

JURISDICTION FOR DISHONOUR OF CHEQUES- THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT 2015-A PANACEA

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Codified about 135 years ago, cheque as a negotiable instrument has struggled to attain credibility. The ingenuity of human mind has discovered ways to avoid honouring or deferring what otherwise is a genuine financial commitment. The jurisdiction of trial issue flooded courts with litigations estimated at 18 lakh cases. The courts oscillated between the civil concept of place of suing and the criminal concept of commission of offence. The stakeholders also have competing interests w.r.t. the place where jurisdiction of trial lies. Synthesising various hues, an amendment has been enshrined in the Negotiable Instrument Act 1881 with a view to increase the credibility of the cheque as a financial instrument and help trade and commerce in general and the lending institutions in particular. This paper attempts to traverse the chequered passage of this amendment, legislative history, the raison d'être, (pursuant to the judgment of the Supreme Court: Which Judgment, give Citation and name) impact assessment of the amended provisions ending with the concluding remarks. It is an attempt to empower a lay reader, provide a practical handout for a legal practitioner, food for thought for a researcher and general reading for an inquisitive student of Law.

Key words: legislative history, amendments, jurisdiction of trial and impact.

Introduction

During 2002 N I Acts has been amended and made it a criminal offence. However in case of bouncing of cheques Supreme Court issued guidelines of failing cases in the K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. But Supreme Court overruled earlier guidelines and amended jurisdiction in case of Dashrath Rupsingh Rathod v. State of Maharashtra & Anr. Consequent upon this amendment in jurisdiction, entire world was shocked and accumulation of cases remains the same.

There are estimated 18 lakh cheque bounce cases across the country, of which about 38,000 are pending in High Courts. In this circumstances the Central Govt., ruled by Mr. Narendra Modi issued an ordinance which come in the force on 15th day of June 2015. The act has also repealed an ordinance which was promulgated earlier. The president had promulgated the ordinance twice-in June and September last year. "The Negotiable Instruments (Amendment) Act 2015 is focused on clarifying the jurisdiction related issues for filling cases for offences committed u/s 138 of the Negotiable Instruments Act 1881.

The clarification of jurisdiction issues may be desirable from the equity point of view as this would be in the interest of the complainant and would also ensure a fair trial.

Accordingly in case of bouncing of cheques the jurisdiction should be the place where cheque is presented for payment through clearing or otherwise.

In case of precaution if pending against the same drawer of the cheque before different courts, all such cases should be transferred to the court which has jurisdiction stated earlier.

Reasons for passing the new law

The rationale behind this change is that, majority of payers being businessmen and traders were using extending credit recklessly and due to the leniency in the provision of Section 138, it was being misused in regards to the place of institution, as sometime the payer had no concern with the place where the cheque was issued and to unnecessarily harass the payee cause hardship of place of institution of case according to their convenience. To curb this practice this judgment aims to get to the root of the issue and resolve it by a strict approach so as to discourage the payer from misusing or carelessly issuing cheques. The hardship of traveling to the location of drawee bank is now on the payer. The change in the existing law shifts the inconvenience and hardship on the payer because now he would have to travel to the place of the drawee bank where the cheque gets dishonoured due to insufficiency of funds. Hence, guaranteeing more precaution by the payer at the time of issuing the cheque.

Object

The objective is to ensure that a fair trial is conducted keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques.

The Ordinance is similar to the Bill in the sense that the substantive principle for determination of the jurisdiction of the cases under section 138 of the NI Act remains the same, except that two distinct situations of payment of cheque

- (i) By submitting the same for collection through an account or
- (ii) Payment of a cheque otherwise through an account, that is, when cheques are presented across the counter of any branch of drawee bank for payment, are covered under the Ordinance.

Jurisdiction Decided u/s 142

The place of jurisdiction for trying cases of dishonour of cheques, under section 138 of the NI Act, 1881, has been fixed by virtue of sub-section (2) of Section 142 as what it used to be before the Apex Court's ruling in Dasrath Rupsingh Rathod . [AIR 2014 SC 3519, (2014) 9 SCC 129]

Why Section 138?

The section 138 of the N.I. Act, 1881 provides for penalties in case of dishonour of cheques due to

insufficiency of funds in the account of the drawer of the cheque.

