



Enhance The Utility Of Cheques In India – Hurdles Should Be Removed In Proceedings Of Dishonour Of Cheques

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Abstract:-

To this day money transactions in business and other activities are made through cheques and other Negotiable Instruments in India. If the transaction through cheque failed the remedies that existed were filing Civil Suit and filing a complaint for the offence of cheating the only ways till 1988. Then the Negotiable Instrument Act is amended and if the cheque is dishonoured it became an offence and punishment is prescribed. There are many amendments made and new provisions are introduced to handle the situations to make the cheque dishonour case proceedings effective. Meanwhile, the government of India is discussing the decriminalisation of the offence of cheque dishonour. Further, even after the inclusion of new provisions, there are difficulties in the Criminal Proceedings of cheque dishonour. The earlier remedies, effects if the amendment of decriminalisation is enforced and existing hurdles in the Criminal Proceedings at present and the way out thereof are discussed in this article.

Keywords:-

Dishonour of Cheque – Remedies – Hurdles in the Criminal Proceedings of Cheque Dishonour and way out thereof.

Introduction:- In India, Money transactions between the people in trade and commerce take place not only by currencies but also through various documents like negotiable instruments such as Cheques and Pronotes. The important issue is if the money owed by the said instruments is unpaid, the legal remedies available and the period to get the relief. Before the year 1988 if the instrument used in the money transaction is a cheque and if the cheque presented in the bank for collection is returned as unpaid and the issue is not settled otherwise, then the remedy for the payee of the cheque is to file a suit or file a private complaint. Then the amendment was introduced in the year 1989 by which cheque dishonour became an offence and punishable. Whether the remedies in case of cheque dishonour are enough to enhance the usage of the cheque is to be discussed.

Remedy through Civil Court:-

As a cheque is also one of the Negotiable Instruments and if for repayment of money, the cheque is issued and returned unpaid then the remedy for the payee of the cheque is to file a suit before the Civil Court for recovery of money. At the same time, if the payee has chosen to file Civil Suit, then he has to bear Court-fees and wait for a considerable period to get the result and relief. Further, the threat of punishment of imprisonment is not there in Civil Suit Proceedings.

Remedy through Private Complaint:-

The payee can also file a Private Complaint before Judicial Magistrate Court for the offence of cheating, stating that the drawer has given the cheque knowing fully well, he had an insufficient amount in his account, Under Section 420 of the Indian Penal Code. In the case of the payee resorted to a private Complaint for an offence Under Section 420 of the Indian Penal code, he has been no remedy to recover the cheque amount. That is the situation till 1988.

Introduction of Section 138 of the Negotiable Instruments Act:-

In such a situation The Negotiable Instrument Act, of 1881 was amended by introducing a new chapter which provided that the act of dishonour of cheque is an offence punishable with fine and imprisonment, as per act 66 of 1988 and which came into force from 1st April 1989. As per the aforesaid amended act the dishonour of a Cheque for the reason of insufficiency of the fund is punishable with one-year imprisonment or a fine of double the

amount of the cheque or both as per Section 138 of N.I.Act. After the amendment Act 55 of 2002, the imprisonment period is modified and the period of imprisonment may be extended to two years with effect from 06.02.2003. While introducing Section 138 of the Negotiable Instruments Act the object of the Amendment Act was to maximize the acceptance of cheques in case of settlement of repayment by introducing that the drawer is liable for punishment.

Decriminalisation:-

Now the Central Government is considering decriminalisation of the offence of Cheque dishonour. If the offence of dishonour of the Cheque is decriminalised by introducing an amendment, then the remedies available to the payee of the cheque are to file Civil Suit and to file a private Complaint against the drawer of the Cheque for the Offence of Cheating. As already pointed out these remedies of filing suit and filing a complaint for the offence of Cheating Under Section 420 of the Indian Penal Code are not give quick and suitable relief. Particularly the payee of the Cheque will not able to get the chance of getting the Cheque amount quickly or shorter period as in the case of proceedings Under Section 138 of N.I. Act. The availability of Section 114 of the Indian Evidence Act, Section 118 of the Negotiable Instruments Act and Section 139 of the Negotiable Instruments Act to support and assist the complainant of offence U/s 138 of the Negotiable Instrument Act is not available in other proceedings.

Difficulties:-

But in the trial proceedings Under Section 138 of the Negotiable Instruments Act, there are difficulties in serving summons to the Respondent/Accused. Suitable Provisions are to be included to overcome the difficulties in service of summons such as order 5 of C.P.C. In W.P(CrL).No.02/2020 Suo Motu writ The Honorable Supreme court has given directions in its order dated 16.04.2021 that treat service of summons in one case Under Section 138 of the Negotiable Instruments Act is to be treated as service of summons in other case filed in the same Court concerning dishonour of Cheques regarding parts of the same transaction.

Likewise, if the Respondent/Accused is absent or purposely not appearing before the Court in the middle of trial proceedings the Court has only the option to issue Bailable Warrant against the Respondent/Accused. Again there is no proper mechanism or institution to execute the said Bailable Warrant against the Respondent/Accused and produce the accused before the

Court except forwarding the Bailable Warrant to the concerned police station for execution along with their heavy and enormous regular work. Though the offence of cheque dishonour is classified as a bailable offence, the Court which is conducting the trial should be given the power to issue a Non-bailable warrant to bring the Respondent/Accused through police and other agencies like Amens, Senior Bailiffs and continue with the proceedings.

Conclusion

Therefore decriminalisation will completely be quashing the object of amending act 66 of 1988 of the Negotiable Instruments Act. And if the above said hurdles in service of summons to the accused and proper execution of Bailable Warrant against the accused are rectified and assure the appearance of the accused before the Court throughout the trial proceedings is guaranteed, it will motivate using of the Cheques then at present and maximize the credibility and utility of the Cheque in India.

