.4016 of 2021 titled as "Kotak Mahindra Bank Ltd. Vs. M/s. Shri Sendhur Agro and Oil Industries", pending in the Court of Judicial Magistrate Ist Class, UT, Chandigarh."*

6. Thereafter, on 29th November 2024, the following order was passed:

"1. The learned counsel appearing for the Respondent - Bank prays for a short adjournment to seek appropriate instructions in the matters.

2. Prima facie, it appears that the entire transaction had taken place in Coimbatore, State of Tamil Nadu. However, the Bank seems to have filed complaints under Section 138 of the Negotiable Instruments Act, 1881 in Chandigarh.

3. The bank owes an explanation why it thought fit to file complaints in Chandigarh and not in Coimbatore, Tamil Nadu.

4. Post these matters on 6-12-2024."

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER:

7. The written submissions of the petitioner read as under:

"A. The scope of powers under Section 406 CrPC, 1973 (akin to Section 527 of CrPC, 1898 and Section 447 of BNSS, 2024) is the question which concerns this Hon'ble Court.

B. One aspect of exercise of power of transfer is the introduction of Section 142A in the Negotiable Instruments Act, 1881 by Amending Act 26 of 2015, which has retrospective effect. Clause (2) of Section 142A contemplates a situation where cases against the same

drawer ought to be filed in the same Court where the first case pertaining to dishonor of cheque is filed or "transferred". Independent of the fact that the interpretation of this provision is being considered by this Hon'ble Court in Kedar Bhausaheb Malhari vs. Axis Bank Ltd. [TP (Crl.) 33 of 2018] where the Court has impleaded the Union of India, taken assistance of an amicus curie and also requested the Ld. Attorney General to appear, the Petitioner submits that in certain scenarios, power of transfer under Section 406 CrPC should be exercised to transfer Section 138 Negotiable Instruments Act cases.

C. *The Petitioner submits that the invocation of power of transfer presupposes the existence of jurisdiction. A case which is filed in a court without jurisdiction should be subjected to a quashing petition and therefore as a matter of principle, the power of transfer under Section 406 CrPC is not sought on the ground that the court from which transfer is sought does not have jurisdiction. The expression which is used in all the three codes is "expedient for the ends of justice" and it is this expression alone which is sought to be invoked by the Petitioner.*

D. *The undisputed facts from Transfer Petition (Crl.) No. 608 of 2024 may kindly be noticed. Some of these facts are recorded in the order issuing notice dated 22.07.2024 –*
(a) The Petitioner is a proprietorship concern which deals with production and distribution of coconut oil and its by-products.

(b) The Petitioner firm had taken overdraft facility from the Respondent Bank vide sanction letter dated 19.03.2015 (pg. 6 of Crl. MP No. 155078 of 2024). This was extended till 2078. The Bank's correspondence address was recorded therein as Egmore, Chennai branch and had nothing to do with Chandigarh.

(c) For this overdraft facility, several collaterals in the form of land were taken apart from a lien which was created on a Fixed Deposit of Rs. 25 lakhs. The 11 properties which were taken as collateral are all lands located in the area of Kangeyam in Tiruppur district (bifurcated from the erstwhile Coimbatore district) of Tamil Nadu.

(d) The sanction letter also required the Petitioner borrower to repay from his HDFC Bank account situated in the Kangeyam branch.

(e) It is pleaded by the Petitioner at pg 3 that all procedures for availing the overdraft facility were done in the Coimbatore branch.

(f) It is further pleaded that the blank cheques of Kotak Mahindra Bank, Tiruppur were given as surety and all the EMI's were to be made through ECS facility.

(g) The Petitioner has also pleaded that there are no other transactions that the Petitioner has with any other branch of the Respondent Bank.

(h) The Petitioner defaulted on payments of its EMIs in the year 2018 which resulted in a demand notice under the SARFAESI Act for a sum of Rs. 2.74 crores. The consequential sale notices and the sale of the Petitioner's assets also took place in Coimbatore.

(i) The Respondent vide. Its letter dated 05.10.2018 had also informed the Petitioner that his Account would be declared as NPA in next two days.

(j) The Petitioner challenged the SARFAESI proceedings before the Debt Recovery Tribunal at Coimbatore (Annexure P-2, pg. 28 onwards).

E. Despite all these aforesaid transactions taking place within the jurisdiction of Tamil Nadu, the Respondent Bank chose to present the cheque for Rs. 21 lakhs at Chandigarh. The complaint is annexed at Annexure P-1 (pg. 13 onwards) and shows the address of the Petitioner to be in Tamil Nadu. The complaint does not refer to several of the aforementioned undisputed facts. This complaint is dated 21.04.2021 and is numbered as CIS No. NACT/4016/2021, while the summons on this have been issued by the Court of Ld. CJM, Chandigarh only on 30.04.2024. This factor of issuance of summons after 3 years of delay also indicates that the complaint was filed and kept in the Registry only to be used at the whim of the Respondent Bank.

F. In the aforesaid background, the Petitioner is requesting this Court to exercise its power of transfer on the anvil of

"expedient for the ends of justice". The following parameters and precedents may be considered –

i. This Hon'ble Court on 29.11.2024 had called upon the Respondent Bank to explain the reason for choosing the jurisdiction of Chandigarh even though the entire transaction had taken place in Coimbatore. There is, however, no explanation that has been given till date. The only response in the Counter Affidavit filed is in paragraph 5 which records that the Bank's collection account is located in Chandigarh. This stand of the Bank might justify the existence of jurisdiction at Chandigarh but does not answer/explain the reason for filing a complaint there, especially when one set of legal proceedings viz. under SARFAESI Act were undertaken within the jurisdiction of Tamil Nadu.

ii. As submitted earlier, this is not an issue pertaining to territorial jurisdiction or an issue of convenience of the accused, but having undertaken all the proceedings including initiation of one set of litigation within Tamil Nadu, it is unjust for the Respondent Bank to choose an unrelated jurisdiction merely because it has an option of more than one places where a complaint can be lodged.

iii. The parameters of 'expedient for the ends of justice' should take into account a situation where availability of more than one jurisdiction is misused for no extra benefit to the Complainant.

iv. The legislative intent of Section 142A also contemplates that holder in due course is not allowed to misuse the availability of multiple jurisdictions and therefore have consciously used the expression 'transfer' along with 'filed' in Section 142A(2).

v. This Hon'ble Court recently in Navapavithra G & Ors. vs. M/s Cholamandalam Investment & Finance Co. Ltd. [TP (Crl] No.441 of 2024] in its order dated 24.10.2024 had held that financial institutions should avoid filing proceedings in various states merely because they have offices there, and should file proceedings in courts having jurisdiction where the actual transaction has taken place and where the cause of action has arisen

vi. Further, this Hon'ble Court in M/s Oasis Marine Pvt. Ltd. & Ors. vs. M/s Godrej Agrovet Ltd. [TP (Crl.) No. 323-325 of 2023] in order dated 08.11.2024 and in Blue Line Entertainment Media Ltd. vs. Kotak Mahindra Bank Ltd. [TP (Crl.) No. 224 of 2020] in order dated 31.10.2022 has allowed similar petitions where the Respondent had instituted other recovery proceedings in a different jurisdiction. The Petitioner submits that they are identically situated.

vii. Moreover, this Hon'ble Court in several cases has allowed transfer petitions when multiple Section 138 NI Act complaint cases are pending against a drawer in different locations. For instance, in Sri Lakshmi Agencies

v. Rallis India Ltd., (2006) 13 SCC 312, transfer petition was allowed considering the convenience of the parties and the fact that the Respondent company was a multinational company with offices all over India. Some other similar cases are A.E. Premanand v. Escorts Finance Ltd., (2004) 13 SCC 527; Global Infrastructure & Technologies Ltd. v. G.K. Builders, (2005) 12 SCC 427; Vikram Tractors v. Escorts Ltd., (2005) 10 SCC 80; Videocon International Ltd. v. Sujana Corpn. Ltd., (2005) 13 SCC 125.

The Petitioner submits that the same principle is applicable here, since two separate prosecutions relating to the same transaction are being undertaken in different jurisdictions against him.

viii. In BR Gupta & Anr. vs. Rohit Jain, (2007) 7 SCC 454, this Hon'ble Court exercised its power under Section 406 CrPC since the Petitioner therein was being subjected to a Section 138 NI Act complaint case as well as an FIR for cheating and forgery relating to the same transaction, in two different jurisdictions.

ix. A 3-judge bench of this Hon'ble Court in Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720, para 21 had also noted that - "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-a-vis the provisions of the Code of Criminal Procedure."

x. For interpreting the phrase "expedient for the ends of justice", it is worthwhile to mention this Hon'ble Court's interpretation of the phrase "justice, equality and good conscience". In M. Siddiq (Ram Janambhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1, this Hon'ble Court traced the origins of the phrase in Roman law. Paragraphs 1000 - 1022 deal with the origin of this phrase and broadly refers to a situation where adherence to written law leads to "Unjust Outcome" (Paragraph 1001). It is this principle, in most humble submission of the Petitioner, which ought to be the basis for Section 406 Petitions.

xi. The other factors which this Hon'ble Court has considered towards ends of justice is not the convenience of the accused but the convenience of possible witnesses, the cost to be incurred by both the prosecution and the defence witness to travel a long way, the language in which the proceedings will be undertaken, etc.

