Vasu Choudhary et al. International Journal of Recent Research Aspects ISSN: 2349-7688, Vol. 5, Issue 1, March 2018, pp. 466-469

Legislative and Judicial Trends in India Relating to Dishonour of Cheque

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Abstract: **The law relating to negotiable instruments is not the law or one country or of one nation; it is the law of the commercial world in general, for, it consists of "certain principles of equity and usages of trade which general convenience and common sense of justice had established to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world". Even now the laws of several countries in Europe are at least so far as general principles are concerned, similar in many respects of course, on questions or detail, different countries have solved the various problems in different ways, but the essentials are the same, and this similarity of law is a pre-requisite for the vast international transactions that are carried on among the different countries.**

Keywords: **Checque, Dishonour, Legislative and Judicial Trends, India**

I. INTRODUCTION

A cheque is an acknowledged bill or exchange that is readily accepted in lieu of payment or money and it is negotiable However, by the fall in moral standards, even these negotiable instruments like cheques issued, started losing their creditability by not being honoured on presentment. It was found that an action in the civil court for collection of the proceeds of a negotiable instrument like a cheque tarried, thus defeating the very purpose of recognizing a negotiable instrument as a speedy vehicle of commerce. It was in that context that chapter XVII was inserted in the Negotiable Instruments Act.

II. SITUATION IN INDIA

In India over the years there have been many important changes in the way cheques are issued/dishonoured/dealt with the commercial globalization has resulted in giving big boost to our country. With the rapid increase in commerce and trade use of cheque also increased and so the cheque dishonoured dispute as of additional forms of crime apart from other crimes already in existence. However to deals with these types of cases we do not have additional numbers of courts, we don't have additional infrastructure. In many states sufficient budgetary provisions are not made for improving the infrastructure if the subordinate courts, including additional improvements of existing courts. Over 38 lac cheque bouncing cases are pending in various courts in the country. There are 766974 cases pending in criminal courts of Delhi at the magisterial level as on 1st June, 2008. Out of this hue work load, a substantial portion is of cases are under section 138 of Negotiable Instrument Act which alone count for 514433 cases of dishonor of Cheques.[1] In July 2018 about 19174669 criminal cases were pending throughout the Country out of which 495144 cases were count to national capital Delhi alone.[2] According to the Gujrat High Court sources, there were approximately two Lac Cheque bouncing cases were there over the State.[3] As per former Chief Justice Shri K.G.Balakrishnan, there were 73000 cases were filed under section 138 of the Negotiable Instrument Act on a single day by a private Telecom company before a Bangalore Court. He also urge the government top appoint more judges to deal with 1.8 crore cases pending in the country. The number of complaints which are pending in Courts Seriously cast shadow on the credibility or our trade, commerce and business immediate steps have to be taken by all concerned to ensure restoration of the credibility of trade, commerce and business. Very recently, while allowing the appeal of an accused in a cheque bouncing case, the Supreme Court has ruled that speedy trial is a fundamental right of an accused. In the age of international trade and globalizations it is even more important that people must have implicit faith in the credibility and honesty of the system. Unfortunately, sanctity and credibility of cheques in commercial transactions have been eroded to a large extent.[4] As sec - 138 to 142 of the Act were found deficient in dealing with dishonoring of cheques, the Negotiable Instrument (Amendment and Miscellaneous Provisions) Act. 2002. Besides other amendments, amended

[1] Law Commission of India , 213th Report, 2008

[2] National Judicial Data Grid, Rajya Sabha Session - 246 Starred Question No 111

[3] Ksl & Industries Ltd v Mannalal Khandelwal, 2005 Cri.L.J 1201 (BOM)

[4] Presidential address by Hon'ble Mr. Justice K.G Bala Krishnan, CJI, at National Seminar on Delay in Admistration of Criminal Justice System, dated: 17 March 2007, Vijay Bhawan, New Delhi.

