

NATIONAL JUDICIAL ACADEMY



[P-1190]

WORKSHOP ON NEGOTIABLE INSTRUMENTS ACT, 1881

22nd to 24th November 2019

PROGRAMME REPORT

PROGRAMME COORDINATORS:

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The National Judicial Academy organized a three days' Workshop on Negotiable Instrument Act, 1881 for Magistrates from 22-24 November, 2019. The workshop was conceived to enhance the capacity of Judicial Magistrates in better implantation of the Negotiable Instruments Act, 1881(hereinafter 'the Act') and expeditious disposal of cases. The workshop discussed key features of the 2018 Amendment in the light of Sections 143A and 148. Interplay between these amended sections and section 421 of the Code of Criminal Procedure, 1973 formed an integral part of the discussion. History and evolution of the Act in pursuance with Section 138, of the Act, jurisdictional development under section 138 and recent Supreme Court rulings for speedy disposal of cases under Section 138 were the core areas of discussion during the workshop.

Session 1 - History and Evolution of Negotiable Instruments Law

Speakers: Justice A. M. Sapre & Justice A.M. Thipsay

The session commenced by emphasizing the need for having a programme on Negotiable Instrument Act, 1881 for magistrates. It was highlighted that as per the 213th Law Commission of India Report 20% of the pending cases before the courts are that of dishonour of cheque. Therefore, it is significant for the judges to have an in depth understating of the Act, various negotiable instruments and how the negotiable instrument law evolved through ages. This will aid judges to be effectual enough to preside over cheque bounce cases and to do speedy disposal of cases. It was emphasized that negotiable instrument is a document contemplated by a contract which firstly, warrants the payment of money, the promise of or order for conveyance of which is unconditional; secondly, specifies or describes the payee, who is designated on and memorialized by the instrument; and lastly, is capable of change through transfer by valid negotiation of the instrument. Historical development with respect to the origin of the word 'Cheque' in England, Indigenous banking in India, bill of exchange, promissory note also formed an integral part of the discussion.

Session 2 - Contemporary Developments

Speakers: Justice A. M. Sapre & Justice A.M. Thipsay

The session started by emphasizing that the Act has undergone amendments to deal with changing times, keeping in mind speedy disposal of cases associated with the offence of dishonour of cheque. This was followed by a brief discussion on criminalization of default under the Act. Thereafter, key features of the Negotiable Instruments (Amendment) Act, 2018: Sections 143A and 148 were discussed in detail. It was emphasized that amended provisions are likely to contribute towards reducing the pendency of cheque bounce cases in courts. While discussing the key features of the amended act it was emphasized that Section 143A seeks to cap interim compensation to 20% of the cheque amount and this essentially empowers the court trying the offence under Section 138 of the Act. However, Section 148 of the Act specifies that in case the drawer files an appeal against his/her conviction, the Appellant court has the power to direct the drawer to deposit a minimum amount of 20% of the fine or compensation that was awarded by the Trial court. The appellant court may direct to release the amount deposited by the appellant to the complainant at any time during the pendency of the appeal. This amount shall be in addition to the compensation paid at the trial stage. The later part of the session discussed merits and challenges associated with the amended sections.

Session 3 - Nature of Offence under Section 138

Speakers: Justice A.M. Thipsay & Prof. S.P. Srivastava

The session commenced by discussing in detail ingredients required for complying with Section 138 of the Act that is- a person must have drawn a cheque for payment of money to another for discharge of any debt or liability; cheque has been presented to the bank within a period of three months; cheque is returned by the bank unpaid due to insufficient funds or it exceeds the amount arranged to be paid the account by an agreement made with the bank; payee makes a demand for payment of money by giving a notice in writing to the drawer within 15 days of the receipt of information by him from the bank concerning return of the

cheque unpaid; drawer fails to make payment to the payee within 15 days of receipt of the notice. Thereafter, conditions precedent for constituting an offence under Section 138 were elaborated upon. It was stressed that steps laid down by way of the proviso are different from ingredients of the offence which the said provision makes punishable. Accordingly, an offence under Section 138 is complete with the dishonour of the cheque but any court is barred to take cognizance until the complainant does not have the cause of action to file a complaint in terms of clause (c) of the proviso read with Section 142. Briefly, the summoning procedure, scope of inquiry, service of notice and summons was discussed.

Session 4 - Nuances of Trial under Section 138

Speakers: Justice Sanjeev Sachdeva & Justice R. Basant

The session initiated by discussing section 147 of the Act with respect to compounding of offence. It was emphasized that compounding of an offence is not a one-sided or unilateral act and therefore, it cannot be resorted to unless the aggrieved person gives approval. The discussion further highlighted that the explanation to Section 138 of the Act expressly states that the dishonoured cheque must have been received by the complainant against a legally enforceable debt or liability. With regard to the sentence in cheque bounce cases it was accentuated that the section prescribes a sentence up to two years or with fine which may extend to twice the amount or with both. It is also important to understand that if sentence of fine is not imposed, then too the prescribed sentence exists but along with the power under Section 357(3) CrPC that directs payment of compensation. Service of notice under section 138 was briefly discussed. Further, the session elaborately discussed the nuances of trial under section 138 with reference to *Damodar S. Prabhu v Sayed Babalal H* (2010) 5 SCC 663, *Madhya Pradesh State Legal Services Authority Vs. Prateek Jain* (2014) 10 SCC 690 and *Meters and Instruments Private Limited and Ors. Vs. Respondent: Kanchan Mehta* (2018) 1 SCC 560.