Raison d'être for The Negotiable Instrument (Amendment) Act 2015:

As per the 'Statement of Objects and Reasons' of the 'The Negotiable Instrument (Amendment) Act 2015', "pursuant to the judgment of the Supreme Court, representations have been made to the Central Government by various stakeholders, including industry associations and financial institutions, expressing concerns about the wide impact this judgment would have on the business interests as it will offer undue protection to defaulters at the expense of the aggrieved complainant; will give a complete go-by to the practice/concept of 'Payable at Par cheques' and would ignore the current realities of cheque clearing with the introduction of CTS (Cheque Truncation System) where cheque clearance happens only through scanned image in electronic form and cheques are not physically required to be presented to the issuing branch (drawee bank branch) but are settled between the service branches of the drawee and payee banks; will give rise to multiplicity of cases covering several cheques drawn on bank(s) at different places and adhering to it is impracticable for a single window agency with customers spread all over India"

Statutory provisions as amended in The Negotiable Instruments (Amendment) Act 2015:

Clarifying the litigious jurisdiction issue, the amended Act renumbers the existing Section 142 as Section 142 (1). Thereafter, Section 142 (2) has been inserted as under:-

"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."

In nutshell, when the cheque is delivered for collection through an account maintained by the payee or the holder in due course, the complaint is to be filed before the Court where the branch of the bank is situated. When the cheque is presented for payment across the counter, the complaint is to be filed before the Court where the drawer maintains his account.

In the amended Act, another section 142(A) with three clauses (1), (2) & (3) has been incorporated dealing with transfer of pending cases as under:

"142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases arising out of section 138 which were pending in any court, whether filed before it or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Act, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 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, the court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

In nutshell, Section 142(A) envisages filing of cases only in the court within whose local jurisdiction the bank branch of the payee, where the payee delivers the cheque for payment is situated. Further, where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, 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 presented for payment within the territorial jurisdiction of that court. It has also been envisaged that if more than one prosecution is filed against the same drawer of cheques before different courts, upon this fact having been brought to the notice of the court, the court shall transfer the case to the court having jurisdiction as per the new scheme of jurisdiction.

Features of Negotiable Instruments (Amendment) Act, 2015

* The Act also states that if the complaint against the person issuing the cheque has been filed in the court with the appropriate jurisdiction, then all subsequent

complaints against that person will be filed in the same court, irrespective of the relevant jurisdiction area.

* The Act also specifies that if more than one case is filed against the same person before different courts, the case will be transferred to the court with appropriate jurisdiction

* The Act also amended the definition of the phrase cheque in electronic form. Under the Act, Now the cheque in the electronic form is defined as the one that has been drawn through any electronic medium (any computer resource) and it is defined as a cheque signed in a secure system with a digital signature or using electronic system and drawn in electronic medium using any computer resource

* As per the reports, there is an estimation of 18 lakh cheque bounce cases across the country, of which about 38,000 are pending in High Courts.

Definition of Cheque

Due to development of Information Technology and Globalization, the Government felt to modernize the definition of Cheque by adding the new sentence to earlier definition. For the said purpose Parliament enacted the Negotiable Instruments Act 2002 to the Principal Act Negotiable Instruments Act, 1881.

Definition (before the amendment of 2002):

Section 6 of NI Act, 1881: Section 6- "Cheque".-A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Modified Definition (Amendment 2002):

Section 6- "Cheque".-A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I.-For the purposes of this section, the expressions- (a) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;(b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II.-For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

Modified Definition (Amendment 2015):

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

- (i) In the **Explanation I** ,for clause (a0, the following clause shall be substituted,

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

- (ii) After **Explanation II** the following Explanation shall be inserted, namely:-
"Explanation III. The expression in this section shall have the same meaning as assigned to that expression in the Information Technology Act, 2000"

Ingredients:

The essential ingredients of sec138 are as follows:-

1. Drawing of a cheque by a person on an account of any debt or other liability.
2. Presentation of the cheque to the bank within a period of 3 months from date of its drawing or within the period of its validity.
3. Returning of the cheque unpaid by the drawee bank.
4. Notice in writing to the drawer of cheque within 30 days of receipt of information regarding return of cheque as unpaid in form of debit advance or return memo.
5. Failure of the drawer to make payment within 15 days of receipt of notice.

Jurisdiction:

Presence of all the above mentioned ingredients is necessary to attract the provision of section 138 of the N.I. Act. It is not necessary that all the above five acts should have been perpetrated at the same locality; they may have been performed in five different localities. Complaint can be filed at any of the places mentioned below. One of the Courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under sec. 138 of the Act

1. Where the cheque was drawn.
2. Where the cheque was presented for encashment.
3. Where the cheque was returned unpaid by drawee bank.
4. Where notice in writing was given to drawer of cheque demanding payment.
5. Where drawer of cheque failed to make payment within 15 days of receipt of notice.

