

**CHEQUE BOUNCE COMPLAINTS TO NOW BE FILED ONLY WHERE THE DRAWER'S
BANK IS LOCATED**

Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.: This landmark decision of the three-judge bench of the Supreme Court delivered on August 1, 2014 has overturned the position of law laid down by the Apex body in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (1999) 7 SCC 510 ("**Bhaskaran**") which held the field for fifteen years. The effect of this judgement is to now restrict cheque bouncing complaints only to jurisdictions where the drawer's bank is located. Under the Bhaskaran regime, the complaint could be filed in any of the courts where any of the 5 ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") occurred that is, (a) drawing of a cheque, (b) presentation to the bank, (c) returning the cheque unpaid to the drawee bank, (d) giving notice to the drawer demanding payment and (e) finally failure to make payment within the stipulated period of 30 days from giving notice. The view then was that any of the aforementioned instances could constitute a cause of action and the complainant was at liberty to file a complaint in any of the jurisdictions where these acts had taken place. The Court now deviated from the previous position and now the complaint has to be filed only where the cheque is dishonoured by the bank on which it is drawn, and other courts will be bereft of territorial jurisdiction. The Supreme court recognized the manipulative abuse by payees deliberately depositing cheques or issuing notices from places not connected with the actual transaction. In fact, in cases where multiple cheques have been issued in connection with a single transaction, the payee was at the liberty to present them in different locations and issue multiple notices from different jurisdiction with the intention to harass the accused and push for a settlement. The Court recognized that the complainant is statutorily bound to comply with Section 177 of the Criminal Procedure Code, 1973 ("**CrPC**") and therefore the place where the Section 138 complaint is to be filed is not of his choosing, but where the offence is committed, i.e. where the cheque has been dishonoured by the drawer's bank. The ingredients of issuing a notice to the drawer and his non-payment within 15 days are only steps to be fulfilled to initiate prosecution but not a part of the offence itself. The Court has however clarified that in respect of a bounced cheque, a complaint can also be filed with the police for cheating under Section 420 of the Indian Penal Code, 1860 ("**IPC**") where the drawer has deliberately issued a cheque with the knowledge that the cheque would not be honoured and with the intention to defraud the payee and get the latter to deliver some property to him or do any other act. With respect to pending cases under S. 138 of the NI Act which are in courts other than those where drawer's bank is located, if the case has not reached the stage where evidence has commenced the Court has made it clear that such complaints have to be returned and re-presented to the court where the drawer's bank is located.

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While the judgement appears to be correct on a strict interpretation of the CrPC and the NI Act in holding that the offence is committed when the cheque gets dishonoured by the drawer's bank and therefore the offence is committed at the place where the drawer's bank is located, by making the judgement not entirely prospective and making it applicable even to pending cases where they have not yet reached the stage of evidence of complainant, it poses significant hardship to payees since until now the payees have relied on the Bhaskaran case which has held the field for fifteen years. It is a common phenomenon that the accused try to evade summons and the process of having them served and attend court itself sometimes runs into months and years. Therefore, for the payee who has filed a complaint in a court other than at the drawer's bank by relying on shankaran case, and his case has not yet reached the stage of evidence, to have the complaint returned and represented to the proper court and to now have to go through the same process again of trying to have the accused served would be a travesty of justice. It is hoped that to alleviate this, the court returning the complaint would, where accused are served with notice already, fix a date of appearance before the court where it will be represented.

The present case can also be misused by unscrupulous drawers by opening bank accounts in remote places and making the payee come all the way there to prosecute them. On the flip side, this could also have the effect of payees becoming reluctant to accept cheques drawn on banks located in places they are not comfortable with or which is inconvenient to them. This may in effect come in the way of smooth and quick financial transactions by relying on cheques and payees may start insisting on DDs or cheques drawn on banks where payees have presence and would not be inconvenient to prosecute in case the cheque bounces. Further, by clarifying that complaints of cheating can also be entertained by the police under Section 420 of the IPC, it creates room for the police to be burdened with a multitude of cases which could have otherwise been expeditiously disposed off under Section 138 of the NI Act. Conversely, the police may also view this as a welcome move by which they are provided with a way to unduly benefit from the complainant and the accused in the guise of investigating and facilitating recovery of the amounts due. The objective of law being to strike a chord of balance between abuse of law and curtailment of crime, whether in the present environment of increased financial crimes this decision achieves the objective remains questionable.



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