SUPREME COURT ON DISHONOUR OF CHEQUES

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Abstract

The Supreme Court has enriched and developed the law of dishonour by the delivering catena of cases. It is said that about 30 lacs cases of dishonour of cheques pending all over the country in various criminal courts, High Courts and the Supreme Court of India former Chief Justice of Supreme Court Justice Sadashivam and Justice K.G. Balakrishnan have suggested for special courts for dealing dishonour of cheques cases. The law Commission of India is also recommended the setting up of fast track Magisterial Courts for dealing with the huge pendency of dishonoured cheque cases. There are 7,66,974 cases pending in criminal courts in Delhi at the Magisterial level as on June 1, 2008. This shows the very importance of the provisions of dishonour of cheques. In this context, the present paper analyses some significant judgments of the Apex Court which have widened the principles and explaining the scope and extent of dishonour of the cheques to meet out newly emerging problems and challenges.

Key words

Dishonour of Cheques, Supreme Court and Negotiable Instruments Act.

I. INTRODUCTION

The Negotiable Instruments Act was passed in the year 1881 which deals with negotiable instruments i.e., Promissory Note, Bill of Exchange and Cheque. These Negotiable Instruments are used as a means of credit as well as payment. Out of these instruments cheque plays very significant role in commercial as well as non-commercial transactions and dealings. By the use of cheques commercial transactions have not only become easy, convenient and economical but it has oiled the wheels of comers and facilitated quick and prompt deals and transactions.[1]

Sections 91 to 99 of the Negotiable Instruments Act, 1881 deal with dishonour of negotiable instruments *inter alia* cheques as well and notice of the dishonour thereof.

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[1] *N. Rangachari v. BSNL*, AIR 2007 SC 1682.

The dishonour of cheques was not recognized as an offence under the Negotiable Instrument Act before 1988 it was simply considered as a civil wrong and in some cases covered under Section 415 read with Section 420 of Indian Penal Code. These provisions were not effective in dealing with the malady of dishonour of cheques, so there was a need in change of law as to dishonour of cheques. Before 1988 dishonour of cheques was regarded only a moral obligation, thus people were never sincere about honour (payment) of cheques issued by them, therefore cases of dishonour of cheques were rampant in society. There were no provisions in the Act to deal effectively the cases of dishonour of cheques. This created a feeling of shy and fear among people accepting cheques as means of payment. The holder of the cheque aggrieved by dishonour was helpless because he had no remedy against the drawer of the cheque. This necessitated a new law on dishonour of cheques. Thus, in 1988 a new Chapter XVII was incorporated for "penalties in case of dishonour of cheques due to insufficiency of funds" in the account of the drawer (account holder) of the cheque. New Sections 138 to 142 were added in the Act and in 2002 further Sections 143 to 147 were also added making a complete code on dishonour of cheques as an offence and cognizance thereof. Now dishonour of cheques under the provisions of Section 138 is an offence and be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

The objects of amendment were mainly:

(i) to encourage the use of cheques, and

(ii) to enhance the credibility and acceptability of cheques.

II. DISHONOUR OF CHEQUES: SUPREME COURT'S RESPONSES

The dishonour of the cheques as an offence under the given conditions under Section 138 is a new provision. Recently some very significant judgement of the Apex Court have widened the principles and explaining the scope and extent of dishonour of the cheques to meet out newly emerging problems and challenges.

These judgments may be explained in the following heads:[2]

Revalidation of Stale Cheques

A cheque which has become invalid because of the expiry of the stipulated period is called a stale cheque. Payment of a stale cheque is not deemed to be a good payment, so a banker is under duty not to make payment of stale cheques. Here a very significant question may arise as to whether such stale cheques can be revalidated voluntarily by altering the dates so as to give a fresh life to cheque for another three months (earlier it was six months). This question came for decision before the Apex Court in a significant case Veera Exports v. T. Kalavati.[3] In this case the respondent had issued to the appellant 8 cheques bearing various dates from 9th April, 1999 to 13th April, 1995 for a sum totalling Rs. 4 lacs. The cheques were presented for payment on 15th May, 1995 but were dishonoured. It is the case of appellant that the fact of dishonour was brought to the

[2] R.N. Chaudhary, *The Law Relating to Cheques,* pp. 353 to 369.