Impact of the Dashrath Rupsing Rathod's judgment: [AIR 2014 SC 3519, (2014) 9 SCC 129]

The Apex court has considered the ramifications of its judgment on several pending cases in the lower courts. In order to mitigate the rigors of this judgment, it indicated in the judgment itself following path for convenience of the complainants and courts.

1. Principle laid down by this judgment will be prospective in operation.
2. In respect of pending cases it distinguished them into following categories and suggested actions as follows:

a. Cases in which trial has commenced: Cases in which summoning and appearance of the accused has taken place and recording of evidence has commenced will continue at the same court. These cases will be deemed to have been transferred from the court which had jurisdiction to the court where they are tried, as per the relaxation provided in public interest.

b. Cases pending at the pre summoning stage: Cases in which summons have not been issued will be maintainable only at the place where the cheque stands dishonoured. Even though evidence is led on affidavit or by oral statement, further proceedings cannot continue.

Limitation:

The time period laid down in the act has to be strictly followed. Any lapse in adhering to the schedule, shall take away a cause of action under Sec. 138. The time limits placed cannot be condoned by the Courts. The limitations which have to be kept in mind and taken into account are as follows:

- * Cheque should be presented to the bank for encashment within its validity period.
- * Within fifteen days from the receipt of return memo indicating reason of dishonour, a notice hold be sent demanding the amount of dishonoured cheque.
- * If the drawer does not pay the amount of dishonoured cheque within the grace period, a complaint thereafter should be filed within one month in the relevant court having jurisdiction.

Significance:

- * First of all the move is likely to benefit 18 lakh people across the country.
- * Furthermore, this would help trade and commerce in general and allow the lending institution, including banks, to continue to extend financing to the economy, without the apprehension of loan default on account of bouncing of a cheque.
- * The main objective is to ensure that a fair trial is conducted keeping in view the interests of the complainant by clarifying the **territorial jurisdiction** for trying the cases for dishonour of cheques and to encourage the usage of cheques and enhancing the credibility of the instrument so that the normal business transactions and settlement of liabilities can be ensured.

Concluding remarks:

The amendment takes care of the interest of the complainant. The clarification on jurisdiction clears haze around it. The clarity on jurisdictional issues of cheque bouncing would increase the credibility of the cheque as a financial instrument. However, it would take a long time before this amendment gets effectuated completely because it involves massive transfer of cases at various stages of trial. Even where evidence has started, the case would be required to be transferred to the court of appropriate jurisdiction. Although effective from 15th June, 2015, the words used w.r.t. Section 142(2) in the amendment i.e. "...as if that Sub- section had been in

force at all material times....." gives retrospectives to the provision. In a recent case titled *Bridgstone India Pvt. Ltd. V Inderpal singh* decided on 24.11.2015, the Hon'ble Supreme Court applied the amended provision, existing through Ordinance at that time, in respect of cheque bounce case of 04.08.2006 on the ground of retrospectives of the provision. The following type of cases would, therefore, be covered by the amended provisions.

a. Complaints filed on or after 15.06.2015.

b. Complaints filed prior to 15.06.2015 and pending.

c. Complaints pending at any stage of trial and subsequent thereto on such issue.

The changes brought in by virtue of Negotiable Instruments (Amendment) Act, 2015 relating to the Territorial Jurisdiction to file Complaints of Dishonour of Cheques. Gujarat High Court has explained the principles relating to it in a recent Judgment in *Brijendra Enterprise v. State of Gujarat* and another. (CRIMINAL MISC.APPLICATION NO. 13062 of 2011) in application under Section 482 of Cr.P.C for quashing a Criminal Complaint filed under Section 138 of NI Act on the ground of lack of territorial Jurisdiction for the Magistrate to try the Case.