G. The following set of judgments may be considered in addition to the abovementioned-

i. The proposition that the power under Section 406 would not be ever used for the convenience of the accused is too broad and defeats the expression in Section 406, i.e. 'expedient for the ends of justice'. This proposition has been used in cases where this Hon'ble Court has held that it is not the convenience of a single accused, rather the convenience of the other accused (if any), the witnesses, the prosecution and the larger interest of the society needs to be cumulatively seen - held in Abdul Nazar Madani vs. State of Tamil Nadu & Anr., (2000) 6 SCC 204, para 7 - followed in Nahar Singh Yadau vs. Union of India, (2011) 1 SCC 307; Mrudul M Damle & Anr. s. CBI, (2012) 5 SCC 706; Harita Sunil Parab vs. State of NCT of Delhi, (2018) 6 SCC 358. In Sri Jayendra Saraswathy vs. State of TN & Ors, (2005) 8 SCC 771, para 25, apart from the above consideration of convenience, this Hon'ble Court also took into account the language in which the proceedings will take place, and the witnesses will testify in before allowing the transfer petition.

ii. There are judgments on Section 138 NI Act in which Transfer Petitions have been dismissed, like Kaushik Chatterjee Vs. State of Haryana. & Ors., (2020) 10 SCC 99. However, these are cases where the respective Petitioners argued the issue of territorial jurisdiction.

iii. This Hon'ble Court has dealt with various stages of development of law of jurisdiction under NI Act in Yogesh Upadhyay & Anr. as. Atlanta Ltd., 2023 SCC OnLine SC 170, paras 5-13. This is cited to indicate a recent decision on how general jurisdiction under Section 138 NI Act has been viewed by this Hon'ble Court."

8. In such circumstances referred to above the petitioner prayed that there being merit in his transfer petition the same may be allowed and the proceedings be transferred from the UT of Chandigarh to the State of Tamil Nadu.

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT BANK:

9. The written submissions filed by the respondent Bank read as under:

"A. *It is submitted that the Respondent is Banking company within the Banking Regulation Act, 1949. On the basis of representations made by the petitioner, the respondent extended credit facilities to the petitioner and its group companies. The petitioners however defaulted on repayments and as of July 2022, owed a sum of more than Rs. 34.14 Cr. to the Respondent.*

B. The Respondent Bank filed a Complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to as 'the said Act') in accordance with law before the competent court within whose jurisdiction the branch of the bank where the payee maintains the account is situated. In this regard it is submitted the Cheque was presented at Respondent's Chandigarh Branch for the reason that the routing/collection account in respect of the subject cheque (in a NPA account) was located at Chandigarh.

C. Significantly, the petitioner has in its written submissions clarified that it is not disputing the jurisdiction of the court where the complaint was filed. In fact, it is the petitioner's contention that the filing of the transfer petitions (as opposed to a quashing petition) pre-supposes the existence of jurisdiction of the court from where the proceedings are sought to be transferred.

D. Section 142 A of the Negotiable Instrument Act stipulates the conditions when the Complaint filed under Section 138 may be transferred. The object of the provision is that all the complaint cases arising out of one transaction should be tried at one place. In the present cases as well as the connected cases, the Respondent has filed cases at Chandigarh only; thus, no ground under Section 142 A to seek transfer arises.

E. The transfer petitions are not supported by any sufficient grounds It is most respectfully submitted that the Petitioner has sought transfer only on the general grounds viz the distance

and the difference in language. The Petitioner has not pleaded (i) any specific problem or health issue which would make it difficult for him to attend the proceedings at Chandigarh (ii)any miscarriage of justice that may happen if the proceedings are continued at Chandigarh (iii) difficulty in understanding English language which is uniformly used in all the courts. It is most respectfully submitted that powers under Section 406 of the CrPC to transfer cases may be exercised only when such transfer is expedient for the ends of justice. This Hon'ble Court has consistently held that the powers under Section 406 of the CrPC are discretionary powers and ought to be used sparingly. In Bhiaru Ram Vs. CBI (Transfer Petition (Crl.) No. 37 of 2009) (judgment and order dated 3.8.2010), this Hon'ble Court observed that "that for the ends of justice, this Court can transfer any criminal case or appeal to any place. In order to transfer a case from one State to another or from one place to another, there must be "reasonable apprehension" on the part of the party to a case that justice may not be done. Mere allegation that there is apprehension that justice will not be done, cannot be the basis of transfer."

It is humbly submitted that the petitioner has failed to make-out a case which would warrant exercise of powers by this Hon'ble Court under Section 406 of the Cr.P.C.

F. It is submitted that the Virtual Facility is available in courts in Chandigarh and the option to attend the hearing virtually is always available to the Petitioner. Instead of approaching Trial

Court and moving an application for exemption therein and satisfying the Trial Court regarding the necessity of such exemption, the Petitioner has directly approached this Hon'ble Court.

G. It is submitted that the cheque bouncing cases filed by the respondent in Chandigarh were prior in time to the original application filed before the DRT, Coimbatore.

H. It is further submitted that there are a batch of cases pending in Chandigarh. The Respondent has filed all cases arising out of the transaction at one single place viz Chandigarh. Thus, no inconvenience could have been caused to the Petitioner.

I. It is further submitted that there are various cases pending at Chandigarh District Court arising out the same transaction in which no Transfer Petition has been filed. It is submitted that there are 23 cases pending in Chandigarh out of which the transfer petition has been filed by the petitioner only in the present batch of cases and in two more cases. To the best of knowledge of the respondent, no other transfer petition has been filed in the other connected cases. A list of the cases pending in Chandigarh court are annexed herewith and marked as Annexure -A (Page No. 6 to 7).

J. It is submitted that transfer of some of the cases arising out of the transaction would be contrary to the object of the Amendment Act of 2015 and in particular Section 142A (2) & (3) inserted vide the said amendment.

K. The Respondent seek to put forth the following heads of submissions alongwith citations in support thereof:-
(a) Complaint case Under Section 138 of the NI Act cannot be transferred at the convenience of the accused

(i) S. Nalini Jayanthi vs M. Ramasubba Reddy, TP (Crl) 655/2022 (Paragraph 2)

(ii) Kasthuripandian S Vs RBL Bank Limited, TP (Crl) No.515/2024 (Paragraph 1)

(b) Under Section 142 (2) (a) of the NI Act, the court within whose jurisdiction the branch of the bank where the payee maintains the account is situated, will have jurisdiction to try the offence. The ground that when head office was in Siliguri, the complaint has been filed in Agra to harass the Petitioner, was held, in the facts of that case, not to be sufficient ground to seek transfer.

(i) Himalaya Self Farming Group & Ant vs M/s Goyal Feed Suppliers, TP (Crl) 273/2020 (Paragraph 5)

(c) Mere language factor/convenience of a party is not enough ground to seek transfer.

(i) Rajkumar Sabu vs Sabu vs Sabu trade private limited, 2021 SCC Online SC 378 (Paragraph 8-10)

(d) Mere convenience of a party is not enough. The apprehension must be reasonable.

(i) Bhiaru Ram & Ors. vs CBI & Anr., (2010) 7 SCC 799 (Paragraph 9 to 15)

(e) Jurisdiction under the Section 406 of the CrPC ought to be sparingly used.

(i) Nahar Singh Yadav vs UOI & Ors, (2011) 1 SCC 307 (Paragraph 29)"

10. In such circumstances referred to above, the learned counsel appearing for the Bank prayed that there being no merit in the transfer petition, the same may be rejected.

ANALYSIS

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

    i. Whether a complaint filed under Section 138 of the N.I. Act can be ordered to be transferred from one court to the other in exercise of powers under Section 406 of the Cr.P.C. on the ground of lack of territorial jurisdiction of the court in which the complaint is filed?

ii. Assuming that the court in which the complaint filed under Section 138 of the N.I. Act lacks territorial jurisdiction to try the same, then is it permissible for this court in exercise of powers under Section 406 of the Cr.P.C. to transfer the said complaint to the court having territorial jurisdiction to try the offence?

iii. Whether the expression "*that for the ends of justice, this Court can transfer any criminal case or appeal to any place."* in Section 406 Cr.P.C. embraces in itself the lack of territorial jurisdiction of the court to try the offence under Section 138 N.I. Act?

12. Before adverting to the rival submissions canvassed on either side, we must look into a few relevant provisions of the N.I. Act. Section 138 of the N.I. Act reads thus:

> "*138. Dishonour of cheque for insufficiency, etc., of funds in the account.—*
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account*

by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
Provided that nothing contained in this section shall apply unless—
(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

13. What is relevant for our purpose is Section 142 of the N.I. Act. Section 142 relates to the cognizance of offences. 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."

14. Section 142-A of the N.I. Act provides for validation for transfer of pending cases. Section 142-A reads thus:

"Validation for transfer of pending cases.—
(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court

having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

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

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

15. This court in the case of ***Yogesh Upadhaya and Another v. Atlanta Limited*** reported in ***2023 SCC OnLine SC 170*** had the

occasion to consider the plea for transfer filed under Section 406 Cr.P.C. in connection with six complaint cases filed under Section 138 and 142 of the N.I. Act respectively. While considering the plea for transfer, the court had the opportunity to consider Section 142(2) contained in the statute book along with Section 142-A.

