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JURISDICTIONAL ISSUES REGARDING DISHONOUR OF CHEQUES: A JOURNEY FROM K. BHASKARAN TO DASHRATH RUPSINGH RATHODE CASE

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Abstract : In today's era of fast and instant money transaction on strength of information technology, cheques have emerged as a prominent instrument for facilitating prompt and direct monetary transactions between individuals and organizations. In this paper, we review the current state of the art of cheques and the recent developments in the field of cashless transactions in India. It is opined that the holder of dishonoured cheque is not able to realize the due payment within reasonable time. Moreover, it is also a big challenge to the need and circulation as well as efficacy of cheque as mode and proof of payment, which is being sought to make a reality in business transactions among traders and public at large by the Government at all levels. This is exacerbated by the sheer volume of instances involving cheque bounce cases, resulting in a flood of such cases inundating the judicial system, requiring both substantial financial resources and an extensive investment of time. The Court found itself once again confronted with a legal case in which the complaint had been lodged in the Court at Bhiwani, located in the state of Haryana, which fell within the territorial jurisdiction where the complainant had presented the cheque for encashment. As a consequence, the subsequent judicial proceedings required to recoup the owed amount become unduly intricate and complex, demanding both substantial and extensive financial resources. Hence, the Court has sought to create a distinction between the three-Judge Bench decision in the Ishar Alloy Steels (supra) case and the decision rendered in the Harman Electronics case.

I. INTRODUCTION

A negotiable instrument refers to a written document that establishes a right in favor of a particular individual and can be transferred through delivery. This transfer of the negotiable instrument occurs without any restrictions, as long as it is done in good faith and serves as a guarantee for the repayment of a debt, either upon demand or at a specified time. The definition of a negotiable instrument, as provided in section Section 13(1) of the Negotiable Instruments Act 1881, also known as the N.I. Act, encompasses promissory notes, bills of exchange, and cheques that are payable either to order or to bearer. However, it is important to note that the aforementioned section does not aim to confine the definition of negotiable instruments solely to these three types of instruments.[1] In fact, all bills of exchange and promissory notes are considered negotiable unless they contain specific language that prohibits their transfer or indicates an intention for them to be non-transferable. The Act mentioned above explicitly outlines different types of instruments, namely Promissory Notes, Bills of Exchange, and Cheques. However, for the purpose of this discussion, the focus will be solely on Cheques, as they form the central theme of the topic at hand.

II. CHEQUE: A NEGOTIABLE INSTRUMENT

An efficient payment system works like an enabler for smooth and speedier flow of liquidity in the economy of any country. Routine systematic risks involved in economic or monetary transactions can be avoided by an efficient and integrated system of payment with proper utilization of limited or available resources. The smooth flow of funds across borders requires the proper security and integrity of the system used for payment and the harmonization of such systems in the respective countries involve in transaction. In an answer to the same, negotiable instruments were developed and cheque was one of the popular and prominent among them in the trading community.

The history of Cheques can be traced back in India to the initial part of the 14th Century, much earlier than in England, wherefrom the 17th Century only something like modern cheque was evolved. The term '*Hundi*' (then used in India) to denote the instruments of

exchange has its root in the Sanskrit word '*Hund*', which means 'to collect'.[1] By the 20th century, cheques became a very popular non-cash method of transaction and payments.

Cheques were conceived as a secure medium to facilitate transactions without the need to carry a substantial sum of currency. These financial instruments have evolved over time in response to the growing demand for cashless transactions, driven by the changing dynamics of markets and products. The transformation in the nature of commerce necessitated the availability of a significant sum of money to successfully consummate transactions, rendering the act of traveling for traders increasingly perilous. Consequently, the enterprising world of traders felt compelled to devise a multitude of negotiable instruments, among which cheques emerged as a prominent solution. A cheque represents a bill of exchange that authorizes the relevant bank to transfer a specified sum of money from the drawer's account to the drawee's account, thereby serving as a means of payment.

