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A CRITICAL ANALYSIS ON THE LATEST AMMENDMENT TO THE PROVISIONS OF THE NEGOTIABLE INSTRUMENTS ACT 1881 (AS AMENDED BY ACT 55 OF 2002)

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"Judgment is nothing but interpretation of law in its true sense" "judgment coupled with justice is the motto of a civilised society"

... Professor Taylor.

who is an eminent British Industrial Psychologist and who aimed at "Equal Justice to all".

"Justice at the door steps"

is the call of the day of the Indian Judiciary. With that aim only, much legislation like Lok Adalats, Alternative Dispute Resolution Scheme for legal disputes and legal literacy camps *etc.*" are being conducted even in remote villages by enlightening the general public by providing the legal awareness to the public and of late, the Honourable High Court of A.P. has made it a point that at least one village under the jurisdiction of a Taluk Chairman of Mandal Legal services committee shall be made a "Dispute Free Village" before 9th of November, which is the Legal Services Day.

Considering the latest amendment to the Negotiable Instruments Act, it is clear that the Government's policy is aimed at

"Justice with economic reforms"

and therefore the Standing Committee on finance and other representations have based their recommendations in formulating the present amendment *i.e.,* Act 55 of 2002, which has liberalised many stringent factors like limitation, compounding of the offences, speedy disposal through summary trial, enhancement of punishment *etc.*

Because of the lack of interpretation of law in its true sense, there arise the so-called "Grounds of Appeal".

Considering the Act 55 of 2002, in brief,.

The substitution of new Section 6 gave a detailed meaning of the cheque in the 'electronic form' and 'truncated cheque', in this computer age. Amendment to Section 64 is also aimed at detecting the fraud, forgery, tampering and destruction of the negotiable instrument, by enabling the drawee bank to demand for further information regarding the truncated cheque. Amendments to Sections 81 and 89 provided for *prima facie* proof of payment with a certificate on the foot of the printout of the electronic image

of a truncated cheque by the banker and detection of material alteration of truncated cheque, which are welcoming measures to check the offences under the Negotiable Instruments Act. Similarly, amendment to Section 131 provided for a duty on the banker to verify the *prima facie* genuineness of the cheque with due diligence and care, which is a settled law, as per the decisions reported in AIR 1938 Allahabad, 374, AIR 1954 Madras 1001 and 1978 (2) APLJ 403.

The amendment to Section 138 provided an extended punishment of 2 years in proviso (a) and in proviso (b), extended the period of demand from 15 days to 30 days which is more helpful to the complainants because the extended punishment of imprisonment for two years will definitely curtail the offences under the act and the extended period of demand of 30 days will give feasibility both to the complainant and accused, to settle dispute outside the Court.

The amendment to Section 141 is a clear indication of the Government's policy of "Justice with economic reforms", which has provided for exemption from prosecution of corporate officials in their discharge of official function. This amendment has given much relief to the corporate officials to work with national and international business organisations in an economically reformative manner, which boost the country's productive ability, international business, and there by increase the Growth Rate as well as foreign exchange reserves.

The amendment to Section 142 of the act after clause (b), providing the proviso has given a great relief to the complainants, which, neither the limitation act nor section 468 Cr.PC could provide. It is a great relief to the complainants to file the complaints even after the limitation period in genuine cases with sufficient cause, which is altogether, a welcoming measure.

Insertion of new Section 143:

"*Power of Court to try cases summarily* :—(1) Not withstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this chapter shall be tried by a Judicial Magistrate of first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees;

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed, or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interest of justice, be continued from day to day, until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing. Every trial under this section shall be concluded as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

On a close reading of this section, the following points arise for consideration.

(i) Almost all the cases are to be tried as summarily as per Section 143(1) of N.I. Act.by numbering the cases as Summary Trial Cases, and not as Calender Cases as has hitherto been done.

(ii) All the trouble arises with the words "as far as may be" because there is no yardstick mentioned or no rules framed, either in terms of pecuniary value of the offence, or in terms of the gravity of the offence prescribed, to number the cases for the offences under the N.I. Act under Sections 262 to 265 Cr.PC. either as CCs or as STCs, with the result, the Courts are put to confusion in numbering the cases initially under which category, but they are to be numbered as STCs only in view of the mandatory provision under clause (1) of Section 143.

(iii) Suppose, the case is numbered as S.T.C initially by applying Sections 262 to 265 Cr.PC., according to clause (1) to Section 143, the punishment shall be for a term not exceeding 3 months and a fine not exceeding five hundred rupees, as per Section 262(2) Cr.PC under Chapter XXI of Cr.PC. in which case the first proviso to clause (1) of Section 143 cannot be implemented for awarding sentence not exceeding one year and a fine exceeding five thousand rupees.

