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AN ANALYTICAL STUDY ON INCONSISTANCY IN SUPREME COURT JUDGMENTS IN CHQUE DISHONOUR CASES

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ABSTRACT

Earlier judgments of Hon'ble Supreme Court of India, in cheque dishonour cases, have been overruled by larger benches of the same apex body applying strict interpretation of law.

KEYWORDS: *Deemed to have committed an offence - territorial jurisdiction – successive dishonour of cheques.*

INTRODUCTION

The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988, was amended inserting a new Chapter XVII consisting of Sections 138 – 142 in the Negotiable Instruments Act 1881. With effect from 01.04.1989, when a cheque is dishonoured of the nature envisaged in Section 138, notwithstanding any other provision in law, the drawer of the cheque shall be deemed to have committed an offence. Punishment for the offence is prescribed in the Section.

The following three essential conditions, must be satisfied before the dishonour of cheque can constitute an offence under Section 138 of the Negotiable Instruments Act, 1881 (herein referred as N.I. Act), and become punishable.

1. the payee or the holder of the cheque ought to have presented the cheque with the drawee bank, for encashment, within six months from the date on which it is drawn or within its validation period, whichever is earlier;
2. that the payee or the holder in due course, as the case may be, ought to have made a demand in writing, to the drawer of the cheque, for the payment of the cheque amount within thirty days of the receipt of the information from the drawee bank regarding the return of the cheque unpaid, and
3. the drawer of the cheque had failed to make the payment of the cheque amount within fifteen days of receipt of such notice.

It is necessary that the cheque is returned unpaid for the specific reasons (i) that the funds in the bank account on which the cheque was drawn was insufficient to honour the cheque or (ii) the cheque amount exceeds the arrangement made with the banker. Once the offence is committed the drawer of the cheque, on conviction, is punishable with imprisonment which may extend to two years or with fine which may extend to twice the amount of the cheque or both.

Prior to the amendment made in the N.I. Act, cheque dishonour was only a civil wrong and to get remedy, the payee or the holder in due course has to file suit in civil court only.

This amendment to the N.I. Act was introduced in the Parliament on the recommendation of Dr. Rajmannar Committee Report suggesting stringent punishment for cheque dishonour offences. The enormous growth in cheque dishonour cases flooded Magistrate Courts in the country where lakhs of cases were pending disposal.

It is common that the accused in cheque dishonour cases raise various allegations in defence, on technical glitches to stall the prosecution, and seek the complaints quashed by appeal courts. Unsuccessful defaulters travel up to the highest court of the country through Special Leave Petitions (S.L.P.) for necessary relief to escape from jail sentence, on conviction. In large number of cases, the accused disputed the jurisdiction of Magistrate Courts to take cognisance of cheque dishonour case.

In this article, the authors have analysed the judicial inconsistency in some of the verdicts delivered by the Hon'ble Supreme Court of India on different issues raised by the accused praying dismissal of the complaint filed against him.

Territorial Jurisdiction of Courts -Case Study:

Harman Electronics (P) Ltd v. National Panasonic India (P) Ltd (2009) 1 SCC 720, judgment dated 12.12.2008.

Both the parties in this case are residents in Chandigarh and entered into a business transaction. The cheque issued by the Harman Electronics in favour of National Panasonic, was dishonoured on presentation for collection in Chandigarh. The payee National Panasonic, also a Corporate Body having its headquarters at Delhi, issued the notice required under clause (b) of section 138 of Negotiable Instruments Act, from New Delhi demanding the drawer of the cheque for payment of the cheque amount within fifteen days of receipt of the notice. When the drawer failed to make the payment within fifteen days, a complaint was filed in the Magistrate Court, Delhi. The accused disputed the suit on the ground, that since the cheque was dishonoured in Chandigarh the Delhi Court has no jurisdiction to take cognisance of the case. It was argued that issuing notice from New Delhi would not vest the jurisdiction in the Delhi Court to try the case. However this plea was rejected by the trial court. Criminal Revision Petition filed before the Hon'ble High Court, Delhi, was also dismissed.

The accused filed Special Leave Petition (S.L.P.) before the Hon'ble Supreme Court against the lower court's verdict. The Hon'ble Supreme Court held (Judgment dated 12.12.2008) that issue of notice from Delhi would not give jurisdiction to try the compliant and the Delhi Court has no jurisdiction to try the case and directed the court to transfer the case to the District and Sessions Court in Chandigarh.

When similar issue was raised in ***K.Baskaran v. SankaranVaidyanBalan (1999) 7 SCC 510,*** the Hon'ble Supreme Court (Judgement dated 29.09.1999) delivered a different verdict relating to court's jurisdiction to try cheque dishonour cases. In this case, the Hon'ble apex court held that "the offence under section 138 of the N.I Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (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, (5) failure of the drawer to make the payment within 15 days of the receipt of the notice. It is not necessary that all the above five acts should have been perpetrated at the same locality". As per this verdict the complainant can file the compliant in any one of the above five places. In this judgment the choice of selecting the court for filing the complaint was given to the complainant.

Baskaran case was followed in ***Smt. Shamsad Begum v. V.B. Mohamed (2008)13 SCC 77*** – *judgment dated 03.11.2008.* A contrary verdict was given in ***Harman's*** case wherein judgment delivered on 12.12.2008. Different verdicts delivered at the same time caused confusion and ambiguity amidst contesting parties.

