

# Negotiable Instruments (Amendment) Bill, 2015 - Reasons And Overview

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The Negotiable Instruments Act 1881, was enacted to legalize the system by which the instruments could pass on from one person to another. The Indian legislature in the context of negotiable instruments followed and adopted English Law. The initial Act had undergone amendments with the changing business scenario and the working environment. It was amended by Banking, Public financial Institutions and Negotiable Instruments Law (Amendment) Act 1988 by which Chapter XVII was incorporated, mainly because to increase the usage of negotiable instruments in the business functioning and making the instruments more credible.

Another major amendment was made by Negotiable Instruments (Amendments and Miscellaneous Provisions) Act 2002. A review at this juncture was necessary since a large number of cases were reported pending. The amendments were made with a view of making the Act more stringent and to effectively implement the provisions of the Act namely Sec.138 to Sec 142.

## **JURISDICTION & APPROPRIATE COURT**

Even despite numerous amendments the pendency of cases kept piling up and it was reported by the Law Commission in

its 213th Report that the number stood at 38 lacs throughout the country. The majority of the cases mainly pertained to Sec. 138 to Sec. 142 of the Act. The main question in issue in the cases was also regarding the territorial jurisdiction of the Courts trying the matter. The jurisdiction point has been the preliminary issue of the cases and had been much debated.

The reason for considering the jurisdiction point was mainly because of the fact that there is no specific provision conferring the power on a particular court to try cases related to Sec 138. Sec. 142 of the Negotiable Instruments Act 1881, states that no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of First Class shall try any offence punishable under Sec 138. An offence under Sec. 138 of the Act is a criminal offence and for reference to the place of trial or inquiry inference should be drawn to Sec 178 of the Code of Criminal Procedure, which postulates that when a crime is committed the Court having jurisdiction over the local area where the crime is committed shall have the power to try the offence. In case the crime has been committed at several places then by any of the Court having jurisdiction over the local area shall have the jurisdiction to try the offence.

This being the settled law, the question

that remained to be answered was as to what event will result in cognizance of an offence, and since this issue is vital for determining the appropriated Court, the point of jurisdiction was still kept open. The Hon'ble Supreme Court has cited various judgments to clarify the position of law on the various aspects relating to Sec. 138 of the Act and the appropriate court for trying the offence. One of the notable judgments is that of K. Bhaskaran Vs Sankaran Vaidhyan Balan(1999) 7 SCC 510, in which it was held by the Hon'ble Supreme Court that any Court within whose jurisdiction any of the five acts, which constitutes or completes the offence under Sec. 138 of the Act, is committed has the jurisdiction to try the offence.

Another notable judgment of the Hon'ble Supreme Court on the question of Jurisdiction was of Harman Electronics (P) Ltd Vs National Panasonic India (P) Ltd. (2009) 1 SCC 720, in which it was decided that issue of the statutory notice under Sec. 138, being one of the 5 acts that completes an offence under Sec. 138, does not give rise to a cause of action and hence the Court having jurisdiction over the place from where the statutory notice was issued could not try the case. This was contrary to the decision laid down in Bhaskaran's case.

## **JURISDICTION CLARIFIED BY HON'BLE SUPREME COURT**

Ultimately all these aspects were taken

into consideration by the Hon'ble Supreme Court and it delivered the landmark judgment on the issue of jurisdiction in the case of Dashrath Rupsingh Rathod Vs State of Maharashtra & Ans, (2014) 9 SCC 129 which was delivered on the 1st of August 2014. The Hon'ble Supreme Court even recorded the reality of the Sec. 138 of the Act in the judgment by stating that the provision of Negotiable Instruments Act, is being misused so far as the territorial jurisdiction for the trial is concerned. The Hon'ble Supreme Court in this case held that "situs or venue of judicial inquiry and trial of the offence must be logically restricted to where the Drawee bank is located".

Though now there was concrete stand on the place of trial of the offence under Sec. 138, it created hurdles for the aggrieved complainants as they had to travel to and fro to the place where such trial took place, if the same was located in a different city. Moreover it also ignored the practical aspects of cheques clearing under CTS system under which physical presentation of cheque is not necessary. The Government received various representations from stakeholders, including financial institutions and corporates regarding the impact of the judgment, and hence a bill was introduced in the Parliament on the 27th of July 2015 in the Lok Sabha for amendments in the Negotiable Instruments Act 1881.

## CONCLUSION

The amendments provide a concrete provision as regards the jurisdiction of the appropriate Court for trying the offences under the Sec. 138 of the Act, which was a major concern and a factor relating to

pendency of cases over the period of time. It provides that:-

- a. If the cheque is delivered for collection through an account- Then the Court having jurisdiction over the branch of the bank where the payee or holder in due course maintains his account shall have jurisdiction.
- b. If the cheque is delivered for collection otherwise through an account- Then the Court having jurisdiction over the branch of the drawee bank where the drawer maintains his account shall have jurisdiction.

Even though the aspect jurisdiction and the appropriate court has been taken care of but still there are certain areas which hinder the speedy disposal of cases under Sec. 138. The ultimate object of reducing the pendency of cases could also be reduced by checking the time limit for disposal of cases. Under the present scenario since there is no capping or definite time frame for disposal of cases, as a result it is dragged for months. Moreover the present Act has a provision of compounding of offences if this can be improved by limiting the time frame for exercising the option of compounding then this may further check the pendency of cases.

The amendment bill is a welcoming move and a positive approach towards reducing the pendency of cases under Sec. 138 of the Negotiable Instruments Act, 1881. We can certainly expect the Government to come out with further improvements, considering the economic realities, implementations and impact of the amendments, for further reducing the pending cases and delivering justice to the aggrieved parties. [W](#)



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