16. The relevant observations in ***Yogesh Upadhaya (Supra)*** read as thus:

> *" 6. In K. Bhaskaran v. Sankaran Vaidhyan Balan [(1999) 7 SCC 510], this Court held that an offence under Section 138 of the Act of 1881 has five components : (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning of the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and (5) failure of the drawer to make payment within 15 days of the receipt of the notice. It was further held that the Courts having jurisdiction over the territorial limits wherein any of the five acts, that constitute the components of the offence, occurred would have the jurisdiction to deal with the case and if the five acts were done in five different areas, any one of the Courts exercising jurisdiction in those five areas would have*

jurisdiction and the complainant could choose any one of those Courts.

7. Thereafter, in Dashrath Rupsingh Rathod v. State of Maharashtra [(2014) 9 SCC 129], a 3-Judges Bench of this Court observed that the return of the cheque by the drawee bank would alone constitute commission of the offence under Section 138 of the Act of 1881 and would indicate the place where the offence is committed. It was, therefore, held 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, i.e., where the cheque is dishonoured upon presentation and not where the complainant's bank is situated.

8. In this regard, it may be noted that Section 142 of the Act of 1881, titled 'Cognizance of Offences', provided that, notwithstanding anything contained in the Criminal Procedure Code, 1973, no Court shall take cognizance of an offence punishable under Section 138 except on a complaint in writing made by the payee or, as the case may be, the holder in due course of the cheque; such complaint is made within one month of the date on which the cause of action arises under clause I of the proviso to Section 138; and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under Section 138.

9. Significantly, the aforestated original Section 142 of the Act of 1881 was renumbered as Section 142(1) when

amendments were made in the Act of 1881 by the Negotiable Instruments (Amendment) Act, 2015 (Act 26 of 2015). Further, Section 142(2) was inserted in the statute book along with Section 142-A. The newly inserted Section 142(2), to the extent relevant, states that 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.

10. This being the statutory scheme, stress is laid by Mr. Chirag M. Shroff, learned counsel, upon the words: 'shall be inquired into and tried only by a Court within whose local jurisdiction……'in Section 142(2) to contend that the Courts at Nagpur would have exclusive jurisdiction in relation to the dishonoured cheques presented by the respondent company through its bank at Nagpur.

11. 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 Act of 1881 was a direct consequence of the judgment of this Court in Dashrath Rupsingh Rathod (supra). 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 Act 1881 is contextual to the ratio laid down in Dashrath Rupsingh Rathod (supra) to the contrary, whereby territorial jurisdiction to try an

offence under Section 138 of the Act of 1881 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.

12. The later decision of this Court in Bridgestone India Private Limited v. Inderpal Singh [(2016) 2 SCC 75] affirmed the legal position obtaining after the amendment of the Act of 1881 and endorsed that Section 142(2)(a) of the Act of 1881 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 (supra) would not non-suit the company in so far as territorial jurisdiction for initiating proceedings under Section 138 of the Act of 1881 was concerned."

(Emphasis supplied)

17. In ***Yogesh Upadhaya (Supra)***, this Court also considered the effect of the *non obstante* clause in Section 142(1) of the N.I. Act so as to examine whether the same would override Section 406 Cr.P.C. In this regard the court observed thus:

> *"13. Therefore, institution of the first two complaint cases before the Courts at Nagpur is in keeping with the legal position obtaining now. However, the contention that the non obstante clause in Section 142(1) of the Act of 1881 would override Section 406 Cr. P.C. and that it would not be permissible for this Court to transfer the said complaint cases, in exercise of power thereunder, cannot be countenanced. It may be noted that the non obstante clause was there in the original Section 142 itself and was not introduced by way of the amendments in the year 2015, along with Section 142(2). The said clause merely has reference to the manner in which cognizance is to be taken in offences under Section 138 of the Act of 1881, as a departure has to be made from the usual procedure inasmuch as prosecution for the said offence stands postponed despite commission of the offence being complete upon dishonour of the cheque and it must necessarily be in terms of the procedure prescribed. The clause, therefore, has to be read and understood in the context and for the purpose it is used and it does not lend itself to the interpretation that Section 406 Cr. P.C. would stand excluded vis-à-vis offences under Section 138 of the Act of 1881. The power of this Court to transfer pending criminal proceedings under Section 406 Cr. P.C. does not stand abrogated thereby in respect of offences under Section 138 of the Act of 1881. It may be noted that this Court exercised power under*

Section 406 Cr. P.C. in relation to offences under Section 138 of the Act of 1881 even during the time the original Section 142 held the field. In A.E. Premanand v. Escorts Finance Ltd. [(2004) 13 SCC 527], this Court took note of the fact that the offences therein, under Section 138 of the Act of 1881, had arisen out of one single transaction and found it appropriate and in the interest of justice that all such cases should be tried in one Court. We, therefore, hold that, notwithstanding the non obstante clause in Section 142(1) of the Act of 1881, the power of this Court to transfer criminal cases under Section 406 Cr. P.C. remains intact in relation to offences under Section 138 of the Act of 1881, if it is found expedient for the ends of justice.

14. In the case on hand, as the six complaint cases pertain to the same transaction, it would be advisable to have a common adjudication to obviate the possibility of contradictory findings being rendered in connection therewith by different Courts. As four of the six cases have been filed by the respondent company before the Dwarka Courts at New Delhi and only two such cases are pending before the Courts at Nagpur, Maharashtra, it would be convenient and in the interest of all concerned, including the parties and their witnesses, that the cases be transferred to the Dwarka Courts at New Delhi."

18. Thus, in ***Yogesh Upadhaya (supra),*** this Court took note of ***K. Bhaskaran v. Sankaran Vaidhyan Balan*** reported in **(1999) 7 SCC 510**, wherein it was held that an offence under Section 138 of the N.I. Act has five components:

(i) drawing of the cheque,

(ii) presentation of the cheque to the bank,

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

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

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

19. It was further held that the jurisdiction to deal with the case vests in the Court having jurisdiction over the territorial limits wherein any of the five acts referred to above that constitute the components of the offence, occurred. If the five acts were done in five different areas, then any one of the Courts exercising jurisdiction in those five areas would have jurisdiction and the complainant could choose any one of those Courts.

20. Further, it relied on ***Dashrath Rupsingh Rathod v. State of Maharashtra,*** reported in **(2014) 9 SCC 129**, wherein it was held 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, i.e., where the cheque is dishonoured upon presentation and not where the complainant's bank is situated.

21. The Court took note of Section 142 of the N.I. Act and the Negotiable Instruments (Amendment) Act, 2015, and said that the newly inserted Section 142(2) provides that 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.

22. The Court after examining the Statement of Objects and Reasons in the N.I. Amendment Act, 2015, stated that the insertion of Sections 142(2) and 142-A in the N.I. Act was a direct consequence of the judgment in ***Dashrath Rupsingh Rathod (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. 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 came into force.

23. The Court further noted that ***Bridgestone India Private Limited (Supra)*** affirmed the change in legal position after the

amendment of the N.I. Act and endorsed that Section 142(2)(a) 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.

24. Therefore, the Court said that the institution of the first two complaint cases before the Courts at Nagpur would be in accordance with the changed legal position after the amendment came into force. However, it rejected the contention that the non obstante clause in Section 142(1) of the NI Act would override Section 406 CrPC and that it would not be permissible for this Court to transfer the said complaint cases.

25. The Court noted that the non obstante clause was already present in the original Section 142(1) and was not introduced by way of the amendments in the year 2015, along with Section 142(2). The non obstante clause merely has reference to the manner in which cognizance is to be taken in an offence under Section 138. The same must not be construed to mean that the power of this Court to transfer pending criminal proceedings under Section 406 CrPC stands abrogated thereby in respect of an offence under Section 138 of the NI Act.

26. After placing reliance on ***A.E. Premanand v. Escorts Finance Ltd.***, reported in **(2004) 13 SCC 52**, the Court had held that notwithstanding the non obstante clause in Section 142(1) of the NI Act, the power of this Court to transfer criminal cases under Section 406 Cr.P.C. remains intact in relation to an offence under Section 138 of the N.I. Act, if it is found expedient for the ends of justice to order such transfer.

27. Before we proceed further it is necessary to clarify that in ***Yogesh Upadhaya (supra)*** this Court was dealing with the transfer of six complaint cases under Sections 138 and 142 of the N.I. Act. Ultimately, considering Section 142(2) along with Section 142-A of the N.I. Act, this Court held that two out of six complaints instituted at Nagpur were in accordance with the legal position. However, since the other four complaints also pertained to the same transaction, the court felt that it would be advisable to have a common adjudication with a view to obviate the possibility of any contradictory findings being rendered in connection with the said complaints by different courts. In such circumstances, all the six complaints were ordered to be transferred to the South-west district courts, Dwarka, New Delhi.

SECTION 406 OF THE CODE OF CRIMINAL PROCEDURE, 1973

28. We now proceed to consider Section 406 of the Cr.P.C. Section 406 Cr.P.C. reads as under:

> *"**406. Power of Supreme Court to transfer cases and appeals.***
> *(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.*
> *(2)The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.*
> *(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case."*

29. The present section corresponds to Section 527 of the old Cr.P.C. The Cr.P.C. clothes this Court with the power under

Section 406 to transfer a case or appeal from one High Court or a Court subordinate to one High Court to another High Court or to a Court subordinate thereto. The expression therein "expedient for the ends of justice" assumes significance.

