
Territorial Jurisdiction in Cheque Bouncing Cases: Judicial Pronouncements and Negotiable Instruments (Amendment) Bill 2015

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ABSTRACT

Territorial jurisdiction in cheque bouncing cases is a burning issue. From 1999 to 2014 many leading cases were decided by the Hon'ble Supreme Court such as in Bhaskaran case, Dashrath Rupsingh Rathore case etc but the problem to decide the territorial jurisdiction was not solved. To solving the issue new ordinance was issued in June 2015 by the President and now the for this a Bill has been passed by both the houses of the Parliament in winter session which will become the Act after acceptance of the President of India. The issue related to territorial jurisdiction in cheque bouncing cases is discussed in this article.

Key words: Cheque, Banking, Negotiable Instrument, Ordinance, Constitution

INTRODUCTION

Jurisdiction means limitation of the legal authority of each court to hear and decide a case. For a court to be able to decide a case, it has to have jurisdiction. In cheque bouncing cases which court have jurisdiction it was the most awaited question before the court. The principle of territorial jurisdiction laid in *Bhaskaran v Sankaran Vaidhyan Balan*ⁱ, wherein the ruling was that complaints under section 138 of Negotiable Instruments Act, 1881, can be filed at any place other than the place of drawee bank. The perplexity over jurisdiction of courts in cheque bouncing cases was not resolved. It was observed in the case 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 necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below :-

“Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”ⁱⁱ

Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for

the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.

Dashrath Rupsingh Rathod Case

On 1 August 2014, the Supreme Court held in ***Dashrath Rupsingh Rathod v. State of Maharashtra***,ⁱⁱⁱ to bring uniformity and certainty on the issue where such cases can be filed. In this case, a 3-Judge bench of the Supreme Court had held that a cheque bouncing case can be filed only in a court which has the territorial jurisdiction over the place where the cheque is dishonoured by the bank on which it is drawn.

Thus, if a cheque is drawn by a person on his bank account at Mumbai, the cheque dishonour case in respect of this cheque can be filed only in a court at Mumbai within whose territorial jurisdiction the said bank is located. Such a case cannot be filed in any other court at any other place. **For example**, if you are the payee of the cheque and if you present this cheque for clearing at Delhi, it cannot be filed at Delhi. Thus, the uncertainty about the place where such a case can be filed was removed. As per this judgment, the payee of a cheque could not unnecessarily harass the drawer of the cheque by filing the cheque bouncing case at the place of his choice by deliberately choosing a different place for presenting the cheque or for sending the notice, etc.

Difficulties arising from Dashrath Rupsingh Rathod case

- After laying down the principle by the Apex Court in Dashrath Rupsingh Rathod case, many people had raised difficulties about this judgment. This is so because the payee of the cheque had to file the case at the place where the drawer of the cheque has a bank account. Thus, if you reside in Delhi and have a bank account in Delhi, and you get a cheque from a person from his bank account in Mumbai, you'll have to go to Mumbai to file the case, even though the fault for cheque dishonour may be that of the person who gave you the cheque.
- Moreover, the judgment of the Supreme Court was also not clear on another issue as to what would happen in the case of a cheque which is “**at par payable at all branches of the bank**”. Within one month of the above SC decision, a decision of the Bombay High Court on 25.08.2015 in the case of ***Ramanbhai Mathurbhai Patel v. State of Maharashtra 2015 ALLMR(Cri)3131, III(2014)BC693(Bom)*** had created the same uncertainty again in respect of multi-city cheques payable at par in all branches of the bank. This Bombay HC decision laid down that the payee of a multi-city cheque, which is payable at par in all branches of the bank, can choose the place where he wants to present the cheque, and thereafter when it is sent for clearing to the nearest branch of the bank in that city, the court having jurisdiction over that clearing branch has the territorial jurisdiction of the cheque bouncing case. So, in respect of the multi-city cheques, the old problem of uncertainty about territorial jurisdiction of cheque bouncing cases became the same.

Provision for Jurisdiction in cheque bouncing cases: New Bill

As it became the keen need to solve the puzzle (Jurisdiction in cheque bouncing cases) very soon. The President of India promulgated an Ordinance called the “Negotiable Instruments (Amendment) Ordinance, 2015” on 15 June 2015. After expiration of the first ordinance on 22 September 2015, the President of India had promulgated a new ordinance, namely, the Negotiable Instruments (Amendment) Second Ordinance, 2015, which shall be deemed to have come into existence with effect from 15 June 2015. Few Days back the Negotiable Instruments (Amendment) Bill 2015 has been passed^{iv} by both Houses the Lok Sabha and Rajya Sabha in winter session of the Parliament. Now after getting the consent of the President the Bill becomes Act.