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sec - 138, 141 and 142 and inserted new sec - 143 to 147 in the Act aimed. Inter alia, at speedy disposal of cases relating to dishonor of cheque through their summary trial as well as making them compoundable. Punishment provided under Sec. 138 too was enhanced from one year to two years.[5] Amendments were brought into force on 6th February. 2003. Due to large number of pendency of dishonored cheque cases (over 38 lacs), the entire credibility or the business within and outside the country is suffering a serious setback. Dishonour of cheque by a Bank causes incalculable loss, injury and inconvenience to the payee and the credibility of issuance of cheque is also being eroded to a large extent. Since, the introduction of this new Chapter XVII relating to penalties in case or dishonour of certain cheques for insufficiency of funds in the accounts. 1'he implementation of these provisions for nearly 14 years revealed certain short comings which have been endeavoured to be plugged by the Negotiable Instruments (Amendment & Miscellaneous Provisions) Act, 2002 (55 of 2002). The Act 55 of 2002 has, besides other amendments, amended Sec - 138, 141 and 142 and inserted new Sec - 143 to 147 in the Act (section 143 - summary trial; Section - 144 - service of summons: Sec - 145 - evidence on affidavit: Section - 146 - Bank's slip prima facie evidence: Sec - 147 - offences to be compoundable). The very purpose of these amendments made in the Act for speedy disposal of dishonored cheque cases is being lost. In the age of international trade and globalization, it is even more important that people must have implicit faith in the credibility and honesty of the system. Unfortunately, sanctity and credibility of cheques in commercial transactions have been eroded to a large extent. The value of a cheque, which was reduced to merely a piece of paper, particularly amongst the business community, has been greatly enhanced. The Law commission of India is of the firm opinion that considering the alarming situation of the pendency of cases and the constitutional rights of a litigant for a speedy and fair trial, the Government of India should direct the State authorities for setting up of Fast Track Courts in the country, which alone. In the opinion of the Law commission, will solve the perennial problem of pendency of cases, which are even summary in nature. The Law Commission is of the view that the backlog or cheque bouncing cases need to be speedily disposed of through this measure lest litigant may lose faith in the judicial system. The commercial circles should have confidence that we have quite faster judicial system. We, accordingly, recommend as under:-[6]

a) Fast Track Courts of Magistrates should be created to dispose of the dishonoured cheque cases under Section - 138 of the Negotiable Instruments Act, 1881.

b) The Central Government aid State Governments must provide necessary funds to meet the expenditure involved in the creation of Fast Track Courts, supporting staff and other infrastructure.

In order to reduce the number of cheque dishonour cases pending in courts, the parliament has passed the Negotiable Instruments (Amendment) Bill, 2017 which received the assent of the President on the 2nd August, 2018; The Amendment aims to counter the delaying tactics employed by people who want to avoid paying cheques issued by them. it will preserve the sanctity of cheque transactions by stopping the practice of people trying to deliberately delay cases through filing of appeals and obtaining stay a on proceedings. The insertion of a new provision wherein a court can order the drawer of the dishonoured cheque to pay interim compensation to the complainant, in a summary trial or a summons case upon framing of charges. The interim compensation will be up to 20% of the amount of the cheque. A similar provision has also been inserted in case of an appeal by the drawer of the cheque against a conviction. The appellate court may order the appellant to deposit at least 20% of the fine or compensation awarded by the trial court. The new amendments strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