30. The power to transfer vested in the High Court, so far as the Cr.P.C. is concerned, is dealt with and was intended by the Legislature to be dealt with solely by Section 407 (Section 526 of the old Cr.P.C.). On the other hand, Section 406(1) (Section 527(1) of the old CrPC) clearly implies that it is only the Supreme Court that has the power to transfer a case pending in a Court subordinate to one High Court to be tried by a Court subordinate to another High Court.
31. A case is transferred by virtue of the powers under Section 406 if there is a reasonable apprehension on the part of a party to a case that justice will not be done. There, however, must be reliable material from which it can be inferred that there are impediments that are interfering or likely to interfere, either directly or indirectly, with the cause of justice.

POSITION OF LAW

32. In ***Kaushik Chatterjee v. State of Haryana and Ors.*** reported in **(2020) 10 SCC 92**, this Court, in an identical situation like the one on hand, held as under:

"8. Thus, in effect, transfer is sought primarily on two grounds, namely, (i) lack of territorial jurisdiction and (ii) apprehension of bias.

xxx xxx xxx

17. As seen from the pleadings and the rival contentions, the petitioner seeks transfer, primarily on the ground of lack of territorial jurisdiction. While the question of territorial jurisdiction in civil cases, revolves mainly around (i) cause of action; or (ii) location of the subject-matter of the suit or (iii) the residence of the defendant, etc., according as the case may be, the question of territorial jurisdiction in criminal cases revolves around (i) place of commission of the offence or (ii) place where the consequence of an act, both of which constitute an offence, ensues or (iii) place where the accused was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject-matter of an offence was required to be returned or accounted for, etc., according as the case may be.

18. While jurisdiction of a civil court is determined by (i) territorial and (ii) pecuniary limits, the jurisdiction of a criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two-fold.

18.1. The first is that the stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21 of the Code of Civil Procedure, 1908. There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.

18.2. The second is that in civil proceedings, a plaint can be returned, under Order 7 Rule 10 CPC, to be presented to the proper court, at any stage of the proceedings. But in criminal proceedings, a limited power is available to a Magistrate under Section 201 of the Criminal Procedure Code, to return a complaint. The power is limited in the sense (a) that it is available before taking cognizance, as Section 201 uses the words "Magistrate who is not competent to take cognizance" and (b) that the power is limited only to complaints, as the word "complaint", as defined by Section 2(d), does not include a "police report".

19. Chapter XIII of the Code of Criminal Procedure, 1973 contains provisions relating to jurisdiction of criminal courts in inquiries and trials. The Code maintains a distinction between (i) inquiry; (ii) investigation; and (iii) trial. The words "inquiry" and "investigation" are defined respectively, in clauses (g) and (h) of Section 2 of the Code.

20. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal courts in inquiries and trials can be summarised in simple terms as follows:

20.1. Every offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was

committed. This rule is found in Section 177. The expression "local jurisdiction" found in Section 177 is defined in Section 2(j) to mean "in relation to a court or Magistrate, means the local area within which the court or Magistrate may exercise all or any of its or his powers under the Code".

20.2. In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.

20.3. Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.4. In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.5. Where an offence 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. (Numbers 2 to 5 are traceable to Section 178)

20.6. Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)

20.7. In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a court

within whose local jurisdiction either of the acts was done. (Section 180)

20.8. In certain cases such as dacoity, dacoity with murder, escaping from custody, etc., the offence may be inquired into and tried by a court within whose local jurisdiction either the offence was committed or the accused person was found.

20.9. In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

20.10. The offences of theft, extortion or robbery may be inquired into or tried by a court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.

20.11. An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused person.

20.12. An offence which includes the possession of stolen property, may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person, having knowledge that it is stolen property. (Nos. 8 to 12 are found in Section 181)

20.13. An offence which includes cheating, if committed by means of letters or telecommunication messages, may be

inquired into or tried by any court within whose local jurisdiction such letters or messages were sent or received.

20.14. An offence of cheating and dishonestly inducing delivery of the property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

20.15. Some offences relating to marriage such as Section 494 IPC (marrying again during the lifetime of husband or wife) and Section 495 IPC (committing the offence under Section 494 with concealment of former marriage) may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the offender last resided with the spouse by the first marriage. (Nos. 13 to 15 are found in Section 182)

20.16. An offence committed in the course of a journey or voyage may be inquired into or tried by a court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage. (Section 183).

20.17. Cases falling under Section 219 (three offences of the same kind committed within a space of twelve months whether in respect of the same person or not), cases falling under Section 220 (commission of more offences than one, in one series of acts committed together as to form the same transaction) and cases falling under Section 221, (where it is doubtful what offences have been committed), may be inquired into or tried by any court competent to inquire into or try any of the offences. (Section 184).

21. Apart from Sections 177 to 184, which lay down in elaborate detail, the rules relating to jurisdiction, Chapter XIII of the Code also contains a few other sections. Section 185 empowers the State Government to order any case or class of cases committed for trial in any district, to be tried in any Sessions Division. Section 186 empowers the High Court, in case where two or more courts have taken cognizance of the same offence and a question as to which of them should inquire into or try the offence has arisen, to decide the district where the inquiry or trial shall take place. Section 187 speaks of the powers of the Magistrate, in case where a person within his local jurisdiction, has committed an offence outside his jurisdiction, but the same cannot be inquired into or tried within such jurisdiction. Sections 188 and 189 deal with offences committed outside India.

22. After laying down in such great detail, the rules relating to territorial jurisdiction in Chapter XIII, the Code of Criminal Procedure makes provisions in Chapter XXXV, as to the fate of irregular proceedings. It is in that Chapter XXXV that one has to search for an answer to the question as to what happens when a court which has no territorial jurisdiction, inquires or tries an offence.

23. Section 460 lists out 9 irregularities, which, if done in good faith by the Magistrate, may not vitiate his proceedings. Section 461 lists out 17 irregularities, which if done by the Magistrate, will make the whole proceedings void. Clause (l) of Section 461 is of significance and it reads as follows:

> *"461. Irregularities which vitiate proceedings.—If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely—*
> *(a)-(k) ****

(l) tries an offender:
*****
his proceedings shall be void"

24. Then comes Section 462, which saves the proceedings that had taken place in a wrong Sessions Division or district or local area. But this is subject to the condition that no failure of justice has occasioned on account of the mistake. Section 462 reads as follows:

> *"462. Proceedings in wrong place.—No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong Sessions Division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."*

25. A cursory reading of Sections 461(l) and 462 gives an impression that there is some incongruity. Under clause (l) of Section 461 if a Magistrate not being empowered by law to try an offender, wrongly tries him, his proceedings shall be void. A proceeding which is void under Section 461 cannot be saved by Section 462. The focus of clause (l) of Section 461 is on the "offender" and not on the "offence". If clause (l) had used the words "tries an offence" rather than the words "tries an offender", the consequence might have been different.

26. It is significant to note that Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word "offence" in three places, namely, clauses (b), (d) and (e). Section 460 does not use the word "offender" even once.

27. On the contrary Section 461 uses the word "offence" only once, namely, in clause (a), but uses the word "offender" twice, namely, in clauses (l) and (m). Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings shall be void under Section 461. Section 462 does not make the principle contained therein to have force notwithstanding anything contained in Section 461.

28. Section 26 of the Code divides offences into two categories, namely, (i) offences under IPC and (ii) offences under any other special law. Insofar as offences under IPC are concerned, clause (a) of Section 26 states that they may be tried by (i) the High Court or (ii) the Court of Session or (iii) any other court, by which such offence is shown in the first Schedule to be triable. In respect of offences under any other law, clause (b) of Section 26 states that they shall be tried by the court specifically mentioned in such special law. In case the special law is silent about the court by which it can be tried, then such an offence may be tried either by the High Court or by any other court by which such offence is shown in the First Schedule to be triable.

29. But clause (a) of Section 26 makes the provisions contained therein, subject to the other provisions of the Code. Therefore, a question arose before this Court in State of U.P. v. Sabir Ali [State of U.P. v. Sabir Ali, AIR 1964 SC 1673 : (1964) 2 Cri LJ 606] as to whether a conviction and punishment handed over by a Magistrate of First Class for an offence under the Uttar Pradesh Private Forest Act, 1948 were void, in the light of Section 15(2) of the Special Act. Section 15(2) of the Uttar Pradesh Private Forest Act made the offences under the Act triable only by a Magistrate of Second or Third Class. Though

the entire trial in that case took place before a Magistrate of Second Class, he was conferred with the powers of a Magistrate of First Class, before he pronounced the judgment. This Court held that the proceedings were void under Section 530(p) of the Code of Criminal Procedure, 1898 (as it stood at that time). It is relevant to note that Section 461(l) of the 1973 Code is in pari materia with Section 530(p) of the 1898 Code.

30. What is now clause (a) of Section 26 of the 1973 Code, is what was Section 28 of the 1898 Code. The only difference between the two is that Section 28 of the 1898 Code referred to the eighth column of the Second Schedule, but Section 26(a) of the 1973 Code refers to the First Schedule. Similarly, clause (b) of Section 26 of the 1973 Code is nothing but what was Section 29 of the 1898 Code.

31. What is significant to note from the 1898 Code and the 1973 Code is that the question of jurisdiction dealt with by Sections 28 and 29 of the 1898 Code and Section 26 of the 1973 Code, is relatable only to the offence and not to the offender. The power of a court to try an offence is directly governed by clauses (a) and (b) of Section 26 of the 1973 Code, as it was governed by Sections 28 and 29 of the 1898 Code.