A cheque, which can also be referred to as a bill of exchange, is a financial instrument drawn on a specific banker and explicitly stated to be payable only upon demand, without any other specified terms of payment. This definition of a cheque encompasses not only the traditional physical form of a cheque, but also includes newer forms such as a truncated cheque, which is a form of cheque where certain information is omitted, and the electronic form of a cheque, which involves the use of digital technologies to facilitate the exchange of funds.[2] A cheque is one of the various species of bill of exchange and it is inextricably linked to an unconditional order on a specified banker, compelling them to pay a certain amount of money to a specified individual or the bearer of the instrument. Within the realm of cheques, there exists a plethora of distinct types, such as bearer cheques, order cheques, and crossed cheques, each bearing its own unique characteristics and implications. It is important to note that a cheque, unlike other financial instruments, does not require acceptance and is therefore required to be promptly settled without any grace period whatsoever, ensuring immediate and unyielding payment.[3] However, it is important to note that a cheque possesses the unique characteristic of being able to be countermanded at any given point in time before payment is made, a feature that sets it apart from the traditional bill of exchange. This means that unlike a normal bill of exchange, which typically cannot be altered or revoked once it has been issued, a cheque provides the issuer with the ability to cancel or revoke the payment request at their discretion. This flexibility grants the issuer a level of control and security that is not typically found in other forms of payment, making the cheque a versatile tool in the realm of financial transactions. Moreover, it is imperative to recognize that a cheque is essentially a bill of exchange that is specifically drawn on a banker and is payable upon demand. This means that the cheque represents a request for payment that is directed towards a specific financial institution, typically a bank, and is expected to be honored immediately upon presentation. This particular characteristic of a cheque further distinguishes it from other types of bills of exchange, which may have varying terms and conditions regarding their payment timelines and methods. Consequently, the cheque serves as a convenient and efficient instrument for facilitating prompt and direct monetary transactions between individuals and organizations..[4] A cheque may bear the date of a Sunday or a holiday.[5]

III. PROBLEM OF CHEQUE BOUNCE: JUDICIAL AND LEGISLATIVE RESPONSE

With the advent of cheques, the people in the commercial and corporate world prefer to carry and execute a small piece of paper called cheque than carrying the physical currency of such amount, which may be subject to theft, loss and other related risks. Cheques are used in almost all transactions like repayment of loan, payment of salary, bill, fee etc., as a reliable method and proof of payment in today's globalized economy. The banker is liable to his customer (i.e., drawer of the cheque), and the customer may initiate action

[1] S. Krishnamurthi Aiyar, *Law Relating to The Negotiable Instruments Act*, 111 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, India, 2014).
[2] Section 6, The Negotiable Instruments Act, 1881.
[3] Shriniwas Gupta & Anushree Gupta (Revised), *Bhashyam & Adiga's The Negotiable Instruments Act*, 124 (Bharat Law House, New Delhi, India, 2015).
[4] Section 75, The Bills of Exchange Act.
[5] B M Prasad & Manish Mohan (Revised), *Khergamvala on The Negotiable Instruments Act*, 65 (LexisNexis Butterworths Wadhwa, Nagpur, India, 2013).

for loss of reputation if it wrongly refuses to honour the cheque. A cross cheque is payable to a banker only, and it prevents payment to an unintended person.

Now a days, payee/ bearer of the cheque is losing the faith in the efficacy and credibility of cheque as a negotiable instrument, because of rampant dishonouring of the cheques at its presentation with the bank on account of insufficiency of the fund in the account of drawer, account of drawer being closed or dormant account of the drawer or referred to drawer, mismatch of signature, etc. Before 1988, dishonouring the cheque was just a civil liability, and a civil suit would take an inordinately long time. To ensure promptitude and remedy against defaulter for upholding the credibility of the cheque holder, criminal remedy was inserted in the N.I. Act in 1988 and was further modified in 2002.

The criminal remedy provided a certain degree of comfort to the recipient of the dishonoured cheque, offering them some reassurance and consolation. Additionally, it served as a means of deterring those individuals who were careless and irresponsible in their actions as they signed and issued the cheque. However, upon examining the implementation and operation of the amended provision of the N.I. Act, it becomes apparent that the resolution of criminal complaints under section 138 of the N.I. Act generally requires a significant amount of time, typically spanning a period of four to five years. This prolonged duration of the legal process only serves to compound the distress and anguish experienced by the payee. Furthermore, the situation is exacerbated by the sheer volume of instances involving cheque bounce cases, resulting in a flood of such cases inundating the judicial system. As a consequence, the subsequent judicial proceedings required to recoup the owed amount become unduly intricate and complex, demanding both substantial financial resources and an extensive investment of time.