III. THE LEGISLATIVE APPROACH

The Negotiable Instrument Act, 1881 was amended by the Banking public financial Institution and Negotiable Instrument Laws (Amendment) Act, 1988 wherein a new chapter XVII was incorporated for penalties in case of dishonor of cheque due to insufficiency in funds in the account of drawer of the cheque. The Act was further amended in year 2002 in relation to section 138 of the said Act. Not only this it went through a major change on 1st August 2014 when a three-judge bench of the Honourable Supreme Court overturned many of the Court's previous decisions**.** *In Dashrath Rupsingh Rathod vs. State of Maharashtra*,[7] before this judgment the legal position was as follows – Let us say a party X based in Mumbai issued a cheque to a party Y of Kolkata. The cheque was drawn on a bank of Mumbai. The cheque was presented by Y to his bank in Kolkata. The cheque bounced. Y issued a notice to X demanding payment for the bounced cheque. X did not pay. Y would file a complaint with the Magistrate at Kolkata. After the judgment dated 1st August 2014, Y had to necessarily come to Mumbai to file the complaint. The Honourable Supreme Court had made it mandatory that the complaint related to cheque bouncing must be filed only where the drawee bank is located. This surely made life difficult for anyone who received a cheque, while simultaneously making

[5] Speech Delivered by Hon'ble Mr. Justice Ajit Parkash Shah, Chief Justice, Delhi High Court, at the Inaugural of Dwarka Court Complex.

[6] Law Commission of India , 213th Report, 2008

[7] (2014) 9 SCC 129

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it easy for the accused or the person whose cheque bounced. However Supreme Court's judgment has been overturned by the Government of India by getting the President of India to promulgate on 15th June 2015 an Ordinance, The Negotiable Instruments (Amendment) Ordinance, 2015, No. 6 of 2015. The Ordinance has introduced a new sub-section to section 142 of The Negotiable Instruments Act. Also until 1st April 2012, cheque in India were valid for a period of 6 months from the date of their issue, before the reserve bank of India issued a notification reducing their validity to 03 months from the date of issue. Presently the Act is further amended through the Negotiable Instruments (Amendment) Bill, 2017 for the purpose of countering the delaying tactics employed by people who want to avoid paying cheques issued by them. Providing that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant.

The Act provides that no court inferior that of a metropolitan Magistrate or a Judicial Magistrate of 1st Class shall try or take Cognizance of the offence under section 138 of the Act. It further provides that cognizance of the offence is to be taken upon a written Complaint by the payee or by the holder of due course of cheque within one month from the date on which the cheque is returned unpaid by the bank. The procedure that is followed by the concerned magistrate is that of provisions of section 262 to 265 (both Inclusive) of Code of Criminal procedure, 1973.[8] Also the offence is compoundable at any stage; the matter can be settled at any time between the parties. In case of any such settlement, an application should be moved before the court to compound and close the case.[9]

IV. THE JUDICIAL APPROACH

In *Lalit Kumar Sharma & Anr v State of Uttar Pradesh & Anr*,[10] Two cheques were issued by the directors of a company and they were prosecuted. Meanwhile, there was a settlement under which Rs 5 lakh was to be paid to the creditor. However, this cheque also bounced, leading to another prosecution. The Allahabad High Court rejected their plea to quash the proceedings. But on appeal, the Supreme Court stated that the latter cheque was issued in terms of a compromise agreement and not to satisfy any debt or payment due. Therefore, the second instance would not invite prosecution under Section 138. The High Court judgment was set aside. In *Lakshmi Dyechem vs. State of Gujarat,*[11] it was held by the court that Signature on cheque not matching with the signature in the record of the bank is treated as no different from "insufficient funds". It was observed that the expression "amount of money is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act.

In *MSR Leathers vs. S. Palaniappan and Anr*,[12] The Supreme Court has reversed the legal principle that it had laid down in *Sadanandan Bhadran v. Madhavan Sunil Kuma,*[13] that a cheque could only be presented once and the underlying principle was that a single instrument cannot lead to multiple causes of action. It was held and observed that that so long as the cheque remains unpaid it is the continuing obligation of the drawer to make good the same by either arranging the funds in the account on which the cheque is drawn or liquidating the liability otherwise. It is true that a dishonour of the cheque can be made a basis for prosecution of the offender but once, but that is far from saying that the holder of the cheque does not have the discretion to choose out of several such defaults, one default, on which to launch such a prosecution. The omission or the failure of the holder to institute prosecution does not, therefore, give any immunity to the drawer so long as the cheque is dishonoured within its validity period and the conditions precedent for prosecution in terms of the proviso to Section 138 are satisfied. Reversing the decision in Sadanandan Bhadran's case the court stated that we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time. In the result, we overrule the decision in