32. In other words, the jurisdiction of a criminal court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile (Section 27) or where the victim is a women [the proviso to clause (a) of Section 26]. But Section 461(l) focuses on the offender and not on the offence.

33. The saving clause contained in Section 462 of the 1973 Code is in pari materia with Section 531 of the 1898 Code. In the light of Section 531 of the 1898 Code, a question arose before the Calcutta High Court in Ramnath Sardar v. Rekharani Sardar [Ramnath Sardar v. Rekharani Sardar, 1975 SCC OnLine Cal 168 : 1975 Cri LJ 1139] , as to the stage at which an objection to the territorial jurisdiction of the court could be raised and considered. In that case, the objection to the territorial jurisdiction raised before a Magistrate in a petition for maintenance filed by the wife against the husband, was rejected by the Magistrate both on merits and on the basis of the saving clause in Section 531. But the High Court held [Ramnath Sardar v. Rekharani Sardar, 1975 SCC OnLine Cal 168 : 1975 Cri LJ 1139] that Section 531 would apply only after the decision or finding or order is arrived at by any Magistrate or court in a wrong jurisdiction and that if any objection to the territorial jurisdiction is taken in any proceeding, it would be the duty of the Magistrate to deal with the same.

34. In Raj Kumari Vijh v. Dev Raj Vijh [Raj Kumari Vijh v. Dev Raj Vijh, (1977) 2 SCC 190 : 1977 SCC (Cri) 294 : AIR 1977 SC 1101] , which also arose out of a case filed by the wife for maintenance against the husband, the Magistrate rejected a prayer for deciding the question of jurisdiction before recording the evidence. Actually the Magistrate passed an order holding that the question of jurisdiction must await the recording of the evidence on the whole case. Ultimately the Magistrate held that he had jurisdiction to entertain the application. One of the reasons why he came to the said conclusion was that in the reply filed by the husband there was no specific denial of the wife's allegation that the parties last resided together within his jurisdiction. When the matter

eventually reached this Court, this Court relied upon the decision in Purushottamdas Dalmia v. State of W.B. [Purushottamdas Dalmia v. State of W.B., AIR 1961 SC 1589 : (1961) 2 Cri LJ 728] to point out that there are two types of jurisdictional issues for a criminal court, namely, (i) the jurisdiction with respect of the power of the court to try particular kinds of offences, and (ii) its territorial jurisdiction.

35. It was specifically held by this Court in Raj Kumari Vijh [Raj Kumari Vijh v. Dev Raj Vijh, (1977) 2 SCC 190 : 1977 SCC (Cri) 294 : AIR 1977 SC 1101] that the question of jurisdiction with respect to the power of the court to try particular kinds of offences goes to the root of the matter and that any transgression of the same would make the entire trial void. However, territorial jurisdiction, according to this Court "is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused ... and the convenience of the witnesses who have to appear before the Court". (SCC p. 194 para 7)

36. After making such a distinction between two different types of jurisdictional issues, this Court concluded in that case, that where a Magistrate has the power to try a particular offence, but the controversy relates solely to his territorial jurisdiction, the case would normally be covered by the saving clause under Section 531 of the 1898 Code (present Section 462 of the 1973 Code).

37. From the above discussion, it is possible to take a view that the words "tries an offence" are more appropriate than the words "tries an offender" in Section 461(l). This is because, lack of jurisdiction to try an offence cannot be cured by Section

462 and hence Section 461, logically, could have included the trial of an offence by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of Section 462, provided there is no other bar for the court to try the said offender (such as in Section 27). But Section 461(l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do.

38. But be that as it may, the upshot of the above discussion is:

38.1. That the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence.

38.2. That if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in Sections 177 to 184 of the Code.

38.3. That these questions may have to be raised before the court trying the offence and such court is bound to consider the same.

39. Having taken note of the legal position, let me now come back to the cases on hand.

40. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand, is one of territorial jurisdiction, at least as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of

the Code. In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshalled. Hence, the transfer petitions are liable to be dismissed. Accordingly, they are dismissed.

41. However, it is open to both parties to raise the issue of territorial jurisdiction, lead evidence on questions of fact that may fall within the purview of Sections 177 to 184 read with Section 26 of the Code and invite a finding. With the above observations the transfer petitions are dismissed. There will be no order as to costs."

33. Thus, this Court said the following:

(i) the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence;

(ii) if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in sections 177 to 184 of the Code; and

(iii) these questions may have to be raised before the court trying the offence and such court is bound to consider the same.

34. While jurisdiction of a civil court is determined by (i) territorial and (ii) pecuniary limits, the jurisdiction of a

criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two-fold i.e.:

CIVIL COURT	CRIMINAL COURT
The stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21 of the Code of Civil Procedure, 1908.	There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.
In civil proceedings, a plaint can be returned, under Order VII, Rule 10, CPC, to be presented to the proper court, at any stage of the proceedings	But in criminal proceedings, a limited power is available to a Magistrate under section 201 of the Code, to return a complaint. The power is limited in the sense that:
	But in criminal proceedings, a limited power is available to a Magistrate under section 201 of the Code, to return a

complaint. The power is limited in the sense that:

1. it is available before taking cognizance, as section 201 uses the words “Magistrate who is not competent to take cognizance”

2. the power is limited only to complaints, as the word “complaint”, as defined by section 2(d), does not include a “police report”.

35. The Court looked into the following distinction:

“TRIES AN OFFENCE” VERSUS “TRIES AN OFFENDER” UNDER SECTION 461(l) CrPC, WHICH IS MORE APPROPRIATE?

The rules relating to territorial jurisdiction are given in Chapter XIII in detail. However, it is in that Chapter XXXV that one has to search for an answer to the question as to what happens when a

court which has no territorial jurisdiction, inquires or tries an offence.

A cursory reading of Section 461(l) and Section 462 gives an impression that there is some incongruity. Under Clause (l) of Section 461 if a Magistrate not being empowered by law to try an offender, wrongly tries him, his proceedings shall be void.

A proceeding which is void under Section 461 cannot be saved by Section 462

36. The focus of clause (l) of Section 461 is on the "offender" and not on the "offence". If clause (l) had used the words "tries an offence" rather than the words "tries an offender", the consequence might have been different.

37. Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word "offence" in three places namely clauses (b), (d) and (e). Section 460 does not use the word "offender" even once. On the contrary Section 461 uses the word 'offence' only once, namely in clause (a), but uses the word "offender" twice namely in clauses (l) and (m).

38. Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings shall be void under Section 461. Section 462 does not make the

principle contained therein to have force notwithstanding anything contained in Section 461.

39. Hence, the jurisdiction of a criminal Court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile (section 27) or where the victim is a women [the proviso to clause (a) of section 26]. But Section 461(l) focuses on the offender and not on the offence. The saving clause contained in Section 462 of the Code of 1973 is in *pari materia* with Section 531 of the Code of 1898.

40. Considering the aforementioned scheme of CrPC, the Court held that the words "tries an offence" are more appropriate than the words "tries an offender" in section 461 (l). This is because, lack of jurisdiction to try an offence cannot be cured by section 462 and hence section 461, logically, could have included the trial of an offence by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void.

41. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender (such as in section 27). But Section 461 (l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do.

42. Thus, in the aforesaid case, this Court declined to transfer the matter having noticed that the case was one of territorial jurisdiction. In such circumstances, this Court left it open to both the parties, i.e., the accused and the complainant to raise the issue of territorial jurisdiction before the court concerned.
43. In the case of ***United States v. National City Lines***, reported in **337 U.S. 78**, the U.S. district court of the southern district of California observed thus:

"The Discretionary Power to Transfer:

There remains the question: Do the facts warrant the granting of the motion?

A Conditions for Transfer

Before answering this question by reference to the facts, we consider briefly the meaning of the transfer provision.
The wording of the clause is different from that of the corresponding provision in the criminal rules. The latter calls for a transfer "if the court is satisfied that in the interest of justice the proceeding should be transferred." The section under consideration provides for transfer "for the convenience of parties and witnesses in the interest of justice" While both sections use the identical phrase "in the interest of justice" as a criterion, the civil transfer rule uses the phrase in juxtaposition with the convenience requirement. But the meaning of the phrase is the same in both instances:

"It implies conditions which assist, or are in aid of or in the furtherance of, justice. Both call for the doing of things which bring about the type of justice which results when law is correctly applied and administered. They import the exercise of discretion which considers both the interests of the defendant and those of society. When commanded by a statute, they do not attempt to determine, in advance, the type of judicial action to be taken."

In the case in which the phrase just quoted occurs, I considered the convenience of parties and witnesses as one of the criteria in determining whether a transfer should be made. And in the present case, I took into account the same element in considering the application of the doctrine of forum non conveniens. In so doing, I did not weigh the convenience of the defendants only, but that of the Government also. The conclusion was arrived at after a balancing of conveniences. This is of the very essence of the judicial process in any matter which calls for the exercise of discretion. Indeed, I wrote:

"A court of equity should aim to balance societal and individual interest and to [41] maintain the proper equilibrium between private rights and public weal."

**743 The transfer provision which concerns us here depends on discretion for its application, as do the kindred provision in the criminal cases and the doctrine of inconvenient forum.*

B Should the Discretion be Exercised?

Having determined that the transfer provision is applicable to this litigation, our next inquiry is whether the discretion should be exercised under the facts in the case.