The individual who possesses the dishonoured cheque is required to commence legal action against the individual who issued the cheque by submitting a written complaint to the court of the Jurisdictional Magistrate. This must be done within one month after the expiration of the 15-day legal demand notice, which should be provided to the drawer within 30 days of receiving the cheque return memo from the bank. Additionally, it is important to note that the payee has the option to resubmit the dishonoured cheque multiple times during the duration of its validity for the purpose of encashment with the bank. Even if the payee has already issued a legal demand notice to the drawer, it is still possible for the payee to initiate criminal proceedings based on successive statutory demand notices.[6]

When discussing the jurisdictional aspect as outlined under the Negotiable Instrument Act of 1881, it becomes evident that there exists a dearth of specific provisions that address the issue pertaining to which court possesses jurisdiction in instances of the dishonour of promissory notes or bills of exchange. In practical terms, the Plaintiff is obligated to initiate legal proceedings in accordance with the Civil Procedure Code of 1908, more specifically Order 7, Rule 2, in order to pursue a money recovery suit. It is crucial to bear in mind that the location where the promissory note is executed, commonly referred to as the "Cause of action" location, holds significant significance in this regard. Generally, the filing of the case hinges upon either the residence of the defendants or where the cause of action arises, as stipulated under section 20 of the C.P.C. The court's jurisdiction, which may range from the Junior Civil Court to the Senior Civil Court or District Court within the local jurisdiction, is determined by the sum stated in the promissory note, which is commonly known as the "Pecuniary Jurisdiction". It is imperative to highlight that this jurisdiction may be subjected to alteration over time under the administration of the State. As such, it is crucial for legal practitioners and individuals involved in such matters to remain cognizant of any changes or updates in relation to jurisdictional matters under the Negotiable Instrument Act of 1881.[7]

However, it is crucial to emphasize that the aforementioned situation did not hold true in the case of cheques. As per the provisions explicated in the Negotiable Instrument Act (Section 138), it can be deduced that the act of a cheque bouncing is regarded as a criminal offense within the context of India. It is imperative to highlight that this particular stipulation is exclusively applicable to instances where the cheque is dishonored due to an insufficient amount of funds and not as a consequence of any other technical

[6] *MSR Leathers* v *Palaniaappan*, Supreme Court of India, Crl. Appeal No- 261-264/2002 dated 10/09/2013.
[7] Bhashyam and Adiga's The Negotiable Instruments Act, 19th Edition, Bharat Law House, New Delhi

default that can be attributed to the drawer. Moreover, it is noteworthy to acknowledge the fact that the aforementioned legal provision plays a significant role in safeguarding the interests of the payee, as it ensures that they are not unjustly deprived of their rightful payment.

In the event of a cheque bouncing, it is customary for a separate civil suit to be initiated with the intention of recovering the funds owed, which would also include the expenses incurred and any lost interest. It is worth emphasizing that pursuing a criminal case would not be conducive to effectively obtaining the outstanding dues in such situations.[8]

The payee/holders of dishonoured cheques have been enjoying the luxury of multiple jurisdictional courts at five different places in view of the judgment of Hon'ble Supreme Court of India passed in case titled as *K. Bhaskaran* v *Sankaran Vaidhyan Balan & Ors*[9], After receiving an appeal from the complainant, the Kerala High Court overturned the acquittal ruling, found the man guilty, and imposed the above penalty. The complaint that the cheque was issued at PW-3's shop, which is located inside the Trial Court's jurisdictional boundaries, was accepted by the learned single judge of the High Court. A Division Bench of the same High Court's ruling in *Kunjan Panicker v. Christudas*, (1997) 2 Kerala Law Times 539, was cited by the learned single judge when discussing notice. The decision said that "refusal and even failure to claim in circumstances as here will tantamount to service of notice."

Given that the accused's signature appears on the cheque, it is legally possible to assume that the cheque was made or drawn for consideration on the date it bears, as per Section 118 of the Act. The Act's Section 139 requires the Court to assume that the check's holder received it in order to pay off a debt or other obligation. The accused had the burden of disproving the aforementioned assumption. It was not possible to convince the Trial Court to use DW-1's interested testimony to refute the assumption. The High Court affirmed the aforementioned conclusion. The accused can no longer make a different argument about that point.

The appellant's learned counsel initially argued that the High Court should not have changed the acquittal into a conviction based solely on the evidence gathered during the trial since the Trial Court lacked jurisdiction to try this case. The accused's claim that the Trial Court lacked jurisdiction to try the case was, of course, upheld.