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[8] Section 143, N.I Act, 1881
[9] Section 147, N.I Act, 1881
[10] (2008) 5 SCC 638
[11] (2012) 13 SCC 375
[12] (2013) 10 SCC 568
[13] 1998 (6) SCC 514

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Sadanandan Bhadran's case and hold that prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. In *Rohitbhai Jivanlal Patel v State of Gujarat & Anr,*[14] in this case The Supreme Court while dismissing an appeal against a High Court judgment which had reversed the acquittal by trial court has held that once the court has drawn presumption of existence of legally enforceable debt as per Section 139 of the Negotiable Instruments Act, factors like source of funds are not relevant if the accused has not been able to rebut the presumption. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.

V. CONCLUSION

The system of Cheques is a matter of concern for everybody whether one is a layman, a business magnate, an industrialist, a banker or a member of the bench or bar. The offence under section 138 of the Act could be visited with imprisonment up to two years and with a fine up to twice the amount of the cheque or both as the case may be. Ever since every limb of this statute was dissected and dealt with various High Courts by rendering different judgments which sometimes created "ebbs" and "tides" in the administration of this law but owner apex court got full aware of the importance of this vastly instrument of commercial transaction and took to blending harmoniously the controversial sections of the Act and that is why displayed a pragmatic approach, sometimes by stretching and sometime by shrinking particular words of this law as the legal exigencies and practical applications of the provisions, warranted. The judiciary by its interpretations has cut the deadwood and trimmed of the branches so that the holder of the cheque is not lost in thickets and branches. There is nowhere any batting on stickly wicket on cheques. It is always a win - win situation for the cheque holder. As the Statutory presumption under section 118 and 139 of the Act in all respect favours the action of the holder of cheque. More over there is a cogency and thoroughness in the verdict of the Supreme Court on this score and there is a clear-cut discernibiliiy of certainty that a cheque can be presented anytime during its validity but for prosecuting the defaulter the cause of action accrues only once when the notice is given. To sum up, the presentation and cause of action are rays with different wavelengths but from the same source i.e. the cheque and while former could be any numbers the latter would be once. So the two contingencies and situations should, therefore, be properly delineated. This final position has emerged after elongated litigious debate before judiciary. But still there is a need to do more to curb the offence of dishonour of cheques. Thus, In the wake of the increasing fraudulent and dishonest acts with respect to issue of negotiable instruments, it is only imperative and inevitable that a liberal construction be accorded to the provisions of a statute which seeks to protect the society against the wrongs suffered by it Giving effect to the intention or the Act and the provisions therein the wrongdoers should not be allowed to escape the consequences by reason of adopting a strict into such provisions under the grab that it is a penal provision. Thus this step of apex court, combined with its previous decisions, go a long way to fulfill the objectives of the Act and is a constructive measure to prevent the misuse of the provision of law which are enacted for the protection of the society rather than to encourage the illegal acts and misdeeds of the offenders of the society. It is also appreciable that the supreme Court has taken into consideration the genuine cases and suggested to follow the principle of Laxmi Dyechem on a case to case basis as it is also necessary to properly judge the intention of the accused to avoid wrongful conviction. Hopefully our legislature in near future shall incorporate the principles laid down by the judiciary in the statute by the of a much needed amendments to section 138 of the Act to avoid any ambiguity as well as considered the inclusion of electronic operation of the bank accounts within the ambit of section – 138 of the Act.

[14] Criminal Appeal No. 508 OF 2019, Decided on 15.3.2019, Supreme Court of India

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