

in AIR 2005 AP 1 and 2010 (5) ALD 578 by process of reference to a Larger Bench for determining authoritative precedent in the light of several authoritative pronouncements and to bring uniformity in understanding the scope, nature and ambit of the Section 69 of the Indian Partnership Act. The finality to the concept of registration of firm as

envisaged under Section 69 of the Indian Partnership Act is still unattained leaving open to the Advocates, law students and legal luminaries to pick and choose judicial pronouncements of their choice, which indirectly is likely to hinder proper and effective adjudication by the fraternity of Hon'ble Judges also.

Is Chapter-XVII of Negotiable Instruments Act 1881 (Central Act No.26 of 1881), titled as "Of Penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts" still in force in the teeth of "The Repealing and Amending Act, 2001 (Central Act 30 of 2001)" which received the assent of the President of India on 3.9.2001 and was also published in Gazette of India, Extra Part-II, S.I, dated 3.9.2001 P.P.1-15) ?

By

**—VARAHAGIRI PRASADA RAO, B.Sc. (Hon.), B.L.
Bobbili, Vizianagaram District**

(i) The Negotiable Instruments Act 1881 (Act No.26 of 1881) originally consisted of 16 chapters containing Sections 1 to 137 only. Thereafter, Chapter-XVII was added in 1885 containing Sections 138 and 139, titled as "Notaries Public" by Negotiable Instruments Act 1885 (Act 2 of 1885), Section 10. Sections 138 and 139 dealt with power to appoint notaries public and power to make rules for notaries public. The said Amendment to the main Act by way of adding Chapter XVII came partly to be again amended by Act 12 of 1891, Section 4 and Section 1 known as "Enactments repealed. Repealed by Amending Act 1891 (Act 12 of 1891), Section 2 and Schedule-I. At last in 1956, the said Chapter XVII was wholly repealed by the Notaries Act, 1952 (Act 53 of 1952) Section 16 with effect from 14.2.1956. So, after 14.2.1956, there was no Chapter XVII at all and there used to be 137 sections only in the N.I. Act, 1881.

(ii) While so, in 1988, Parliament again amended the N.I. Act, 1881 by way of

adding Chapter XVII with effect from 1.4.1989, by way of passing an Act by name, "Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment Act) 1988 (Act No.66 of 1988) with effect from 1.4.1989 containing Sections 138 to 142 and further amended Chapter XVII by way of adding Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002) *w.e.f.* 6.2.2003. Thus Chapter XVII contains Sections 138 to 147 by 2003.

(iii) While so, Parliament again passed an Act known as "Repealing and Amending Act 2001 (Act 30 of 2001) with effect from 3.9.2001 and the said Act received the assent of the President on 3.9.2001 and was also published in Gazette of India Extra, Part-II Section-I, dated 3.9.2001 P.P.1-15), As per the said Act 30 of 2001, number of Central Acts were repealed in whole or in part. The Act, "Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988 (Act 66 of 1988)" was wholly

repealed by “Repealing and Amending Act, 2001 (Act 30 of 2001) as per Section 3 and the First Schedule of the said Act. Thus “The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988 (Act 66 of 1988)”, incorporating Chapter XVII *w.e.f.* 1.4.1989 in the Negotiable Instruments Act, 1881 (Act 26 of 1881) was repealed in whole by “Repealing and Amending Act, 2001 (Act 30 of 2001) *w.e.f.* 3.9.2001. Consequently, under the eye of law, on and after 3.9.2001, there is no chapter like Chapter XVII in the Negotiable Instruments Act 1991 and hence there is no offence like dishonour of cheque as contemplated under Section 138 of N.I. Act and hence there can be no punishment under Section 142 of N.I. Act, as the so-called offence like bouncing or dishonouring of a cheque is not at all a statutory offence under Section 138 and hence punishable under Section 142 of N.I. Act on and after passing of the above mentioned Act, to wit, “The Repeal and Amending Act, 2001 (Act 30 of 2001) *w.e.f.* 3.9.2001; but, the pity is, this Act 30 of 2001 had not been being considered by Courts including Apex Court and even till today dishonour of cheque is being considered as an offence and cheque-drawers are being tried for the said offence by the Magistrates and such persons are being convicted or acquitted on factual aspects, which are being again confirmed or not confirmed by the Courts including High Courts and Supreme Court.

(iv) In this context, it will be of much use if the important provisions of “Repealing and Amending Act, 2001 (Act No.30 of 2001)” are considered.

The Repealing and Amending Act 2001
(Act 30 of 2001)

*[Received the assent of President on 3.9.2001
and published in Gazette of India, dated
3.9.2001 Pt.II S.I. Ext.P1 (No.37)]*

An act of repeal certain enactments and
to amend certain other enactments. Be it

enacted by Parliament in the fifty second
year of the Republic of India as follows :

(1) *Short title* – This Act may be called the
Repealing and Amending Act, 2001.

(2) *Repeal of certain enactments* – The
enactments specified in the First Schedule
are hereby repealed to the extent
mentioned in the fourth column thereof.