“We are unable to understand how the Trial Court arrived at its conclusion regarding the jurisdictional issue. The Code states that "every offence shall ordinarily be inquired into and tried in a court within whose jurisdiction it was committed." It is not appropriate to consider the location of the bank (which returned the cheque) as the only factor in identifying the crime site. It is important to keep in mind that the dishonouring of the cheque does not constitute the completion of the Section 138 offence. It only comes to an end when the cheque drawer fails to deposit the cheque amount within the 15-day deadline specified in clause (c) of the proviso to Section 138 of the Act. Establishing a specific location as the site of nonpayment of the amount covered by the cheque is typically challenging. For that reason, a place would depend on several variables. It may be at the residence of the payee, the drawer, or both, or it may be at the location of their respective places of business. This is why it is challenging to establish a specific location as the crime's place of occurrence under Section 138 of the Act.”[10]

The idea that all offences must be tried in the court with jurisdiction over the perpetrator is neither infallible or unexceptional, even in other cases. The lawmakers carefully crafted Section 177[11], emphasising that the norm is not always applicable by inserting the phrase "ordinarily" as a precaution. According to Section 178[12] of the Code, a trial may take place in any of the places under the jurisdiction of the court if it is unclear where the offence would have been committed. The clause has expanded the scope even further by noting that the court in either locality may exercise jurisdiction to try a case where the offence was committed partially in one and partially in another local area. Furthermore, *Section 179* of the Code expands its application even further. "Section 179. Offence triable where act is done or consequence ensues." is how it is written.When something that has been done and a result that has followed

[8] Anjana Dave, An Analytical Study of the Provisions relating to Dishonour of Cheques under Chapter XVII of theNegotiable Instruments Act, 1881, Vol. 7 Issue 5, Pacific Business Review International,2014
[9] Supreme Court of India, Crl. Appeal No-1015/1999 dated 29/09/1999.
[10] Supra Note 9
[11] Section 177, THE CODE OF CRIMINAL PROCEDURE, 1973
[12] Section 178, THE CODE OF CRIMINAL PROCEDURE, 1973

makes an act illegal, the offence can be investigated or tried by a court that has local jurisdiction over the place where the item was done or the consequence occurred."[13]

In accordance with the pronouncement articulated in paragraph 12 of the pertinent judicial decision, it was explicitly stated that, in pursuance of *Section 177* of the Code, the legal provision mandates that the investigation and subsequent trial of any criminal offense must typically take place within the boundaries of a court that possesses jurisdiction over the specific geographical area in which the offense was perpetrated.

wherein it was held that "the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. 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 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 payment within 15 days of the receipt of the notice.

It is not mandatory that all of the aforementioned five acts must have been committed in the same vicinity. It is plausible that each of those five acts could have been carried out in five distinct localities. However, the amalgamation of all the five acts mentioned above is an indispensable requirement for the culmination of the offense under Section 138 of the Code. In this context, a reference to Section 178(d) of the Code proves valuable. Consequently, it becomes evident that if the five different acts were executed in five different localities, any of the courts possessing jurisdiction in one of the five local areas could potentially become the designated trial venue for the offence under Section 138 of the Act. In simpler terms, the complainant has the freedom to select any of those courts with jurisdiction over any of the local areas within the territorial boundaries wherein any of those five acts were carried out.."

Therefore, it is explicit that the aggrieved complainant can file the complaint against cheque bounce before the court of any of the abovementioned five jurisdictions over any of the local areas within the territorial limits of which any of those five acts was done.

The payee must submit a written notice of demand in order to make a demand. The prosecution's burden would have been significantly reduced if that had been the sole condition for the offence, which was the drawer's failure to pay the cheque amount within 15 days of the date of such "giving." However, the law stipulates that the drawer must make payment of the outstanding balance within 15 days of receiving the aforementioned notice. Thus, it is evident that in this case, "giving notice" does not mean "receiving notice." Giving is a process, and the goal of giving is to receive. Giving is a process, and the goal of giving is to receive. The former procedure, which entails mailing the notice to the drawer at the appropriate address, is the payee's responsibility.

"Giving of notice" and "receiving of the notice" are defined differently in Black's Law Dictionary. Refer to page 621. "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A notification is deemed ' received' by an individual when it is properly delivered to them or at their place of business.