The factual situation did not change while the matter was before the Supreme Court. It is the same as existed when I granted the motion to dismiss. The affidavits filed with the prior motion have been refiled and adopted for the purposes of the present motions. The Government has filed no additional affidavits. But it was agreed at the hearing that the additional facts contained in the affidavit of Jesse R. O'Malley, one of counsel for the Government, in opposition to the affidavit of Denis B. Sullivan, filed in opposition to the Government's motion for an early trial date, might be considered. The affidavit merely recites that a transfer to the Northern District of Illinois, Eastern Division, might result in delay because of the crowded condition of the calendar of that court. It points to the fact that the transfer of the criminal case had resulted in delay.

Speculations as to possible time of trial are not determinative of the matter. Regardless of the condition of their calendars, district courts have it within their power to advance cases when public interest so requires. And if the need for immediate action is brought home to the judges of the District Court of Illinois, I am certain that they will arrange for as early a trial of this cause as could be had in this district. In the instant case, the Government could very readily have avoided the delay which resulted from its direct appeal from my ruling by refiling the case immediately in the Northern District of Illinois, Eastern Division, especially when the defendants had stipulated that they would not seek a dismissal if so refiled.

I do not question the Government's right to seek the alternative of appeal in order to avoid a decision which it disapproved and which it did not desire to become established as an unchallenged precedent. However, in balancing the

conveniences, we must exclude situations such as delay brought on by the voluntary act of the Government when it had another alternative.

**744 I need not repeat the summary of the affidavits given in the two previous opinions." Having re-examined them, and having considered the additional affidavits and facts in the record to which my attention has been called by both parties, I am of the view that the convenience of the parties and witnesses require the transfer of this case in the interest of justice.*

Anticipating that such conclusion might be based on a balancing of conveniences, counsel for the Government intimated at the hearing that no resort could be had to such method in resolving the conflicting contentions. I agree that when the section speaks of the convenience "of parties and witnesses, it means that the convenience of both sides must be examined. But I know of no way of applying the requirement to a particular situation than by viewing the facts from both standpoints and giving preference to those which, in the court's opinion, preponderate to such an extent as to make the choice in the interest of justice. Unless the right to choose between conflicting facts or assertions exists, the court could never determine a motion under this section on the facts. For if the mere assertion by the Government of its own convenience and the convenience of its witnesses were sufficient to stay action, we would be confronted with a power to paralyze judicial discretion, beside which the devastating effect of the historic liberum veto ("Nie Pozwalan" "I don't permit") of the Polish nobles in their Diet (1572-1697) would dim into insignificance.

As I cannot so interpret the meaning of the section, I conclude that the showing in this case warrants transfer to the Northern District of Illinois, Eastern Division."

(Emphasis supplied)

44. In ***Bhiaru Ram & Ors. v. Central Bureau of Investigation & Ors*** reported in **(2010) 7 SCC 799** this Court observed thus:

"7. Section 406 of the Code of Criminal Procedure empowers this Court to transfer any case or appeal from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court. We are concerned about sub-section (1) of Section 406 which reads as under:

"406. Power of Supreme Court to transfer cases and appeals. —(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court."

8. It is clear from the abovesaid provision that for the ends of justice, this Court can transfer any criminal case or appeal to any place. In order to transfer a case from one State to another or from one place to another, there must be "reasonable apprehension" on the part of the party to a case that justice

may not be done. Mere allegation that there is apprehension that justice will not be done, cannot be the basis of transfer. In fact, in the case on hand, it is not the claim of the petitioners that they may not get fair justice at Special Court, CBI, Greater Mumbai but they are seeking transfer mainly on the basis of convenience stating that all of them are hailing from Rajasthan and majority of the witnesses going to be examined are from Jaipur, Rajasthan.

9. In a recent judgment pronounced on 23-7-2010 in D.A.V. Boys Sr. Sec. School v. D.A.V. College Managing Committee [(2010) 8 SCC 401], this Court while considering the power of this Court to transfer suits, appeals, etc. on the civil side under Section 25 of the Civil Procedure Code has held that:

> *"Section 25 of the Code itself makes it clear that if any application is made for transfer, after notice to the parties, if the Court is satisfied that an order of transfer is expedient for the ends of justice necessary direction may be issued for transfer of any suit, appeal or other proceedings from a High Court or other civil court in one State to another High Court or other civil court in any other State. In order to maintain fair trial, this Court can exercise this power and transfer the proceedings to an appropriate court. The mere convenience of the parties may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Further illustrations are, balance of convenience or inconvenience to the plaintiff or the defendant or witnesses and reasonable apprehension in the mind of the litigant that he might not get justice in the court in which suit is pending. The abovementioned*

instances are only illustrative in nature. In the interest of justice and to adherence of fair trial, this Court exercises its discretion and order transfer in a suit or appeal or other proceedings."

From the above, it is clear that the abovementioned principles have to be kept in mind while dealing with transfer petitions.

10. In the case on hand, except convenience, the petitioners have not pressed into service any other ground for transfer. In fact, Mr P.H. Parekh, informed this Court that the petitioners are willing to attend the proceedings at Delhi, if the case is transferred to Special Court, CBI, Delhi.

11. Mr. H.P. Raval, learned Additional Solicitor General, after taking us through specific averments made in the counter-affidavit filed on behalf of Respondents 1 and 2 (CBI), submitted that the main accused Shri B.R. Meena is a very influential person in the State of Rajasthan and there is strong apprehension that due to influence of Shri B.R. Meena, there would be no fair trial at Jaipur or any other place in the State of Rajasthan. He also pointed out that the Court of Special Judge, CBI at Greater Mumbai has ample jurisdiction to try this case because various movable properties have been found in Mumbai and the main accused, Shri B.R. Meena, was posted in Mumbai from 2001 to the end of the check period i.e. 4-10-2005 and this is the period during which most of the properties were allegedly acquired by him and his family members.

12. We have already adverted to the fact that against the main accused Shri B.R. Meena, (IRS 1977), Commissioner of Income Tax, Income Tax Appellate Tribunal, Mumbai, a case has been registered on 29-9-2005 under Section 13(2) read

with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for possession of assets in his own name and in the name of his family members to the extent of Rs 43,29,394 which were disproportionate to his known sources of income and could not be satisfactorily accounted for. It further shows that Respondent 3, during the check period i.e. 1-4-1993 to 4-10-2005, acquired assets disproportionate to his known sources of income to the extent of Rs 1,39,39,025.

13. The petitioners have been charge-sheeted for commission of offences under Section 109 read with Section 193 IPC read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for having actively aided and abetted Respondents 3 to 4 by fabricating false evidence through preparation of false agreements to sell with the object to justify/explain the huge cash recoveries from the residential premises of Respondent 3. It further reveals that the petitioners entered into false transactions with Respondent 3 showing receipt of cash amounts against alleged purchase of immovable properties from him. The stamp papers were purchased against (sic after) registration of case and false agreements to sell were prepared in connivance with each other.

14. A perusal of the charge-sheet containing all these details clearly shows that witnesses to be examined are not only from Jaipur, Rajasthan, but also from various other places including Mumbai. Though the petitioners may have a little inconvenience, the mere inconvenience may not be sufficient ground for the exercise of power of transfer but it must be shown that the trial in the chosen forum will result in failure of justice.

15. We have already pointed out that except the plea of inconvenience on the ground that they have to come all the way from Rajasthan no other reason was pressed into service. Even, the request for transfer to Delhi cannot be accepted since it would not be beneficial either to the petitioners or to the prosecution. In fact, the main accused, Respondents 3 and 4 have not filed any petition seeking transfer. In such circumstances, the plea of the petitioners for transfer of the case from the Court of Special Judge, CBI, Greater Mumbai to Special Judge, CBI, Jaipur on the ground of inconvenience cannot be accepted."

(Emphasis supplied)

45. In ***Rajkumar Sabu v. Sabu Trade Private Limited*** reported in **2021 SCC OnLine SC 378** this Court observed thus:

"5. Now the petitioner wants the criminal case pending in the Salem Court to be transferred to the Patiala House Court, New Delhi. Two main grounds have been urged on behalf of the petitioner in support of his plea, argued by Mr. S. Guru Krishnakumar, learned Senior Advocate. One is that the points involved in the criminal case are similar to the suits which are being tried and determined by the Delhi High Court. The other ground taken is that the proceeding in the Salem Court is being conducted in Tamil, which the petitioner does not understand. It has also been urged on behalf of the petitioner that it would be more convenient for the parties to conduct the proceeding in New Delhi as the civil suits are being heard in the Delhi High Court only. The petitioner also complains about distance of over 2000 kilometres between Salem and petitioner's own place of residence at Indore and alleges that there is no direct connectivity between these two places. The authorities relied

upon by the petitioner are (i) Sri Jayendra Saraswathy Swamigal (II), T.N. v. State of Tamil Nadu [(2005) 8 SCC 771] and Mrudul M. Damle v. Central Bureau of Investigation, New Delhi [(2012) 5 SCC 706]. It is also asserted on behalf of the petitioner that the respondents have influence in Salem and he has apprehension that he would not get impartial enquiry/investigation/trial at Salem.