As according to the Bill, jurisdiction to file cases of cheque bouncing had been changed and now the case will have to be filed in a court at a place as per the provisions of Section 142(2) of the Negotiable Instruments Act, which had been inserted by the Bill, and even all pending cheque bouncing cases would also be transferred to the courts as per this new provision.

The Bill changed the jurisdiction issue

The Supreme Court judgment and the above Bombay High Court judgment (and, also, all other judgments) were superseded by the Bill. Here is what was done by this Bill.

Firstly, in the Negotiable Instruments Act, 1881, a new sub-section (2) was inserted in Section 142, which laid down as under:

“(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

Secondly, a new Section 142A was inserted in the Negotiable Instruments Act, 1881, which laid down as under:

“142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

PROVISIONS OF THE BILL

The jurisdiction of filing cheque dishonour cases under Section 138 of the Negotiable Instruments Act will now be governed by the provisions of this new Bill as under:

- **Primary Territorial Jurisdiction:** A cheque bouncing case can be filed only in the court at the place where the bank in which the **payee has account** is located. *For example*, if you are based at Delhi and you have an account in a bank in a particular area of Delhi. You receive a cheque from someone in Mumbai. You present your cheque in Delhi in the bank where you have your account. Now, if this cheque is dishonoured, then the cheque bounce case can be filed only in Delhi in the court which has jurisdiction over the area where your bank is located.
- **Subsequently Cases:** Secondly, once you have filed a cheque bounce case in one particular court at a place in this manner, subsequently if there is any other cheque of the same party (drawer) which has also bounced, then all such subsequent cheque bounce cases against the same drawer will also have to be filed **in the same court** (even if you present them in some bank in some other city or area). This will ensure that the drawer of cheques is not harassed by filing multiple cheque bounce cases at different locations. So, even multiple cheque bounce cases against the same party can be filed only in one court even if you present the cheques in different banks at different locations.
- **Transfer of Pending Cases:** Thirdly, all cheque bounce cases which are pending as on 15 June 2015 in different courts in India, will be transferred to the court which has jurisdiction to try such case in the manner mentioned above, i.e., such pending cases will be transferred to the court which has jurisdiction over the place where the bank of the payee is located. If there are multiple cheque bounce cases pending between the same parties as on 15 June 2015, then all such multiple cases will be transferred to the court where the first case has jurisdiction as per above principle.

CONCLUSION

Finally the jurisdiction of filing cheque dishonour cases under Section 138 of the Negotiable Instruments Act is changed by the Negotiable Instruments (Amendment) Bill- 2015 as under:

(1) Now a cheque bouncing case could be filed only in the court at the place where the bank in which the payee has account is located. For example, if you are based at Delhi and you have an account in a bank in a particular area of Delhi. You receive a cheque from someone in Mumbai. You present your cheque in Delhi in the bank where you have your account. Now, if this cheque is dishonoured, then the cheque bounce case could be filed only in Delhi in the court which has jurisdiction over the area where your bank is located.

(2) Secondly, once you have filed a cheque bounce case in one particular court at a place in this manner, subsequently if there is any other cheque of the same party (drawer) which has also bounced, then all such subsequent cheque bounce cases against the same drawer would also have to be filed in the same court (even if you present them in some bank in some other city or area). This would ensure that the drawer of cheques is not harassed by filing multiple cheque bounce cases at different locations. So, even multiple cheque bounce cases against the same party could be filed only in one court even if you presented the cheques in different banks at different locations.

(3) Thirdly, all cheque bounce cases which were pending as on 15 June 2015 in different courts in India, were required to be transferred to the court which had jurisdiction to try such case in the manner mentioned above, i.e., such pending cases were to be transferred to the court which had jurisdiction over the place where the bank of the payee is located. If there are multiple cheque bounce cases pending between the same parties as on 15 June 2015, then all such multiple cases would be transferred to the court where the first case has jurisdiction as per above principle.

Thus, this new Bill introduced some clarity and uniformity in the matter of cheque dishonour cases. This Bill will take care of the interests of the payee of the cheque while at the same time also will also take care that the drawer of the multiple cheques will not be harassed by filing multiple litigations at different locations to harass him (if more than one cheque had bounced). This Bill superseded the Supreme Court decision dated 1 August 2014, *Dashrath Rupsingh Rathod v. State of Maharashtra*⁵ or any other judgment / decision of any court (Supreme Court or High Courts) on this issue.

ENDNOTES:

ⁱ AIR1999SC3762, 1999CriLJ4606, (1999) 7 SCC 510

ⁱⁱ Section 178(d) of the Criminal Procedure Code 1973

ⁱⁱⁱ (2014) 9 SCC 129, AIR2014SC3519

^{iv} Indian Express. Viewed on 14/12/2015. Accessed from <http://indianexpress.com/article/india/india-news-india/parliament-passes-negotiable-instruments-amendment-bill/>

^v (2014) 9 SCC 129

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