A smart cheque drawer could profit from using various means to avoid receiving the notice and avoid facing the legal ramifications of Section 138 of the Act if it is strictly interpreted that the drawer should have actually received the notice for the period of 15 days to start running, regardless of whether the payee sent the notice to the correct address. It is important to remember that the court should not adopt an interpretation that benefits a dishonest evader and penalises an honest payee, since that would be against the very purpose of the legislation.

The erudite author Maxwell has highlighted in his book "Interpretation of Statues" that "provisions relating to giving of notice often receive liberal interpretation." Refer to page 99 of the 12th edition. Since he is assumed to be the loser in the transaction and the legislature made the provision specifically for his benefit, the context envisioned in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice. Clause (b) of the proviso to Section 138 of the Act

[13] Section 179, THE CODE OF CRIMINAL PROCEDURE, 1973

indicates that the law requires the payee to `make a demand' by providing notice. The necessity of'making a demand' is the main point of the clause. All that the legislature has mandated is the manner in which such a demand may be made. In order to fulfil his obligation to provide notice, a payee may send the notice. His involvement ends when it is dispatched; the recipient's actions determine the next step.

According to established precedent, if an addressee declines to accept a notice, it is assumed that the notice was delivered to him (Harcharan Singh v. Smt. Shivrani and Ors., [1981] 2 SCC 535; Jagdish Singh v. Natthu Singh, [1992] 1 SCC 647). In this case, the notice is returned as unclaimed rather than as refused. Regarding the presumption of service, will there be any notable distinctions between the two? Referring to Section 27[14] of the General Clauses Act in this regard will be helpful. The passage says as follows:

"27. Meaning of service by post. - Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression `serve' or either of the expressions `give' or `send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post"

As a result, the Supreme Court upholds the conviction of the offence under Section 138 of the Act, but it sets aside the High Court's sentence to give the trial court the authority to make decisions regarding the appropriate sentence and any applicable compensation.

After *K. Bhaskaran, Shri Ishar Alloy Steels Ltd. v. JayaswalsNeco Ltd*[15] follows the same. The cheque that had been dishonoured was brought for encashment by the Complainant/holder in his bank within the stipulated statutory period of six months. However, by the time it reached the drawer's bank, the aforementioned period of limitation had already expired. Upon careful examination, it was noted that the act of not presenting the cheque to the drawee bank within the specified period, as outlined in the Section, would release the person who issued the cheque from any criminal liability under Section 138 of the N.I. Act. Otherwise, this person might have been held responsible for paying the cheque amount to the payee in a civil action instituted under the law. This particular decision serves to clarify that the location where a complainant chooses to present the cheque for encashment does not establish or establish territorial jurisdiction.

Again the decision followed in *Prem Chand Vijay Kumar v. Yashpal Singh*[16],Upon the issuance of a notice under Section 138 of the Negotiable Instruments Act, a subsequent act of presenting a check and its subsequent dishonor does not give rise to a new legal claim that could initiate the procedural mechanisms outlined in Section 138. In the subsequent judgment of Prem Chand, the court did not explicitly state all five elements of the Bhaskaran test but rather identified only four of them.

This proposition was further modified by the Supreme Court in *M/S Harman Electronics(P) Ltd & Ors* v. *M/S National Panasonic India Ltd. Wherein* [17]the court observed at paragraph 25, "We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower cannot only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-`-vis the provisions of the Criminal Procedure Code" and at paragraph 27, "We regret that such a principle cannot be applied in a criminal case. Jurisdiction of the Court to try a criminal case is governed by the provisions of the Criminal Procedure Code and not on common law principle". However, it is relevant to mention here that that sending of a notice is one of the ingredients for maintaining the complaint but different than receiving the notice and dishonour of a cheque by itself constitutes an offence. The Hon'ble apex court has further aptly observed at Paragraph 14 in the aforesaid case as,

[14] Section 27 The General Clauses Act, 1977

[15] Shri Ishar Alloy Steels Ltd. v. JayaswalsNeco Ltd (2001) 3 SCC 609

[16] Prem Chand Vijay Kumar v. Yashpal Singh (2005) 4 SCC 417

[17] Supreme Court of India, Crl Appeal No-2021/2008 dated 12/12/2008.

"For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would." The Court further said that the holder of cheque sometimes, choses the place of trial at most inconveniencing place for the drawer so that he may accede to his demand under duress of trial in most distant court from the drawer's point of view.