6. Mr. Gopal Sankarnarayan, learned Senior Advocate has highlighted, in course of his submissions on behalf of the respondent, the delay in approaching this Court seeking transfer of the criminal case. As per his submission, proceeding was registered on 5th April, 2018 and has made substantial progress. The complaint has reached the stage of cross examination of the complainants' witnesses by the petitioner. The transfer petition was filed on 12th January, 2021. He also points out that personal appearance of the petitioner during trial stood dispensed with by an order of the Madras High Court. It is also his submission that the case pending in the Salem Court has criminal elements, which ought not to be mixed up with the civil suit. Relying on a judgment of a Coordinate Bench in the case of Umesh Kumar Sharma v. State of Uttarakhand [2020 SCC OnLine SC 845] and an earlier decision of this Court in the case of Gurcharan Dass Chadha v. State of Rajasthan [(1966) 2 SCR 678], he has argued that to sustain allegation of lack of neutrality in trial as a ground for transfer, credible materials will have to be brought before the Court. His argument is that there is no such material that would justify transfer on this ground. Certain decisions have been referred to on behalf of the respondents on the point that civil and criminal proceedings can go on simultaneously in relation to similar transactions. But I do not consider it necessary to deal with these authorities, as that

point does not arise in the present proceeding, which is a Transfer Petition.

7. I shall proceed on the basis that the suits being heard by the Delhi High Court would have points which could overlap with those involved in the criminal case pending in the Salem Court. But that very fact, by itself, in my view, would not justify transfer of the said case. Substantial progress has been made in the said complaint before the Salem Court. So far as the subject-criminal case is concerned, the ground of overlapping points in any event cannot justify the petitioner's case for transfer as even if the petition is allowed, the criminal case shall have to proceed in the Court of Judicial Magistrate and not in the High Court where the civil suits are being heard. Two different judicial fora would be hearing the civil cases and the criminal case. Whether the civil cases and the criminal case would continue together or not is not a question which falls for determination in this Transfer Petition. Moreover, it does not appear that earlier any complaint was made about the proceeding being carried on at Salem. In fact, the petitioner had applied for quashing the complaint before the Madras High Court but at that point of time, no proceeding was taken out for transferring the criminal complaint. Moreover, on 8th June 2018, the petitioner had appeared before the Salem Court and received copy of the criminal complaint. This has been stated in the list of dates forming part of the Transfer Petition. At that point of time, the two earlier Transfer Petitions were pending. Those two petitions were disposed of on 18th July 2018. The petitioner does not appear to have had expressed their grievances on the basis of which this petition has been filed at that point of time. Barring claims being made by the petitioner of the respondents being influential person in Salem, no material has been produced to demonstrate that

such perceived influence can impair a neutral trial. These allegations, inter-alia, appear in an additional affidavit filed on behalf of the petitioner affirmed on 26th February, 2021. The claims of the petitioner do not match the level of unjust influence exerted on the defence in the case of Sri Jayendra Saraswathy Swamigal (supra), on the basis of which the transfer petition was allowed. In that case, this Court found the prosecuting authorities were harassing the defence team of lawyers and there were materials demonstrated by the petitioner to show that the State machinery was going out of its way in preventing the accused from defending himself. The petitioner's case of possible tainted trial is unfounded and does not meet the standard laid down in the cases of Gurucharan Dass Chadha (supra) and Umesh Kumar Sharma (supra). I cannot come to a conclusion that justice would be in peril if the case continues in the Salem Court. I am not satisfied on the basis of materials available that the petitioner would not get impartial trial in the Salem Court.

8. Next, I shall turn to the question of the problem of language faced by the petitioner. The respondents seem to be carrying on their business from Salem. In course of hearing before me, no question has been raised as regards territorial jurisdiction of the Salem Court in proceeding with the case, the transfer of which is asked for. Now, complaint is being made that the petitioner not being able to understand Tamil language, the case ought to be transferred to a Court in Delhi. Language was a factor considered by this Court in the case of Sri Jayendra Saraswathy Swamigal (supra), while selecting the Court to which the case was to be transferred. But language was not the criteria based on which transfer of the case was directed. I have briefly discussed earlier the reason for which transfer of the case was directed. The language factor weighed

with this Court while deciding the forum to which the case was to be transferred after decision was taken to transfer the case for certain other reasons.

9. Ordinarily, if a Court has jurisdiction to hear a case, the case ought to proceed in that Court only. The proceeding in the Salem Court has not been questioned on the ground of lack of jurisdiction but on the ground contemplated in Section 406 of the 1973 Code. Jurisdiction under the aforesaid provision ought to be sparingly used, as held in the case of Nahar Singh Yadav v. Union of India [(2011) 1 SCC 307]. Such jurisdiction cannot be exercised on mere apprehension of one of the parties that justice would not be done in a given case. This was broadly the ratio in the case of Gurcharan Dass Chadha (supra). In my opinion if a Court hearing a case possesses the jurisdiction to proceed with the same, solely based on the fact that one of the parties to that case is unable to follow the language of that Court would not warrant exercise of jurisdiction of this Court under Section 406 of the 1973 Code. Records reveal that aid of translator is available in the Salem Court, which could overcome this difficulty. If required, the petitioner may take the aid of interpreter also, as may be available.

10. The petitioner's plea for transfer is based primarily on convenience. But convenience of one of the parties cannot be a ground for allowing his application. Transfer of a criminal case under Section 406 of the 1973 Code can be directed when such transfer would be "expedient for the ends of justice". This expression entails factors beyond mere convenience of the parties or one of them in conducting a case before a Court having jurisdiction to hear the case. The parties are related, and are essentially fighting commercial litigations filed in

multiple jurisdictions. While instituting civil suits, both the parties had chosen fora, some of which were away from their primary places of business, or the main places of business of the defendants. The ratio of the decision of this Court in the case of Mrudul M. Damle (supra) cannot apply in the factual context of this case. In that case, a proceeding pending in the Court of Special Judge, CBI Cases, Rohini Courts, New Delhi was directed to be transferred to the Special Judge, CBI cases, Court of Session, Thane. Out of 92 witnesses enlisted in the charge sheet, 88 were from different parts of Maharashtra. That was a case which this Court found was not "Delhi-centric". The accused persons were based in western part of this Country. It was because of these reasons, the case was directed to be transferred. The circumstances surrounding the case pending in the Salem Court are entirely different. In the case of Rajesh Talwar v. CBI [(2012) 4 SCC 217] it was held: —

> *"46. Jurisdiction of a court to conduct criminal prosecution is based on the provisions of the Code of Criminal Procedure. Often either the complainant or the accused have to travel across an entire State to attend to criminal proceedings before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the criminal trial is accepted, the provisions contained in the Criminal procedure Code earmarking the courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience are*

inconsequential so far as the mandate of law is concerned. The instant plea, therefore, deserves outright rejection."

11. For these reasons, I dismiss the present transfer petition. Connected applications, if any, shall also stand disposed of."

(Emphasis supplied)

46. In ***Nahar Singh Yadav & Anr. v. Union of India & Ors.*** reported in **(2011) 1 SCC 307**, this Court observed thus:

"22. It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well."

(Emphasis supplied)

47. It follows from the above-mentioned exposition of law that transfer of cases under Section 406 Cr.P.C. may be allowed when there is a reasonable apprehension backed by evidence that justice may not be done and mere convenience or inconvenience of the parties may not by itself be sufficient

enough to pray for transfer. The court has to appropriately balance the grounds raised in the facts and circumstances of each case and exercise its discretion in a circumspect manner while ordering a transfer under Section 406.

48. In ***Amarinder Singh v. Parkash Singh Badal*** reported in **(2009) 6 SCC 260**, while dealing with two transfer applications preferred under Section 406 Cr.P.C. on the ground that with the change in State Government, the trial was suffering a setback due to the influence of the new Chief Minister as also the lack of interest by the Public Prosecutor, P. Sathasivam, J., speaking for a three-Judge Bench has observed thus:

"18. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one."

(Emphasis supplied)

49. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not the power under Section 406 Cr.P.C should be exercised, yet it is manifest from a bare reading of sub-sections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine and more particularly on the plea of lack of territorial jurisdiction of the court to try the offence under Section 138 of the N.I. Act. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide

credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability in holding a fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere, either directly or indirectly, with the

course of justice. [See: ***Nahar Singh Yadav & Anr. v. Union of India & Ors.,*** **(2011) 1 SCC 307**]

50. The above-mentioned factors are not exhaustive in nature and are illustrative of the requirements of a fair trial. It is clear as a noon day that ensuring a fair trial is the predominant consideration for a court to rule on a motion for transfer of a case. This Court in ***Maneka Sanjay Gandhi v. Rani Jethmalani,*** reported in **(1979) 4 SCC 167** has held thus:

"***2.*** *Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when- the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.*"

(Emphasis supplied)

51. In ***Maneka Sanjay Gandhi (supra)***, it was also held that as a general rule, it is the complainant who has the right to choose the forum that has jurisdiction over the subject matter and the courts do not interfere with such a right unless circumstances that hamper the ends of justice are brought to the notice of the court by the other party.