[3] AIR 2002 SC 38.

notice of the respondent and that the respondent then requested for more time to pay. The appellants granted more time to pay. On request of the respondent. The appellants claimed that as the respondent still could not pay the amounts in January, 1996, she changed the dates of the cheques from the 1995 to 1996. The appellant claimed that the respondent also made the necessary endorsement on the cheques at that time. The cheques were again presented on 18th July, 1996 and were dishonoured. A legal notice dated 8th August, 1996, was served upon the respondents. The respondents alleged that she had been forced to change the dates against her will. The appellant then filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. The respondent thereafter filed a petition in the High Court of Madras to quash the complaint filed under Section 138 of the Act. The High Court quashed the complained, hence this appeal before the Apex Court. The grounds for quashing the proceedings by the High Court mainly based upon:

(i) That the validity period of all the 8 cheques had already expired by October, 1995 and then held that once the validity period was over the cheques could not be revalidated by altering the dates so as to give a fresh life to the cheques for another six months (now it is three months).

(ii) Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto as contemplated by Section 87 of the N.I. Act.

On appeal to the Supreme Court quashed the decision of the High Court and the Supreme Court held that the reasoning of the High Court were entirely fallacious and unsound. The Supreme Court held that a cheque which has become invalid because of the expiry of the stipulated period could be made valid by alteration of cheques. There is no provision in the Act or any other law which stipulates that a drawer of the negotiable instrument cannot revalidate it. It is always open to a drawer to revalidate Negotiable Instruments including a cheque. It is further held that if the drawer of the cheque himself alter the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheques became void as there is material alteration thereto.

Successive Presentment of Cheques

As to presentment of cheques for payment a very significant question arises that whether cheque can be presented more than once or only one time. There has been different view of the various High Courts, but the principles of law on this point has been settled by the Supreme Court in Sadanandan Bhadaran v. Madhvan Sunil Kumar.[4] The Supreme Court ruled that a cheque can be presented for payment any number of times during its period of validity and its dishonour on every occasion will give rise to fresh cause of action within the meaning of clause (b) of Section 142 of the N.I. Act, so as to entitled the payee to institute prosecution under Section 138 on the basis of the last cause of action.

[4] AIR 1988 SC 3043.

Deemed Dishonour

In Modi Cement Ltd. v. K.K. Nandi[5] it has been ruled by the Supreme Court that 'Account Closed', 'Payment Stopped' will constitute deemed dishonour subject to the provisions of Section 138 of the N.I. Act. This judgment was further upheld by the Supreme Court in NEPC Micon Ltd. vs. Magma Leasing Ltd.[6] and Rangappa vs. Mohan AIR 2010 SC 1898.

As to Jurisdiction and Cognizance of the Offence by the Court

Section 142 of the N.I. Act provides as to jurisdiction and taking cognizance of offence as:-

(a) No court shall take cognizance of any offence punishable under Section 138 except upon a complaint in writing made by the payee or by 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.

(c) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class try any offence punishable under Section 138.

Thus, the conditions for taking cognizance by court are first, upon a complaint second, complaint within statutory period of one month, and third, by Metropolitan Magistrate or Magistrate of the first class.

These conditions are *sine qua non* for taking cognizance of a complaint under section 142 of the Act. Now, the moot question is that which criminal court may exercise jurisdiction as to dishonour of cheques. In dishonour of cheques several acts are contemplated and where any of the Act takes place that court will have jurisdiction to take cognizance. As to question of jurisdiction Supreme Court has laid down principles of law in K. Bhaskaran v. Shankaran Vaidhyan Balan.[7] It has been held that Section 138 has five components namely:

(i) Drawing of Cheque,

(ii) Presentation of cheque to the bank for payment,

(iii) Returning of cheque unpaid by the bank,

(iv) Giving notice in writing to drawer after dishonour of the cheque,

(v) Failure of the drawer to make payment.

Under Section 178 of the Cr.P.C. where the offence consists of several acts in different areas it may be enquired into and trial by court having jurisdiction over any of such local areas. Thus, different Acts were done in five different areas any of the Court may exercise jurisdiction and try the offence under Section 138. This case of the Supreme Court laid down as principles of law for deciding jurisdiction. Section 138 requires no FIR no inquiry and no investigation. It starts cognizance with trial upon complaint.

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[5] AIR 1998 SC 1057.

[6] AIR 1999 SC 1952.

[7] AIR 1999 SC 3662.

But this principle of law as laid down in K. Bhaskaran case has been overruled by the Supreme Court in Dashrath Roopsingh Rathod v. State of Maharashtra.[8] The Supreme Court held that the complaints relating to dishonour of the cheques must be filed in the courts within whose territorial jurisdiction the drawee bank is situated.