After *M/S Harman Electronics*, it was *Nishant Aggarwal v. Kailash Kumar Sharma.*[18], where *K. Bhaskaran* followed again. The Court found itself once again confronted with a legal case in which the complaint had been lodged in the Court at Bhiwani, located in the state of Haryana, which fell within the territorial jurisdiction where the complainant had presented the cheque for encashment. It is noteworthy that the cheque in question had been drawn on a bank situated in Gauhati, Assam. In order to determine the appropriate jurisdiction to handle the matter, the Court relied upon the viewpoint expressed in the *Bhaskaran case*. The Bhiwani Court, according to this Court, possessed the necessary jurisdiction to handle the case. In making this determination, the Court attempted to create a distinction between the three-Judge Bench decision in the *Ishar Alloy Steels* (supra) case and the decision rendered in the *Harman Electronics case* (supra). This was done in order to establish that the underlying principle stated in the *Bhaskaran case* had not been diluted by the ratios of these aforementioned decisions.

However, Bhaskaran(supra) was overruled by the three judges' bench of supreme court of India in *Dashrath Rupsingh Rathode* v *State of Maharastra*,[19] where the Supreme Court has held at Paragraph 21 that, "Complaint of Dishonour of Cheque can be filed only to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. The Court clarified that the Complainant is statutorily bound to comply with Section 177 etc. of the Criminal Procedure Code, 1973 and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choice."

In this case the Apex Court while holding that cheque bounce cases has to be filed in the court, within whose local jurisdiction, the cheque is dishonoured by the Bank, on which it is drawn. Although said ruling had been applied prospectively, if matter has not reached at the stage of section 145(2) of the N.I. Act, it has caused a lot of inconvenience to the complainant payee as he has to go to the place of location of drawer's bank for seeking remedy against drawer under section 138 of N.I. Act and thereby he has been made to go from goal to post again and again for seeking his grievances redressed by some competent court, particularly out of station from his residence or place of business.

Finally, the Negotiable Instruments (Amendment) Act, 2015, which has been applied retrospectively with effect from 15/06/2015, has settled the problem of multiplicity of various jurisdictional court and now it is the place of the bank with which payee has presented for encashment, will be decisive factor in determination of jurisdictional court. The legislative clarification of jurisdictional issues is in the interest of complainant and it also helps the trade and commerce as well as loan lending banks. It would also ensure the fair trial for drawer with well anticipated place of trial and at same time, he would be more cautious at the time of issuance of cheque recklessly.

The complainant payee has to wage a long drawn expensive legal battle against the defaulter drawer (who becomes accused) in case under Section 138 of Negotiable Instrument Act as he has to defend his case up to highest Appellant Court i.e., Supreme Court of India for getting his due. However, complainant may even lose his case for want of some technical nicety because offence under

[18] Nishant Aggarwal v. Kailash Kumar Sharma (2013) 10 S.C.C. 72

[19] Supreme Court of India, Crl. Appeal NO-2287/2009 dated 01/08/2014.

Section 138 of N.I. Act is a hyper technical offence and same cannot be construed liberally as it being substantive penal provision. Accordingly, holder of the cheque would be left in lurch, if he fails to comply with technical requirement of the N.I. Act even on account of sheer ignorance. Moreover, the court appears to be hesitant in rewarding the deterrent or exemplary sentence of imprisonment on the convict, who is guilty of dishonouring of cheque in the name of application of reformist approach to sentencing and matter being quasi- civil in nature. Further, the court does not generally award adequate compensation to the victim (the holder of cheque), keeping in view of the legal fee and travel cost incurred by him apart from accruable compounding interest on the money involved and his mental agony in sustaining protracted trial of the case.

The suffering of complainant further gets prolonged and perplexed, when the accused prefers repeated revision and appeal and finally the order of compensation could not be realized for the complainant even by the court on account of non-availability of funds and resources with convict, which he might have created deliberately by disposing of his property prior to the outcome of the case.

