

Rules and Regulations to be placed before State Legislature :

Every rule made under Section 109 and every regulation made under Section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

Thus, while the Wakf Boards are established for the protection of wakfs they are also curtailed for misuse of powers. However just use of powers either by the Wakf Boards or by the Governments is always in the interest of the wakf institutions and the wakf properties.

LIABILITY OF DIRECTORS OF A COMPANY FOR THE OFFENCE OF CHEQUE BOUNCING UNDER NEGOTIABLE INSTRUMENTS ACT - A CRITICAL STUDY

By

—MOHD. ABDULLAH,
(Asst. Professor),
Sultan-ul-Uloom College of Law,
Hyderabad

The provisions of the Negotiable Instruments Amendment Act 1988 with its best of the intentions and objectives were incorporated and came into effect from 1st April 1989. This amendment added a new chapter to the Act containing a set of provisions imposing punishment for “Bouncing of Cheque.”

These specific provisions dealing with what is popularly called “Bouncing of Cheque” in reality have been bouncing from one Court to other Court including that of High Courts and the Supreme Court. The bouncing of cheques has become a storm difficult to control and even the judicial process is too painful and too prolonged and taxing the victims. The decisions of the Courts and their interpretations in the matters of bouncing of a cheque vastly varied depending on various aspects of the issue.

This variance and uncertainty was taken advantage by unscrupulous persons and are using the different Court rulings at different points of time and at different levels of judiciary to slip out of the clutches of law.

Section 141 of the Negotiable Instruments Act clearly provides that in case a cheque bounces, the liability rests only on such persons who are responsible to the company for the conduct of the business, though such a person can defend himself by showing that the offence was committed without his knowledge or that he had exercised due diligence to prevent the offence from being committed. Even when a person is not in charge of a company’s affairs but is occupying the position of a director, manager, secretary or other officer, he would also be liable if it can be shown that the offence was committed with his consent or connivance or is attributable to him. According to Amendment Act 2002, where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not liable for prosecution for the offence in the event of dishonour of the cheque.

In fact Section 141 of the N.I. Act which provides that in case a cheque bounces the liability rest only on such persons who are responsible to the company for the conduct of the business. Here attention is drawn to the Amendment 2002, where in Government Directors are exempted from Criminal liability. On the same line an amendment can be added to Section 141 or to add explanatory clause that will explain that those persons who actually sign cheques, the managing director, executive director and whole time directors are only liable and not any other person merely because he is director.

A careful analysis of the Judgments pronounced by our Courts in respect of cheques issued by companies and their Directors has created enough heat and debate because the cheque issued by an ordinary individual and the cheque issued by a company appears to enjoy different status before the Court

To examine and test the presumption the following cases were researched with a critical angle, for a brighter light on the issue.

In *Anil Hada v. Indian Acrylic Ltd.*,¹ it was held that according to Section 141, when the company is the drawer of a cheque which is dishonoured, the company is the principal offender, and the remaining persons, *i.e.*, everyone who was incharge of and was responsible for the business of the company are also made offenders. The provisions do not contain condition that a prosecution of the company is *sine qua non* for prosecution of other persons. Hence, if the prosecution against company is dropped because of winding up of company, the prosecution is maintainable against the directors.

In *M/s. Nagarjuna Finance Ltd. v. M/s. Kanosika Laboratories Ltd., Hyderabad*.² It

was held that criminal proceedings under Section 138 of the Negotiable Instruments Act for dishonour of a cheque, against the company and its Managing Director could not be stayed on the winding up order.

In *Kusum Ingots and Alloys Ltd v. P.P. Securities Ltd.*,³ it was held that the company has been declared sick before the expiry of the period of payment of the cheque amount, would not save it or its directors from the prosecution for the dishonour of the cheque.

In *Goa Plast Pvt Ltd v Chico Ursula D'Souza*,⁴ Supreme Court held that the person responsible becomes liable irrespective of the position or status granted to him in the organization known categories of relationship like master-servant are not material.

In *Shankarlal Sharda v State of N.C.T of Delhi*,⁵ wherein there was dishonour of a cheque issued by the Director of a Company was brought before the Court for establishing Criminal liability under Sections 138 and 141 of the Negotiable Instruments Act 1881. In this case the accused company was directed to be wound up under the provisions of companies Act. As such the accused company or its directors could not have disposed off any asset or effect after winding up order was passed. The cheques issued by the company were payable after issuance of winding up order. The Hon'ble Court held that in such a situation that persons incur Criminal liability only if dishonour of cheque can be attributed to an act or omission on his part, further held that the cause of action cannot accrue at any stage prior to presentation and dishonour of cheques. Held that non of the accused directors of the company can be held responsible for dishonour of cheques because assets of company had already gone out of their hands before cheques became payable.

1. 2000 (1) ALD (Cr.) 25 (SC) = AIR 2000 SC 145

2. 1998 (4) ALD 229 = AIR 1998 AP 396

3. 2000 (1) ALD (Cr.) 770 (SC) = AIR 2000 SC 954.

4. 2004 (1) ALD (Cr.) 309 (SC) = AIR 2004 SC 408

5. AIR 2008 NOC 134 (DEL)

In *Vijaya Manchanda v. M/s Graphline Computer Pvt. Ltd.*,⁶ where in a case of cheque dishonour proceeding against a company the petitioner alleging no concern with cheque or company shown as principal accused, the Court held that no requisite averments were made against, in relation to the person being a director and person incharge and in control and responsible to company for conduct of its business the order taking cognizance and issuing summons to the petitioner liable to be quashed.

In a case between *Director Maruthi Foods and Farms Pvt Ltd v. Basanna Pattekar*,⁷ where in the proceeding under Section 138 of Negotiable Instruments Act where the complainant is a company and it was pleaded before the Court that the complainant is a Director of a company authorize to depose on behalf of the company where no documentary evidence was produced to show that he is the Director of the company and he has been authorized to depose on behalf of the company and even the resolution contending his authority to depose on behalf

of the company is not produced and he himself has plead ignorance about the resolution passed by the board the Court finally acquitted the accused.

In another case between *K.P.G. Nair v. State*,⁸ where in a proceeding under Section 141 of the Negotiable Instruments Act averments made against the executive officer of a company were held to be insufficient to show that he was incharge of and was responsible to the company for conduct of business of the company. Held the order issuing summons to the executive liable to be quashed.

In view of the above cases the factual situation in terms of judicial opinion is that in case of a dishonoured cheque issued by an individual to that of a cheque dishonoured issued by a company, they stand statically on different footings. The practical suggestion given by the author to amend Section 141 to synchronizing the amendment which has come in 2002 barring Government Directors from liability.

RESERVATION UNDER INDIAN CONSTITUTION

By

—B. RAMAIAH, B.A., L.L.M.
VV Palam Post
Khammam Urban and District,
A.P.

Introduction

The concept of “reservation” is one of the crucial factors in the Constitution of India to secure socio-economic justice to the downtrodden people and to bring them to the mainstream of the National life. The political, social and economic inequalities, which existed in our country prior to our

Constitution came into being made many revolutionary and social thinkers to agitate for securing socio-economic and political justice. Consequently, when the Constitution of India was being drafted, the Constitution-makers inserted the concept of ‘equality’ so that no individual shall be treated unequally. They thought that the meaning of ‘equality’ based upon individual achievement was too

6. AIR 2008 NOC 137 (DEL)

7. AIR 2008 NOC 140 (KAR)

8. AIR 2008 NOC 424 (DEL)