Session 5 – Presumption under Section 118 and 139 of the Act

Speakers: Justice Sanjeev Sachdeva, Justice R. Basant & Justice G.Y. Ganoo

The session commenced by highlighting that presumption provided in Section 139 of the Act is akin to presumption envisaged in section 118 of the Act. It is significant to note that section 118 deals with presumptions as to negotiable instruments of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of endorsements, as to stamps and holding of Negotiable Instruments in due course. Furthermore, when execution of a cheque is admitted it creates presumption under Section 139 of the Act. This presumption is no doubt rebuttable at trial but there is no refuting to the fact that the same favours the complainant and shifts the burden to the drawer of the instrument (in case the same is dishonoured) to prove that the instrument was without any lawful consideration. It is to be noted that presumption under Section 139 is frequently read with Section 118 of the Act. Reference was made to *Basalingappa v. Mudibassapa*, 2019 SCC OnLine SC 491, *Laxmi Dyechem v. State of Gujarat*, (2012) 13 SCC 375. With respect to rebutting of presumption reference was made to *Rangappa v. Sri Mohan*, (2010) 11 SCC 441 and it was emphasized that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his own.

Session 6- Offence by Companies and vicarious Liability of Officers of the Company

Speakers: Justice Sanjeev Sachdeva, Justice R. Basant & Justice G.Y. Ganoo

The session accentuated that Section 141 of the Act distinguishes three categories of persons who are brought within the purview of penal liability through the legal fiction envisaged in the section. They are the company itself, every person who was in charge and was responsible of the affairs of the company, and other persons like director or a manager or a secretary or officer of the company, with whose involvement or negligence the company has committed the offence. In this regard, *SMS Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 was discussed. Elaborate references were made to *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330, *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330, *Standard Chartered Bank vs. State of Maharashtra and Ors.* (2016)6SCC 62 and *G. Ramesh vs. Kanike Harish Kumar Ujwal and Ors.* (2019) SCC Online SC 577. It was accentuated that for making directors liable for offences committed by the company under Section 141, there must be explicit averments against directors, showing how and in what manner they were accountable for the conduct of the affairs of the company.

Session 7 – Jurisdictional Development under Section 138

Speakers: Justice Ashutosh Kumar & Justice G.Y. Ganoo

The session underlined that initially there was no provision to determine territorial jurisdiction. But by way of the Amendment Act of 2015, with the insertion of Section 142(2) and 142A in the principal Act the position has been clarified with respect to issues related to the filing of cases for offence committed under section 138. The 2015 Amendment Act, superseded the law as laid down by the Supreme Court in *Dashrath Rupsingh Rathore vs. State of Maharashtra* (2014) 9 SCC 129. It was highlighted that now the legal position has completely changed and the same as laid down in *M/s Bridgestone India Pvt. Ltd. vs. Inderpal Singh* (2016) 2 SCC 75 was discussed in detail. In this case the court held that, the new law vests jurisdiction for initiating proceedings under Section 138, inter alia, in territorial jurisdiction of court where cheque is

delivered for collection (through an account of branch of bank where payee or holder in due course maintains an account). Jurisdictional development under Section 138 of the Act prior and post *K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr*(1999) 7 SCC 129 and the new dimension as given in the case of *Harman Electronics Pvt. Ltd. Vs. National Panasonic India Pvt. Ltd.* (2009) 1 SCC 720 also formed an integral part of the discussion.

Session 8 – Techniques and Tools for Timely Disposal of cases under the Act

Speakers: Justice Ashutosh Kumar & Justice G.Y. Ganoo

The session commenced by highlighting that various amendments to the Act have been done with the objective to enhance timely disposal of cases under the Act. Clarity on the territorial jurisdictional issue by way of Amendment Act 2015 will enhance the disposal rate of cheque bounce cases. The guidelines for summary trials given by the Supreme Court in *Indian Bank Association Vs Union of India* (2014) 5 SCC 590 was discussed in detail. The discussion elaborated presumption under Section 118 and compounding under Section 147 of the Act for the purposes of timely disposal of cases. The participants were suggested strict adherence to the case flow managements rules as notified by their respective high courts. Moreover, the discussion stressed that while presiding over cheque bounce cases a magistrate must try to internalize legal process in day to day hearings, bring in certainty to each hearing, maximize judicial time, essentially manage each day cause list and most importantly do optimal utilization of Information and Communication Technology so that backlog of cases is reduced.