Dishonour of Cheque—Presentations vis-à-vis Cause of Action

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The cheque system in Indian is of British parentage. It is common knowledge that the London Gold Smiths were the first bankers in England and the system of the payment of cash through cheques dates back to 17th century. The system of cheques is a matter that concerns everybody whether he is a layman, a business magnate, an industrialist, a banker or a member of the bench or bar. Rhetorically, therefore, a truncated cheque system is injurious to the economic health of the country. Getting aware of this and of the mandates of the global economy, we have passed Banking Public Financial Institutions and Negotiable Instruments laws (Amendment) Act 1988 (66 of 1988). By this amendment act, the chapter comprising section 138 to 142 was inserted in the Negotiable Instruments Act, 1881. Then again it was amended in the year 2002 and section 143 to 147 were inserted. The second amendment was resorted to plug the loopholes that were perceived even after the insertions of the sections i.e. 138 to 142 because legislature wanted to give it all possible teeth so that a bouncer of cheque does not escape the rope.

The offence under section 138 of the Act could be visited with imprisonment up to two years and with fine up to twice the amount of the dishonoured cheque or both as the case may be. That ever since every limb of this statute was dissected and dealt with various high courts by rendering different judgements which sometimes created "ebbs" and "tides" in the administration of this law but our apex court got fully aware of the importance of this vastly viable instrument of commercial transaction and took to blending harmoniously the controversial sections of the Act and that is why displayed a pragmatic approach, sometimes by stretching and sometimes by shrinking particular words of this law as the legal exigencies and practical applications of the provisions, warranted. Our apex court has done commendable work on this concept, which has journeyed long by now. The judiciary, has, by its interpretation cut the deadwood and trimmed off the said branches so that the holder of a cheque is not lost in thickets and branches. There is nowhere no batting on sticky wicket on cheques. It is always a win-win situation for a cheque holder. The judiciary has carefully done nothing that could damage the gathering momentum of a vibrant and sound banking system in the country.

The Supreme Court verdict on BALCO and contract labour amply reveals that our judiciary is a very much alive to the economic reforms and therefore, whatever verdicts pronounces on the concept of dishonour of cheque, there is an undercurrent of its anxiety to evolve sound banking system in India compatible with international standards.

As we all know chapter XVII of the Act contains the fascicule of sections 138 to 142 and it was brought into being to enhance the acceptability of cheques in settlement of liabilities. Then very ticklish situation surfaces as a consequence of the clear postulates of these section that successive presentations could be resorted to during the validity period of a cheque as then would this situation permit the emergence of a concept of successive accrual of the cause of action.

For comprehending this vexed proposition, chronologically we shall have to refer to the case of *KC Nadar* vs. *Chenakal M.R Simon* 1994 Cr LJ 3515, which propounded the basic theory that a cheque can be presented on any number of times during the period of its validity. But once the offence was complete with failure to pay the amount within the prescribed period after making demands in writing, a subsequent presentation of the cheque for encashment is of no use so far as section 138 of the Act is concerned. Thus, complaint filed on a second cause of action with the same cheque

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would not be maintainable. In this case, the Kerala High Court referred to the cases of 1993 Cr LJ 680 (Bom): 1993 Cr LJ 2165 (Cal): 1992 Cr LJ 4048 (AP): 1992 Cr LJ (Cal) 14: 1991 Ker LJ 335 (DB) and (1991) 1 Ker LJ 893 DB. Kerala High Court dissented the view of Andhra Pradesh High Court contained in 1992 Cr LJ 4048 but followed the DB judgment of its own high court as referred in (1991) 1 Ker LJ 893. Now the same High Court in the case of *M/s SKD Lakshmanan Fire Works Industries* vs. *KV Sivarama Krishnan &* anrs.1995 Cr LJ (Ker) 1384 has overruled the ratio decided in the case of 1994 Cr LJ 3515 cited supra.

The diametrically opposite views just confused the position for quite sometime till the Supreme Court handed down to us a conceptual clarity of the concept in the case of Sadanandan Bhadran vs. Madhavan Sunil Kumar 1998 Cr LJ 4066 when the Supreme Court delineated the distinction between the right to successive presentation and cause of action and the Supreme Court overruled, the full bench case of Kerala High Court in *M/s SKD Lakshmanan Fire Works Industries* vs. *KV Sivarama Krishnan & anrs*.1995 Cr LJ 1384. The apex court composing the quandary rankled and rattled by the judgments rendered by the various high courts on this score, debated the propositions that a cheque can be presented on any number of occasions within the period of its validity and its dishonour on every occasion will give rise to a fresh "cause of action" within the meaning of clause (b) of section 142 of the Act so as to entitle the payee to institute prosecution under section 138 on the basis of last cause of action and that a cheque can be presented for encashment on any number of occasions within the period of its validity but there can be only one cause of action under section 142 (b) arising from its last dishonour and further that only for the first dishonour, and not subsequent dishonours, can a prosecution under section 138 be instituted.

The apex court then posed the question as to how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving only one opportunity to file a complaint could be harmonized. Their Lordships of the Supreme Court, in this case, therefore, gave anxious consideration to this question and culled down and harmonized the position with the interpretation that on each presentation of the cheque and its dishonour a fresh right and not cause of action accrues in his favour. He may, therefore, without taking preemptory action in exercise of his such right under clause (b) of section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. 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 the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. In a generic and wide meaning "cause of action" would mean every fact, which is necessary to establish to support a right or obtain a judgement. Viewed in this backdrop, some facts are required to be proved to successfully prosecute drawer for an offence under section 138 of the Act. They *inter alia* include that the cheque must have been drawn for payment of an amount of money in discharge of a debt or liability and the cheque must have been dishonoured, that the cheque must have been presented within the prescribed period and that payee must have made the demand for payment of money by giving notice in writing to the drawer within stipulated time and the drawer must have failed to make the payment within 15 days of the receipt of the notice. A combined reading of the sections 138 and 142 makes it clear that the cause of action within meaning of section 142 (c) of the Negotiable Instruments Act arises but would arise only once.

Following this decision of the Supreme Court, the Allahabad High Court in the case of *Shailesh Kumar Agarwal* vs. *state of UP and others* 2000 Cr LJ 2921 held that section 138 of the Act does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity and a fresh right arises with every presentation but cause of action arises only once when the notice is served.

There is a cogency and thoroughness in the verdict of the Supreme Court on this score and there is a clear-cut discernibility of certainty that a cheque can be presented anytime during its validity but for prosecuting the defaulter the cause of action accrues only once when the notice is given. To sum up, the presentation and cause of action are rays with different wavelengths but from the same source i.e. the cheque and while former could be any numbers the latter would be once. So the two contingencies and situations should, therefore, be properly delineated. This final position has emerged after elongated litigious debate before judiciary. ■