It is held that "The Negotiable Instruments (Amendment) Bill [Act], 2015, inter alia, provides for the following, namely:

- * cases relating to dishonour of cheques under section 138 of the said Act to be inquired and tried only by a court within whose local jurisdiction the branch of the bank, where the payee or the holder in due course maintains the account, is situated;
- * cases under section 138 pending in any court before the commencement of the proposed legislation to be transferred to the court in accordance with the new scheme of jurisdiction for such cases as proposed under sub-section (2) of section 142;
- * where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of section 138 of the said Act against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court;
- * where, if more than one prosecution filed by the same payee or holder in due course against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case of the court having jurisdiction as per the new scheme of jurisdiction proposed under sub-section (2) of section 142; and
- * amending Explanation I under section 6 of the said Act which relates to the meaning of expression "a cheque in the electronic form", as the said meaning is found to be deficient because it presumes drawing of a physical cheque, which is not the objective in preparing "a cheque in the electronic form" and therefore, inserting a new

Explanation III in the said section giving reference of the expressions contained in the Information Technology Act, 2000”.

The Court held that In view of the amendment, a complaint for dishonour of cheque under Section 138 of the Act can be now filed only in the Court situated at the place where the bank, in which the payee has account, is located.

Comment

The clarity on jurisdictional issues for trying cases of cheque bouncing would increase the credibility of the cheque as a financial instrument.

This ordinance has been brought to ensure fairness keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques.

This would help the trade and commerce in general and allow the lending institution, including banks, to continue to extend finance to the economy, without the apprehension of lack of effective remedy on account of bouncing of a cheque.

My observation and Suggestions

According to my belief the final amendment in 2015 of Negotiable Instruments Act 1881it will save lots of time and cost to the courts, banks, complainant & advocates. Where different cases at different places are filed against the same accused /drawer all such cases should be transferred to the court which has jurisdiction. And in this provision the accused will not escape under the excuse of dates nor can extend the proceeding. This will be help full for the disposal of the cases. Despite clear this final amendment 2015 in Negotiable Instruments Act 1881 there is no expeditious disposal of cases.

I believe and of the opinion that the developed state like Gujarat, Maharashtra & Tamilnadu there is lots of pending cheques return cases and new cases are also being filed, I suggest that:

- 1) The cases should be handed over to the Arbitrator or the provisions should be made that the case is disposed of by settlement. A certain banks should be given authority to settle or re-conciliation.
- 2) In this regard certain amount should be decided and to that extend bank should be given specific authorities for disposal of cases or two-three nationalised banks should be authorised in this regard.
- 3) In addition to above some arbitrator should be appointed who should be given certain authority and the dissection given should be bounding upon both the parties to be dispute.
- 4) However use of duplicate cheques, withdrawal of money by fraudulent signature and cases related to chatting may be disposes of by the courts.
- 5) At present, bank is charging amount money by way of E- transfer under NEFT (National Electronic Fund Transfer) & RTGS (Real Time

Gross Settlement) as prescribed by RBI. For reducing the use of cheques such charges should be abolish. This charge is being leaved by the National Payment Corporation of India which is accompanied of RBI, who settles the transactions between two banks. There would be tremendous increase in e-transfer of money. If such charges are abolish which also result in to decrying of cheque bounce cases.

References

- * Avtar Singh, Laws of Banking and Negotiable Instruments, (2011 Ed), Eastern Book Company
- * Bare Act the Negotiable Instruments Act, 1881 (26 of 1881)2012 Professional Book Publishers
- * Bare Act the Negotiable Instruments Act, 1881 (26 of 1881)2016 Professional Book Publishers
- * Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Bill, 1988
- * Bhashyam and Adiga's, *The Negotiable Instruments Act*, (19th Ed.), Bharat Law House, New Delhi
- * Bridgstone India Pvt. Ltd. V Inderpal singh (CRIMINAL APPEAL No.1557 OF 2015)
- * Brijendra Enterprise v. State of Gujarat and another. (CRIMINAL MISC.APPLICATION NO. 13062 of 2011)
- * Critical study of the Dishonor of Cheque under The Negotiable Instruments Act, 1881
- * Dashrath Rupsingh Rathod v. State of Maharashtra & Anr AIR 2014 SC 3519
- * Jurisdiction in cheque bouncing cases is changed by new Ordinance, superseding SC judgment
- * K. Bhaskaran vs. SankaranVaidhyanBalan and Anr (1999) 7 SCC 510 *The Negotiable Instruments Act, 1881*, (2015 Ed.), EBC Publishing Pvt. Ltd
- * Lapsing of Negotiable Instruments (Amendment) Ordinance 2015 causes uncertainty in cheque bounce cases
- * The Code of Criminal Procedure, 1973
- * The Economics Times 06/01/2016
- * The Negotiable Instruments Act, 1881
- * The Negotiable Instruments (Amendment) Bill, 2015