

# Dispute Resolution Hotline

August 19, 2014

## DISHONOUR OF CHEQUES: SUPREME COURT CLARIFIES TERRITORIAL JURISDICTION

The Supreme Court has:

- Acknowledged that there was a massive misuse of the criminal justice system with a view to cause hardship, harassment and inconvenience to the accused;
- Directed that proceedings are to be filed at the place where the cheque is dishonoured;
- Directed the return of pending cases (where service remains incomplete) – the complainant is required to file before the appropriate court within 30 days of such return. This will lead to procedural red-tape and further delays;
- Complaints where recording of evidence has commenced will continue where currently filed.

### INTRODUCTION

The Supreme Court (“**Court**”) has, in its recent decision in *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.*<sup>1</sup>, held that in cases of dishonour of cheque, only those courts within whose territorial limits the drawee bank is situated would have the jurisdiction to try the case. Additionally, in a move that will have significant and far-reaching consequences, the Court also directed that pending cases in which the accused had not been properly served would be returned to the complainants for filing before the appropriate courts (i.e. having territorial jurisdiction), which filing is required to be done within 30 days of return.

### ISSUE

Acknowledging the fact that it had become commonplace for the courts to encounter a notice issued under Section 138 of the Negotiable Instruments Act, 1881, from a place that had no connection with the accused or with any facet of the transaction, the Court stated that misemployment insofar as the choice of place of suing now calls for a stricter interpretation of the statute. The Court, thus, reconsidered the issue of which court would have the territorial jurisdiction to try a case of dishonour of cheque under Section 138 of the Negotiable Instruments Act, 1881 (the “**Act**”). In the past, the Court had passed several decisions giving divergent views on the issue.

### BACKGROUND – PREVIOUS DIVERGENT DECISIONS

In *Bhaskaran v. Sankaran Vaidhyan Balan* [“**Bhaskaran**”]<sup>2</sup>, the Court read Section 138 of the Act with Sections 177 to 179 of the Code of Criminal Procedure, 1973 (“**CrPC**”). It observed that the offence under Section 138 can be completed only with the concatenation of the following five acts:

- Drawing of the cheque;
- Presentation of the cheque to the bank;
- Returning the cheque unpaid by the drawee bank;
- Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount;
- Failure of the drawer to make payment within 15 days of the receipt of the notice.

It was held that upon the completion of the offence, any Court, within whose jurisdiction, any one of the five acts took place, would have the requisite jurisdiction to try such case.

The ruling in *Bhaskaran* was diluted in *Harman Electronics Pvt. Ltd. v. National Panasonic India Pvt. Ltd.*<sup>3</sup> (“**Harman**”). The Court addressed the issue of whether a Delhi Court would have jurisdiction solely because the statutory notice under Section 138 of the Act was issued from Delhi. The Court held that:

- Issue of the statutory notice does not give rise to a cause of action. Only receipt of the notice does;
- Only the main provision of Section 138 constitutes an offence. The proviso thereto merely enlisted the conditions necessary for taking cognizance of the offence;
- If mere presentation of the cheque or issue of notice would bestow upon a court the territorial jurisdiction to try offences under Section 138 of the Act, it would inevitably lead to harassment of the drawer.

The judgments in *Bhaskaran* and *Harman* represent the liberal and the strict views, respectively, on the issue of territorial jurisdiction for trial of the offence of dishonour of cheques under Section 138 of the Act.

### JUDGMENT OF THE COURT

#### Determination of Territorial Jurisdiction

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The Court cautioned that the phrase “*cause of action*” in Section 138 should not be assigned the same interpretation provided under civil law. Relying on Section 178 of the CrPC, the Court held that territorial jurisdiction in criminal matters, including under the Act, is determined solely by location of the commission of offence.

### **Commission of Offence**

Relying on the decision in *Hamman*, the Court held that the offence is committed when a cheque is drawn by an accused in discharge of debt or liability and such cheque is returned unpaid for insufficiency of funds or the amount exceeds the arrangement made with the bank. Its cognizance can be taken by the court only when:

- the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

### **Jurisdiction with Court where Drawee Bank situated**

The Court concluded that under Section 138 of the Act, the offence is committed when the drawee bank returns the cheque unpaid. The proviso to Section 138 of the Act, merely postpones the prosecution of the offender till the time that he fails to pay the amounts within 15 days of the statutory notice.

The place of commission of the offence would be the place where the drawee bank is located (and, consequently, where the cheque is dishonoured). Thus, courts of such place would have the territorial jurisdiction to try the offence under the Act.

The Court clarified that nothing would prevent an aggrieved person from availing other remedies under the Indian Penal Code or the CrPC. Where a payee was able to establish that the inducement for accepting a cheque which subsequently was dishonoured had occurred where he resides or transacts business, he will not have to suffer the travails of journeying to the place where the cheque had been dishonoured.

### **Pending Cases**

Having decided the issue of appropriate territorial jurisdiction, the Court considered the various options available in regard to the cases that are pending before the various Courts in India. The Court held that:

- where proceedings had progressed to the stage of recording of evidence or beyond, the proceedings would continue before the same courts and it would be deemed that the Court had transferred the case from the court of proper jurisdiction to the court where such case was pending.
- for the remaining cases, including where the accused had not been properly served, the complaints would be returned to the complainants for filing in the proper court. If such complaints are filed within 30 days of their return, they shall be deemed to have been filed within the limitation period (unless the initial complaint was itself time barred).

### **ANALYSIS**

This decision of the Court clarifies a very contentious issue pertaining to the offence of dishonour of cheques under Section 138 of the Act. Going forward, a party desirous of filing a complaint for dishonour of a cheque will only be able to file a complaint in the court having territorial jurisdiction.

There will also be a return of pending cases (where recording of evidence has not yet begun). The complainant will be required to file the complaint before the appropriate court within 30 days of such return. Return of proceedings may also lead to further procedural red-tape and consequential delays. In some instances, a complainant may now find it cumbersome to prosecute a complaint before the appropriate court, which may well be in another city.

While a complainant will not be able to file multiple complaints before different courts which could harass an accused, a possible consequence may also be a significant shift in the acceptability of a cheque drawn on an inconveniently located bank. Additionally, in cases of intra-state business dealings, creditors may well prefer to avoid any such potential complications and press for alternative and risk-less payment.

– **Varuna Bhanrale, Sahil Kanuga & Vyapak Desai**

You can direct your queries or comments to the authors

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<sup>1</sup> Criminal Appeal No. 2287 of 2009, decided on August 1, 2014

<sup>2</sup> (1999) 7 SCC 510

<sup>3</sup> (2009) 1 SCC 720

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