(3) *Amendment of certain enactments* – The
enactments mentioned in the second
schedule are hereby amended to the extent
and the manner mentioned in the fourth
column thereof.

(4) *Savings* – The repeal by this Act of
any enactment shall not affect any other
enactment in which the repealed enactment
has been applied, incorporated or referred
to and this Act shall not affect the validity,
invalidity effect or consequences of
anything already done or suffered or any
right, title, obligation or liability already
acquired, accrued or incurred or any
remedy or proceeding in respect thereof
or any release or discharge or from any
debt, penalty, obligation, liability, claim or
demand or any indemnity already granted
or the proof of any past act or thing, nor
shall this Act affect any principle or rule
of law or established jurisdiction from or
course of pleading, practice or procedure
or existing usage, custom, privilege,
restriction, exemption, office or
appointment, notwithstanding that the
same respectively may have been in any
manner affirmed or recognized or derived
by in or from any enactment hereby
repealed, nor shall the repeal by this Act
of any enactment revive or restore any
jurisdiction, office, custom, liability, right,
title, privilege, restriction, exemption, usage,
practice, procedure or other matter or
thing not existing or in force.

The First Schedule

(See Section 2)

Repeals

Year No.	Act No.	Short title	Extent of Repeal
-----	-----	-----	-----
1988	66	The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988.	The whole

Second Schedule

(See Section 3)

Amendments

(v) I request the readers to scrutinize Section 4 of Act 30 of 2001 analytically, as mere superficial reading of it may apparently appear that the said Chapter XVII is still on the statute book, which is not for the following reasons :

(a) If Chapter XVII is still in force even after passing of Act 30 of 2001 – which clearly declared that Act 66 of 1988 was repealed in whole – why shall the Parliament pass the Act 30 of 2001 at all ? If it is to be understood that Chapter XVII is still in force, where is the necessity for the Parliament to pass Act 30 of 2001 ? Is it necessary for the Parliament to pass an Act, affirmatively stating that a particular Act is still in force ? If that is so, as there are innumerable number of Acts passed by Parliament day in and day out, the Parliament has to pass equal number of innumerable enactments daily confirming the existing laws. It is a meaningless interpretation of statutes, requiring the Parliament to pass another set of Acts confirming the Acts in force daily. If Act 30 of 2001 is not passed, Act 66 of 1988 continues to be in force and as such, there is no necessity for the Parliament

to declare that Act 66 of 1988 is still in force, if the interpretation, to wit, that, even after passing of Act 30 of 2001, Act 68 of 1988, shall be deemed to be in force on the statute book is to be accepted as correct. Section 4 of Act 30 of 2001 ought to have been drafted as follows : “The repeal by this Act of any enactment shall not affect the repealed enactment, which was already incorporated, applied or referred in any other enactment instead of in the way in which it was drafted, to wit, ‘The repeal by this Act of any enactment shall not effect any other enactment in which the repealed enactment was applied, incorporated or referred.....’” So, viewed in any angle, Act 30 of 2001 has got to be interpreted according to its own tenor, which already declares that Act 66 of 1988 was repealed in whole; and, as such, it is baseless and meaningless to argue that, even though Act 66 of 1988 was wholly repealed by Act 30 of 2001, still Act 66 of 1988 is in force. If so, what meaning can be attributed to Act 30 of 2001 in the teeth of its explicit declaration that Act 66 of 1988 was wholly repealed ?

(b) Section 4 of Act 30 of 2001 starts as follows :

“The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to and.....”.

It is settled law of interpretation of the statutes and the words and phrases used therein that, the actual meaning of them should only be looked into and no extraneous views or intentions should be borrowed for interpretation and it is also settled proposition that, while interpreting a statute, no other words, phrases or clauses should be brought in aid, unless, while doing so, the doctrine of incorporation comes to aid, which again should be apparent from the phraseology used in the impugned Act. Section 6 of Central General Clauses Act, 1897 also gives such mandate only.

If we interpret Section 4 threadbare, the following comes to forefront.

- (i) It refers to about three to four hundred Acts mentioned in first schedule which are repealed in whole or in part.
- (ii) There must be another enactment in which the repealed enactment was referred, applied or incorporated.
- (iii) On account of the said repeal, the other enactment in which the repealed enactment was incorporated will not be affected.

So, it is crystal clear that Chapter XVII was incorporated in N.I. Act by virtue of Act 66 of 1988. So, on and after passing of Act 66 of 1988, Chapter XVII was also included in the parent Act and the whole is called N.I. Act, 1881 after Act 66 of 1988. If Act 66 of 1988 was repealed, by Act 30 of 2001, it means that Chapter XVII in N.I. Act 1881, only was dropped and the original N.I. Act 1881 with its sixteen chapters will be in force. It cannot be for a moment visualized that, even though Chapter XVII of N.I. Act, 1881 which was inserted in 1988 by Act 66 of 1988 was repealed by Act 30 of 2001, the said Act 66 of 1988, will be still in force and consequently Chapter XVII is still in force. If that is the way of interpretation of Act 66 of 1988, in the teeth of Act 30 of 2001, what is the view, intention and purpose of enacting Act 30 of 2001? Can it be said that, even though Act 66 of 1988 is repealed by Act 30 of 2001, Act 66 of 1988 shall be deemed to be in force, inasmuch as it has become incorporated in the parent Act by the time of passing of Act 30 of 2001? Such a view amounts to contradiction in terms and dovetails to a galaxy of whimsical and eccentric way of interpretation of statutes, which a layman also cannot appreciate; to add to this interpretation of English Grammar also has its important role to play. In Section 4, the subject part is, "The repeal by