But that restriction do not apply to special laws, because when a special law provides for summary trial of an act or omission which is an offence there under, the limit of 3 months is not applicable and punishment exceeding 3 months may be passed, as per the settled law in the cases reported in AIR 1970 AP 47, and in 1979 Crl.LJ 223. As the N.I. Act is also a special law, the above restriction do not apply to this act also.

(iv) The second proviso under clause (1) of Section143 is a replica of Section 260(2) Cr.PC causes practical difficulty to the Courts because if the Magistrate acts as per this provision, it becomes nothing but revealing the mind of the Court before concluding the trial and before hearing the arguments, which is in no way desirable, which will lead to further complications, such as, the accused seeking for transfer of the case from that Court to another, on the ground of prejudice, *etc.*

Not much case law is available regarding this aspect of causing prejudice to the accused if such procedure is adopted because this Chapter XXI of Criminal Procedure Code deals with only petty offences and they end by admission of the offence and by fine only. Almost no cases under this chapter are taken to the higher Courts to invite a decision on this aspect. The following cases are available which are under the above provision of law under Section 260(2) Cr.PC., AIR 1955 Assam 240; AIR 1969 Guj. 324; 1969 Crl.LJ1046; and 1971 Crl.LJ 1244. But now that as per the second proviso to Section 143(1) is added, to N.I.Act, which is a white collared offence, we may expect more case law in this regard.

In 1969 Crl.L.J 1046, which is a Bench decision, the learned Judges have directed for the application of Section 260(2) Cr.PC.

AIR 1969 Guj. 324 reads thus : Court following summary procedure and after recording substance of evidence framed charge in respect of the offences punishable under Sections 323, 332, and 504 IPC; same procedure continued thereafter - Held Court committed an error in law in continuing same procedure after hearing framed charge under Section 332 IPC and it would not be irregularity curable under Section 537 Cr.PC. The case was remanded to the lower Court with a direction that the trial of the case be entrusted to another Magistrate except the

Magistrate that tried the case earlier, which is almost a separate trial.

AIR 1971 Crl.LJ 1244 reads thus: which is a case disposed by the Gujarath High Court by his Lordship *M.P.Thakkar,* J., : If the mode of trial is to be altered, in the midstream where the offence is such, which cannot be tried in a summary way, the trial must, from its inception, be conducted in the regular manner. It is a case for the offences punishable under Sections 338 and 279 IPC The lower Court has acquitted the accused and the appeal before the Hon'ble High Court was allowed and in exercise of powers under Section 423(1)(a) Cr.PC., the learned Judge directed that the accused be tried by a Magistrate other than the learned Magistrate who acquitted the accused.

By observing the two judgments of the appellate Courts, the mind of the appellate Courts is clear regarding the application of the provision under Section 260 (2) Cr. PC.

(v) However, this Clause No.l of Section 143 has created enough confusion in the mind of the Courts in numbering the cases as CC or as STC. initially and the second proviso to clause (1) has complicated the issue, because, the case has to be first registered as STC as per sections 262 to 265 Cr.PC and the summary trial to be conducted as per the first proviso, and then again it may have to be renumbered as CC by invoking the second proviso if the Magistrate think so.

Clauses (2) and (3) of Section 143 provided for speedy trial by which cases can be disposed of early which is the need of the day for early solution of the cases and for speedy and effective justice coupled with compensation under Section 357 Cr.PC.

Sections 144 and 145 are added because they are similar to the amendment of CPC in 2002 and especially Section 145 which provided for chief examination of the witnesses by way of filing affidavits, is similar to the provision under Order 18 Rule 4 CPC. by which much of the time of the Court can be saved.

Section 146 provided a *prima facie* proof of dishonour of the cheque on production of the return memo issued by the bank, by which the Court can presume the dishonour of cheque as per Section 118 of the N.I. Act. which has solved the very important proof of evidence required under the Evidence Act.

Section 147 has given feasibility for compounding the offences under N.I. Act under Section 320 of the Cr.PC. by which almost all the cases can be settled easily and as such it is a great relief to the accused under the offences under the N.I. Act.

Before amendment, the cases under this act are being numbered as Calendar cases, by which, talking in terms of units prescribed for judicial officers, which gives 1/2 unit for each case, and after amendment, which has increased punishment upto 2 years, if the cases are to be registered as STCs "as far as may be", the units awarded will be decreased to the Magistrates *i.e.,* at 1/4th unit to each STC case, even though the trial of the cases are very lengthy because the offences under this act are white collared offences, and there will be severe contest in such cases.

This amendment is no doubt aimed at providing justice with economic reforms, provided speedy trial and provided many remedial measures, such as relieving the limitation burden and providing for compounding of the offence under Section 320 Cr.PC., *etc.,* and I feel that every one connected with the Indian judiciary will definitely welcome the amendment to the N.I. Act.