IV. EFFICACY & REMEDIES

The experience shows that the drawer of cheque raises plea of misuse of his blank signed cheque against the creditor, while the creditor claims that he has advanced loan to the drawer and in discharge of that debt, the drawer issued dishonoured cheque in his favour. Here, it is opined that the creditor should also be encouraged and compelled to advance the loan including friendly loan via accounted mode of payment like through cheque or E-payment, apart from specific written agreement, so that claim of extending loan by the creditor can be easily established and accused would be deterred from taking frivolous plea of non-receiving of any loan from the creditor. The drawer also raises plea of non-receiving of goods or receiving of goods of sub-standard quality and quantity. Accordingly, payee should keep the proof of delivery and the court ought not allow such unconnected plea of drawer in cases under section -138 of N.I. Act, which may be relevant under Sales of Goods Act or other Act. It would fasten the criminal proceedings under section 138 of N.I. Act and 420 of I.P.C. as well as order XXXVII of C.P.C. because accused would not be able to take such untenable plea in course of trial and even the court would not allow to lead defence evidence on well-established fact of payment by the creditor, in discharge of which, dishonoured cheque in question has been issued.

It is suggested that the drawer of dishonoured cheque should not be allowed to contest the case of the payee without payment of due amount with the court which would, in turn, deter the drawer of dishonoured cheque from taking all and sundry plea in course of trial and thereby prolonging the court litigation proceedings because it, thereby, compels the holder of dishonoured cheque to compound the matter even on acceptance of meagre and unreasonably less amount. It would also make the execution of order of the court in respect of fine and compensation very easy from deposited corpus of fund of convict drawer. It is felt that holder of dishonoured cheque is constrained to compound the matter at lessor amount offered by the drawer because a trader or creditor needs his money on urgent basis for his personal or business purpose and therefore he cannot afford the long drawn litigation, in which majority of drawer of cheque are interested for his obvious vested interest.

The drawer of dishonoured cheque generally thinks that wearing out tactics would bear fruit for him because the payee are ill-afford to withstand the long litigation and under compulsion, payee will accept his offer of amount for compromise, that too on his terms and subject to all possible exigency on the part of the drawer. It is, therefore, very common to see the failures of payments of compromised compensation amount on part of drawer even in agreed installments over a long period of time. It results into revival of criminal proceedings again after non-fulfillment of compromise terms and conditions by the drawer.

It is also experienced that higher the sentence by the trial court, the greater the possibility of compromise at the stage of appellant court and better compliance by the convict payee, as matter under section 138 of the N.I. Act is compoundable in nature & same can be compounded at any stage of litigation even before appellant court.

It is also seen that when there is bigger amount of dishonoured cheque, there is bigger possibility of delay in conclusion of trial as there is big issue of huge interest, which might have been earned in bank or business on money in question and also the drawer is in better position to prolong the trial by filling all possible revisions and appeals against all and sundry order of the inferior court with the help of battery of senior competent lawyers.

It is also observed that there have been genuine instances of misuse of blank security cheque of innocent and needy drawer, who did not get money or articles as claimed by the complainant, in whose favour legal consideration has to be presumed.[20] Some unscrupulous payee also tried to invoke Section 420 of I.P.C. against the drawer in order to exert undue pressure on the drawer of same cheque even without existence of dishonest intention of drawer *ab initio* to induce him to deliver some property.

Making the offence under section 138 of N.I. Act non-bailable and keeping drawer of dishonoured cheque behind bar at the discretion of the court after giving 30 days period for compromise and payment, may deter and discourage him from waging endless trial against the complainant after taking all untenable defence pleas with motive to prolong the trial without immediate impunity. In vast number of cases, the drawers do not pay cheque amount within the period of fifteen days legal demand notice and they also do not compromise with complainant for want of money/ resources at his command or disposal due to their weaken financial position in course of time for varied reason.

The mandatory legal presumption under Section 139 of N.I. Act regarding receiving of cheque by the holder in discharge, in whole or in part, of legally enforceable debt or other liability may shift the initial burden of proof on the shoulder of the accused drawer of the cheque. However, once, the accused discharges said burden of proof with standard of balance of probability, it is again unalienable duty of the complainant to prove his case as a matter of fact beyond all reasonable doubts as expected in a normal criminal trial. At same point of time the court has to be cautious, while invoking said legal presumption of consideration under Section 139 of N.I. Act qua cheque in favour of the holder because it cannot be oblivious of prevailing facts and circumstances in our society as to blank cheques are being taken from needy person in distress, who had no bargaining power, being weak party to the transaction and the same are being misused by unscrupulous lender and traders, who are hungry of exorbitant interest and unjust enrichment. Such lender may fill the blank/ inchoate cheque as per his sweet will even beyond the agreed requirement and authority given to him expressly or explicitly.[21]