52. In the context of our present discussion, it is pertinent to note that that Section 406 of the Cr.P.C. uses the expression "*expedient for the ends of justice*", while empowering this Court to transfer a criminal case. The import of the expression "ends of justice" has been discussed by this Court in ***Yakub Abdul Razak Memon v. State of Maharashtra*****,** reported in **(2013) 13 SCC 1** wherein it has been held that:

*"**1551.** While dealing with such an issue, the court must not lose sight of the fact that meaning of "ends of justice" essentially refers to justice to all the parties. This phrase refers to the best interest of the public within the four corners of the statute. In fact, it means preservation of proper balance between the Constitutional/statutory rights of an individual and rights of the people at large to have the law enforced. The "ends of justice" does not mean vague and indeterminate notions of justice, but justice according to the law of the land."*

(Emphasis supplied)

53. The expression "ends of justice" has been more elaborately elucidated in context of procedural law in the decision of this

Court in ***Mahadev Govind Gharge v. LAO*****,** reported in **(2011) 6 SCC 321**, wherein it was held that:

*"**29.** Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold. We have already noticed that there is no indefeasible divestment of right of the cross-objector in case of a delay and his rights to file cross-objections are protected even at a belated stage by the discretion vested in the courts. But at the same time, the court cannot lose sight of the fact that the meaning of "ends of justice" essentially refers to justice for all the parties involved in the litigation. It will be unfair to give an interpretation to a provision to vest a party with a right at the cost of the other, particularly, when statutory provisions do not so specifically or even impliedly provide for the same.*

—xxx—

***34.** The consistent view taken by this Court is that the provisions of a statute are normally construed to achieve the ends of justice, advance the interest of public and to avoid multiplicity of litigation. In Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy [(2001) 8 SCC 115] this Court expressed similar view in relation to amendment of pleadings. The principles stated in that judgment may aptly be applied generally in relation to the interpretation of provisions of the Code. Strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction. (...)"*

(Emphasis supplied)

54. Therefore, when a complainant institutes a case in a court of his choosing and such a court has the territorial jurisdiction to adjudicate the matter then the transfer of such case has to be guided by principles that would achieve the ends of justice. The meaning of "ends of justice" essentially refers to justice for all the parties involved in the litigation.

55. Section 142 of the N.I. Act in clear terms, provides the complainant with the right to lodge a complaint, before a court, within whose jurisdiction, the branch of the bank where the cheque is delivered for collection, is situated. Therefore, the argument of the accused that another court might also be empowered to take cognizance of the matter under Section 142, since the cause of action arose within that jurisdiction, cannot by itself be a ground for seeking transfer under Section 406 of the Cr.P.C.

56. Additionally, since Section 142(2) of the N.I. Act also speaks of cause of action, we must try to understand what cause of action means. A Court gets jurisdiction over the matter if the cause of action arises within the local limits of its jurisdiction. Cause of action means: *"the whole bundle of material facts which it is necessary for the plaintiff to prove in order to entitle*

him to succeed in the suit." To ascertain whether the bundle of facts give rise to the cause of action and to determine whether one or more of those facts had occurred within the territorial jurisdiction of the Court, the entire plaint needs to be looked into and taken into consideration. In the decision rendered in ***State of Madras v. C.P. Agencies*** reported in ***AIR 1960 SC 1309,*** this Court has quoted with approval the following observations made in ***Mst. Chand Kour v. Pratab Singh*** reported in **15 Indian Appeals 156**:

"*Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.*"

(Emphasis supplied)

57. This Court in ***State of Madhya Pradesh v. K.P. Ghiara*****,** reported in **1956 SCC OnLine SC 85** held that the venue of enquiry or trial of a case is primarily to be determined by the averments contained in the complaint or charge sheet and unless the facts there are positively disproved, ordinarily the Court, where the charge sheet or complaint is filed has to

proceed with the matter, except where action has to be taken under Section 202 of the Criminal Procedure Code.

58. The main plank of the submission canvassed on behalf of the petitioner seeking transfer needs to be now looked into. According to the petitioner, there was no good reason for the Bank to file the complaint under Section 138 of the N.I. Act in Chandigarh more particularly when the entire cause of action could be said to have arose in Coimbatore. If not in the form of allegations, then at least in the form of a serious grievance, the petitioner says that only with a view to harass and cause inconvenience, the Bank lodged the complaint in Chandigarh. The Bank says that the law permits it to file the complaint in Chandigarh as the collection centre of the Bank is in Chandigarh. According to the Bank, the law permits filing of such a complaint at the place where a cheque is delivered for collection at any branch of the Bank of the payee or holder in due course, as the cheque is 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 , has an account maintained.

59. There is no challenge before us to the constitutional validity of Section 142(2) of the Negotiable Instrument Amendment Act, 2015 on the ground that the same is *ultra vires* Article 14 of the

Constitution of India. There was a challenge at one point of time to the validity of Section 142(2) of the Amendment Act, 2015 before the High Court of Madras in the case of ***Refex Energy Ltd. v. Union of India*** reported in **2019 SCC Online Mad 9941**. While dismissing the writ petition and holding that the amendment cannot be said to be *ultra vires*, the division bench of the High Court held as under:

> *"**2.** The contention of the learned Counsel for the petitioner is that this amendment amounts to setting at naught a judgment of the Honourable Supreme Court which is not permissible in law. The contention of the petitioner cannot be accepted. It is well settled right from the decision in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality reported in (1969) 2 SCC 283 : AIR 1970 Supreme Court 192 that Legislation can take away the basis of a judgment.*
>
> ***3.** The Honourable Supreme Court in Dashrath Rupsingh Rathod (supra) summed up the law relating to the place of suing as under:*
>
> *"56. To sum up:*
>
> *(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.*

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

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

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

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

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

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

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

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

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

4. *In order to resolve the concerns regarding the said judgment, the President of India promulgated an Ordinance, called Negotiable Instruments (Amendment) Ordinance, 2015. The said Ordinance, thereafter, became an Act, namely, Negotiable Instruments (Amendment) Act, 2015. Amendments were made by the Negotiable Instruments (Amendment) Act, 2015, which read as under:*

"An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

***1**. (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2015.*

(2) It shall be deemed to have come into force on the 15th day of June, 2015.

***2**. In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), in section 6,-*

(i) in Explanation I, for clause (a), the following clause shall be substituted, namely:—

'(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

(ii) after Explanation II, the following Explanation shall be inserted, namely:—

'Explanation III.-For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.'.

3. In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

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

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

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

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

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

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

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

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due

course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

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

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

5. *By virtue of the said amendment, the entire basis of the judgment of Dashrath Rupsingh Rathod (supra) has been removed. The power of the Legislature to take away the basis of a judgment by making amendments is well settled. It is trite law that the Legislature can take away the basis of the judgment of a judicial pronouncement by either passing a Validating Act or passing amendments to the parent Act. [Refer. State of Karnataka v. Karnataka Pawn Brokers Association reported in (2018) 6 SCC 363; State of Karnataka v. Pro Lab reported in (2015) 8 SCC 557; Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality reported in (1969) 2 SCC 283 : AIR 1970 Supreme Court 192; Gujarat Ambuja Cements v. Union of India reported in (2005) 4 SCC 214; State Bank's Staff Union (Madras Circle) v. Union of India reported in (2005) 7 SCC 584]*

> ***6.*** *In view of the above, there is no infirmity in the amendment. Even otherwise, the Parliament is competent to bring out the amendment under the Negotiable Instruments Act. The said amendment cannot be said to be ultra vires in view of the provisions of the Act or Part III of the Constitution of India. The amendment cannot also be called to be manifestly arbitrary in the absence of any materials on record.*
>
> ***7.*** *Accordingly, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petition is also dismissed."*

60. Thus, indubitably, Section 142 of the N.I. Act was amended and Section 142-A was introduced with effect from 15.06.2015, to clarify the jurisdictional issue and to address the crisis of transfer of cases as per the ratio in ***Dashrath Rupsingh (supra)***.

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.

63. The strong assertion on the part of the petitioner that no part of the cause of action could be said to have arisen within Chandigarh, is of no avail to them, more particularly when the

law itself allows the institution of a complaint in Chandigarh. The enactment of sub-section (2)(a) of Section 142 of the N.I. Act and the Explanation thereto allows the complainant to file a complaint before the courts within whose jurisdiction the collection branch of the bank falls. In the present case, while contending that the court in Chandigarh lack the jurisdiction to entertain the case, it is not the case of the petitioner that the respondent Bank has no collection branch in Chandigarh.

64. The argument canvassed on behalf of the petitioner that although the Court in Chandigarh has the territorial jurisdiction to try the case under Section 138 of the N.I. Act yet as the Court in Delhi also has the territorial jurisdiction to try the case, the proceedings deserve to be transferred to the Court in Delhi to take care of two situations for the petitioner (i) language barrier and (ii) convenience.

65. For the purpose of transfer of any case or proceedings under Section 406 of the Cr.P.C., the case must fall within the ambit of the expression "*expedient for the ends of justice*". Mere inconvenience or hardship that the accused may have to face in travelling from Coimbatore to Chandigarh would not fall within the expression "*expedient for the ends of justice*". The case must fall within any of the five situations as narrated in

para 49 of this judgment. It is always open for the petitioner accused to pray for exemption from personal appearance or request the Court that he may be permitted to join the proceedings online.

CONCLUSION

66. Having regard to the pleadings in the memorandum of the transfer petition, we have reached the conclusion that no case is made out for transfer of the proceedings in question under 406 CrPC.

67. In the result, the petition fails and is hereby dismissed. All other connected transfer petitions are also disposed of in the aforesaid terms.

68. Pending applications, if any, shall stand disposed of.

……J.
(J. B. PARDIWALA)

……J.
(R. MAHADEVAN)

New Delhi.
March 6th, 2025.