Dashrath Rupsing Rathod v, State of Maharastra (2014) 9 SCC 129 Judgment dated 01.08.2014.

After nearly six years, the verdict given in ***Baskaran's*** case was overruled in ***Dasrath*** case. In this case the Hon'ble Supreme Court held that to constitute an offence under Section 138 of the Act, the following essential ingredients are to be satisfied:

a) "cheque is drawn by the accused on an account maintained by him with a banker;
b) the cheque amount is in discharge of a debt or liability, and
c) the cheque is returned unpaid for insufficiency of funds or that the amount exceeds the arrangement made with the bank,

the offence standing committed the moment the cheque is returned unpaid." The Hon'ble Court clarified that clauses (a), (b) and (c) to proviso to Section 138 of the Act are components to be fulfilled for the Magistrate Courts to take cognisance of the offence.

Judgment given in ***K.Baskaran*** (supra) was overruled in ***Dasrath Rathod*** case in 2014.

To nullify the ruling in ***Dasrath*** case, Parliament passed Negotiable Instruments (Amendment) Act, 2015 with retrospective effect from 15.06.2015. Section 142 of the Act is re-numbered as 142(1), (a), (b) and (c); a new Section 142 (2) (a) and (b) inserted. The amendment stipulates:

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 accounts, is situated.

Explanation.- For the purpose 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.

Prior Intimation To Payee - Case Study:

Electronics Trade & Technology Development Corporation Ltd; v. Indian Technologists and Engineers (Electronics) (P) Ltd; (1996)2 SCC 739, 86 Comp. Case 30,33,

The issue before the court: The drawer of the cheque had given prior instruction to the payee or holder of the cheque, not to present the cheque for collection, yet the cheque was presented but dishonoured. Whether under such circumstances, Section 138 of the N.I. Act was attracted, was considered in two judgments of the Hon'ble Supreme Court.

In ***Electronics Trade*** it was held, " Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of the negotiable instrument, to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course, to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly."

A similar verdict was delivered in ***K.K. Sidhartan v. T.P. PraveenaChandran (1996)87 Comp. Case 685 SC.***

Modi Cements Ltd., v. Kuchil Kumar Nandi (1998) 92 Comp. Case 88 (Judgment dated 02.03.1998).

Both ***Electronic Trade*** and ***Sidhartan*** were reversed by a larger bench of the Hon'ble Supreme Court in ***Modi Cements*** case. The court held that even though there was no sufficient funds in the bank account, at the time of issuing the cheque, it is possible that the drawer can make arrangement or deposit money in his account before the cheque is presented for collection, to honour the cheque. Assuming presumption of dishonesty until the dishonour of cheque happened is unjustified.

Corporate Liability- Case Study:

Aneeta Hada v. Godfather Travels & Tours (P) Ltd, (2008) 13 SCC 703, judgment dated 08.05.2008.

The issue, whether the directors of a company can be prosecuted for offence committed under Section 138 by the company without arraigning the company as the prime accused, was considered. The Hon'ble Supreme Court held that even if the prosecution proceedings were not taken or could not be continued against the company due to any legal snag, it is no bar for proceeding against the other persons falling within the purview of sub-section (1) and (2) of Section 141 of the Act. However there was opposite view expressed between the two judges and the case was referred to a larger bench.

The larger bench of three judges, however held in ***Aneeta Hada v.Godfather Travels and Tours (P) Ltd ;(2012) 5 SCC 661,*** judgment dated 27.04.2012, that the words ' as well as the company" in strict application mandate that without arraignment of the company as the accused other category of persons cannot be prosecuted.

Successive Dishonour - Case Study:

Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 514, judgment dated 28.08.1998.

The issue, whether the holder of the cheque forfeits his right to file complaint under Section 142 of the Act, if no complaint was filed when dishonour happened for the first time, was considered. Hon'ble Supreme Court observed that "clause (a) of the proviso to Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. But once he gives a notice under clause (b) of Section 138, he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time, he would be liable for offence and the cause of action for filing the complaint will arise."

MSR Leathers v. S. PalaniappanAnd Another (2013) 1 SCC 177, judgment dated 26.09.2012.

The above ruling in ***Sadanandan*** case was overruled in ***MSR Leather***. The Hon'ble Court held " There is nothing in the provisions of the Act that forbids the holder/ payee of the cheque to demand by service of a fresh notice, under clause (b) of the proviso to Section 138 of the N.I. Act, the amount covered by the cheque, should there be a second or a successive dishonour of the cheque on its presentation."It is therefore clear that the holder of the cheque either on his own decision or at the request of the drawer, may choose to refrain from instituting prosecution based on the dishonour of the cheque for the first time. Every time, on receipt of notice under clause (b) to Section 138, if the drawer fails to make the payment within the stipulated time, a new cause of action arises.

CONCLUSION

In conclusion, the authors have simply made the analysis herein above, and indicate that it is not an exhaustive study on judicial verdicts that are conflicting and inconsistent, in cheque dishonour cases. Judicial verdicts should be clear, certain and unambiguous, so that litigants do not get confused.