Experience also shows that blank cheques are being taken from the debtor by the creditor invariably and some times, by the seller from the purchaser as token security. Such abovementioned cheques are very susceptible to the misuse by the holder of cheque and in case of dishonouring of such cheques, the legal presumption qua consideration under Section 139 of N.I. Act for holder may not do justice for innocent and ignorant drawer, who did not receive claimed money or goods. It is exception and contrary to the basic tenant of criminal jurisprudence and basic human right as the court has to presume every accused innocent till proven guilty by way of fair trial on strength of objective credible evidence before competent court of law.

Any material alteration in the body of the cheque would make the cheque in question void as such has not been consented thereto by the original parties because it changes the integrity and legal identity of the contract in terms of date, time of drawing, place of payment, it's medium and sum of amount.[22] Such written instrument suffering from said material change cannot be used for launching criminal prosecution against the drawer unless he revalidated the same. The cheque must have been issued for outstanding debt or liability owned towards the complainant.

It is also noteworthy that for attracting the culpability under Section 138 of the N.I. Act, it is not necessary that debt or liability in question, for discharge of which, cheque was issued, should have been owned by the drawer himself as he may issue such cheque even for discharge of debt or liability of any other person. However, cheque in question must have been issued in order to discharge certain outstanding and legally enforceable debt or liability for attracting sanction under Section 138 of the N.I. Act. Accordingly, if a cheque issued as gift, towards lending a loan or for unlawful purpose, the drawer cannot be prosecuted under Section 138 of N.I. Act.

If offence under Section 138 of N.I. Act is committed by the company, every person, in charge of and was responsible for conducting the business of the company like Director, Manager, Secretary etc. shall be deemed to be guilty of the offence apart from

[20] Section 139, the Negotiable Instrument Act, 1881.

[21] *Id*., Section 20.
[22] *Id*., Section 87.

the company under Section 141 of N.I. Act unless the offence was committed without his knowledge or he exercised all due diligence to prevent the commission of said offence.

Thus, the N.I. Act admits vicarious criminal liability of responsible officer of Drawer Company unlike general criminal jurisprudence prevailing in India. Moreover, the complainant has to array the drawer company apart from directors as accused with specific averments qua roles of accused officials of company[23].

V. CONCLUSION

Heavy pendency of more than 18 Lacs cases before various courts in India and long time-taking complex litigation process do not augur well for trader and creditor in terms of use of cheque.[24] The contested case under section 138 of the N.I. Act, sometimes, takes more than a decade before various courts despite statutory mandate under Section 141 warranting disposal of cheque bounce case within six months from institution of complaint. It is also a big hindrance on the path of accounted cashless transactions via cheque payments, which is being sought to make a reality in business transactions among traders and public at large by the Government at all levels because the holder of dishonoured cheque is not able to realize the due payment within reasonable time. Now, wages and salary may be paid through cheque or electronically under Payment of Wages Act, 1936. On other hand, digital transaction i.e. E- payment via RTGS or NEFT, mobile apps and software based E-payment Gateway portals are getting momentum as they offer instant recorded payment to the desired person and that too, without giving any legal notice to other party or thereafter going to the court unlike cases under Section 138 of the N.I. Act. It may discourage the traders or payee of dishonoured cheque from accepting another cheque in his business and it may, in turn, prompted to receive cash or E-payment. It throws big contemporary competition and a challenge to the need and circulation as well as efficacy of cheque as mode and proof of payment in today's era of fast and instant money transaction on strength of information technology.

However, it is pertinent to mention that legislative reforms to contain cheque bounce cases has now started bringing positive results as merely 32 incidents of cheque bounce was reported during the period of 2015 to 2017 in the country against approximately 1.35 Billion population.[25]

[23] *Aneeta Hada* v *M/S Godfather Travels and tours*, Crl. Appeal No-838/2008 dated 2704/2012 and *S.M.S Pharmaceuticals Ltd.* v *Neeta Bhalla & Anr.*, Crl. Appeal No- 664/2002 dated 20/022007(Supreme Court).

[24] http://www.livelaw.in/lok-sabha-passes-negotiable-instruments-amendment-bill-2015/.

[25] Table 1.3, Crime in India 2017, Statistics (2019), National Crime Records Bureau, p7.