Further in Times Business Solution Ltd. v. Databyte,[9] mere presentation of cheques before a bank in Delhi where drawee bank situated outside Delhi, will not confer jurisdiction upon Delhi Courts.

Thus, the multiplicity of jurisdiction of the, Courts for offence under section 138 has been done away by the ruling given by the Supreme Court in Dashrath Roopsingh Rathod case.[10]

As to Premature Complaint under Section 138

Where the complaint is filed before the expiry of 30 days from the date of notice given under Section 138 is called premature complaint i.e. filing of complaint before cause of action arises. There were difference of opinion of the various High Courts as to premature complaints under Section 138. The High Courts of Calcutta, Rajasthan and Karnataka were of the view that such complaint liable to be returned for filing same on accruing cause of action or should waited till maturity period. Thus, cognizance on such complaint can be taken after its maturity but the opinion of Madras High Court[11] was that premature complaint is infirm and liable to be quashed.

This controversy as to premature complaint under Section 138 has been resolved by the Supreme Court in Narsinghdas Tapadia v. Goverdhandas Partani.[12] In this case the Supreme Court drew a distinction between 'taking cognizance of offence' and 'the filing of the complaint by the complainant'. This court has held that there is a bar to the taking of a cognizance by the Magistrate but there was no bar to the filing of a complaint and that complaint filed even before the expiry of the period of the 15 days could be made a basis for taking cognizance of the offence provided cognizance was taken after the expiry of the said period.

But this principle of the law as laid down by the Supreme Court in Narsinghdas Tapadia case has been overruled by this court in Yogendra Pratap Singh v. Savitri Panday.[13] This court has expressed doubt as to where premature complaint can be regarded a valid complaint under Section 142 for taking cognizance by the Court. This Court has also expressed doubt as to rule laid down in Narsinghdas Tapadia case.

In the light of the ever, this court has referred the case to a three Judge Bench of this Court i.e. a larger bench for decision, the three Judge Bench consisting of Chief Justice of India Justice R.M. Loda held that a premature complaint under Section 142 is no complaint in the eyes of law. Further, the observation of the court was:

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[8] AIR 2014 SC 3519.

[9] AIR 2015 SC 1138.

[10] R.N. Chaudhary, *Banking Law*, at 707.

[11] *Kanchan Kamdansthan v. Nagraj (1995) 1 crimes 366 (Mad).*

[12] AIR 2000 SC 2946.

[13] AIR 2012 SC 2508.

"A complaint filed before the expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the Proviso of Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to whom and under what circumstances an offence can be said to have been committed, with Section 142(b) of the N.I. Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no matter of doubt that no offence can be said to have been committed unless and until the period of 15 days prescribed under Section 138 (c) has in fact elapsed. Therefore, a Court is barred in law from taking cognizance of the complaint….." We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia v. Goverdhan Das Partani.[14]

As to Repayment of Cheque Money

The Act under Section 138 provides punishment for offence of dishonour of cheques which may extends to two years imprisonment or with fine which may extend to twice of the cheque amount or with both. But the Act does not provide as to repayment of cheque money to the payee or holder in due course.[15]

The practice of repayment to the payee or holder in due course of cheque amount is that after being successful the payee or holder in due course has to file another civil suit for recovery of the cheque money. It does not seem proper and expedient for the payee or holder in due course that after travelling the legal battle from Trail Court to the Supreme Court, he further file another civil suit for the recovery of cheque amount. The author has suggested for repayment of cheque amount out of the amount of fine imposed on drawer.[16]

In R. Vijayan v. Baby[17] the Supreme Court had advised suitable amendment under Section 138 so that compensation may be paid to the complainant as there is no provision for repayment of cheque money out of fine imposed upon drawer. But the judgment of the Supreme Court in Somnath Sarkar v. Utpal Basu Mallick[18] finds support of providing compensatory justice to the payee or holder in due course but observed that it is the function of the Legislature to make suitable amendment in the Act.

III. CONCLUSION

There are catena of cases decided by the Supreme Court touching relevant aspects of dishonour of cheques. Above are some significant judgments which have been mentioned here. Since the decisions of the courts and particularly of the Apex Court not only provide basic material but play significant role in the development of the subject and for giving now trends and challenges. These judgment be incorporated in the relevant provisions of the Act.

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[14] AIR 2000 SC 2946.

[15] *Supra* note 2.

[16] *The Banking Law*, at 723; Dr. S.L. Chaudhary, *New Paradigm of Dishonour of Cheques.*

[17] AIR 2012 SC 528.

[18] AIR 2014 SC 771.