this Act of any enactment", the verb is, "shall not affect", the object part is, "any other enactment". The other clause that follow the object "any other enactment", in which the repealed enactment has been applied, incorporated, or referred to is an analytical clause. "The analytical clause is an "adjective clause" qualifying the noun "any other enactment". The verb "shall not affect" is a transitive verb and its object is, "any other enactment". The analytical clause qualifying the object, "any other enactment" is not the "direct object" or "indirect object" of the transitive verb "shall not affect". The said analytical clause or subordinate clause is not a noun clause, being not the object of a transitive verb or subject of a verb, but it is only an adjective clause, qualifying the noun (Object in this sentence) "any other enactment". So, the adjective clause has no role to play in the said sentence except to qualify the noun, "any other enactment". So, according to grammatical interpretation also, the verb "shall not affect" has got every relevancy with its object, "any other enactment" and it has nothing to do with the subordinate clause. In the instant case, "any other enactment" has to be referred to as meaning "The Negotiable Instruments Act 1881 (Act 26 of 1881)".

So, viewed in any angle, I humbly state with all my little knowledge, honesty, integrity and sincerity that Chapter XVII of Negotiable Instruments Act, 1881 (Act 26 of 1881) has been no more on the statute book right from the passing of Act 30 of 2001 with effect from 3.9.2001 and as this Act has not been brought to the notice of the Courts including Apex Court, a volley of cases relating to the so-called offence under Section 138 of N.I. Act, 1881 (Act 26 of 1881) have had been being tried and disposed either punishing or acquitting the drawyer of the cheque for no fault of his in giving a cheque to the drawyee, which gives purely a civil right to obtain a decree for money, like a promissory note. Anyway, this aspect was not considered

by any Court including Supreme Court till today, holding or negating my honest opinion. I appreciate and accept with respectful thanks any criticism from the legal faculty or other gentry, as, this subject is a

highly important point dealing with fundamental rights of a citizen, for it is the constitutional mandate that no citizen of this country shall be punished for no offence at all.

The decision reported in 2011 (3) ALD 771 = 2011 (4) ALT 345 (Mamidi Sambasiva Rao v. Bali Ammanna and another) is *per incuriam*, as it does not refer to the amendment made to Section 4(1)(b) of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act No.9 of 1977) by Amendment Act 2008 (Act No.21 of 2008) with effect from 6.5.2008 relating to transfers made on or before 29.1.2007.

By

—VARAHAGIRI PRASADA RAO, B.Sc. (Hon.), B.L.
Bobbili, Vizianagaram District

1. The facts in the above cited decision are simple. The suit schedule property admeasuring 73 square yards, a residential site with premises bearing No.6/339 with Assessment No.6781, consisting of two rooms with cement sheet roof, was originally assigned to the second defendant under a Patta dated : 10.10.2010. The second defendant died and so his legal representatives 3 to 6 were added as parties to the suit. The plaintiff claims that he purchased the suit schedule property from the deceased second defendant under an agreement of sale dated 3.1.1990 for a consideration of Rs.5,000/- and he obtained a decree in OS 152 of 1999 dated 28.4.2000. Pursuant to the said decree, the plaintiff (D.Hr.) filed EP 148 of 2001, seeking a direction to the defendants/J.Drs. to execute a registered sale deed. The defendants/J.Drs. resisted the claim of the plaintiff/D.Hr., contending that the plaintiff D.Hr. obtained an *ex parte* decree and the property in question is a Government poramboke land and that it was assigned by the Government to the second defendant *i.e.*, the father of defendants 3 to 6 and since it is an assigned land for construction of a house, the same cannot be alienated and the agreement of sale is hit

under the provisions of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (Act 9 of 1977). It is to be understood that the said E.P. 148 of 2001 filed by the plaintiff (D.Hr.) under Order 21 Rule 34 CP Code must have been dismissed by the executing Court, as, from the reported decision, CMA 15/2004 was filed in the Court of Additional Senior Civil Judge (Fast Track Court), Gudiwada, which, in turn, dismissed the same on 28.7.2004, against which CRP No.856 of 2006, was filed in High Court, which was also dismissed on 20.1.2011. The said dismissal of CRP 856/2006 is, according to my honest opinion, *per incuriam*.

2. In the original Act 9 of 1977, Section 4(1) declared that, if the District Collector is satisfied that the provisions of sub-section (1) Section 3 have been contravened in respect of any assigned land, he or any other officer not below the rank of a Tahsildar, authorized by him in this behalf, may, by order

- (a) take possession of the assigned land, after writing the person in possession...and;