

# Paramount Law Times Newsletter



*(For uptodating law and events)*

**2014-15 – (second half)**

**Issue no 0010**

**Dated 05 August, 2014**

## **Welcome Announcement**

We feel privilege to share with all that Justice S. D. Anand (Retired, Judge Punjab and Haryana High Court) has very graciously agreed to share with us all **HIS PERSPECTIVE OF MATTERS OF PUBLIC CONCERN CENTERED AROUND OUR JUDICIARY.**

This issue carries first write up of Justice S. D. Anand.

\*

## **Legal Audit and Moral Audit Services**

Paramount Law Consultants Ltd., Delhi has completed its research and is taking up legal audit and moral audit services for the CorporateS.

Subhash Nagpal  
Chairman

Paramount Law Consultants Ltd., Delhi

## **MY PERSPECTIVE**

**Justice S. D. Anand (Retd.)**

**Accountability (of Judges) legislation ?  
----- Not really needed but welcome !**

**Tinkering with Collegium system in currency -  
----- A big No-No.**

Though the in-house mechanism, at the hands of the Apex Court, for taking care of the microscopic ‘aberrant’ has been proved to have been functioning effectively, the bringing in of a documentation for fixture of accountability in the form of a legislation, is welcome. Those authorized to legislate must, however, deliberate the legislation in length amongst themselves but also consult the stake holders and leaders of the legal profession. Care must be taken to ensure that any clause in the legislation does not facilitate vexatious complaints and it further does not adversely affect the ambience of the judicial institution.

The tinkering with of the Collegium system would, however, erode the independence of Judiciary. While certain quarters may be of the opinion that there is scope for improvement in the eligibility/credential verification, the job of elevating Judges must be left to the primacy of the collegium. Flawing the Collegium system, on the whole, is not a very appropriate thought.

Hope that a debate, thorough in character within the legislative precincts and at the outside lawful forums, would lead to an outcome in the larger interest of the citizenry. The media reports about hurrying through such a legislation of momentous hue would not be in order.

\*

## **TERRITORIAL JURISDICTION**

### **IN 'DISHONoured - CHEQUES' CASES U/S 138 NEGOTIABLE INSTRUMENT ACT**

**Dr. S. K. Kapoor**  
*Ved Ratan*

#### **I**

#### **Territorial Jurisdiction of Criminal Courts**

1. **Section 177** of Code of Criminal Procedure, 1973 provides for ordinary place of inquiry and trial. This statutory provisions specifically ordains:

#### ***Section 177 Ordinary Place of Inquiry and Trial***

*“Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”*

#### **II**

#### **Territorial Jurisdiction in respect of complaints under Section 138 of N. I. Act**

2. Supreme Court in its judgment dated 01 August, 2014 in Criminal Appeal No. 2287 of 2009 titled as **Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr.** has settled the law regarding ‘Territorial Jurisdiction’ in respect of complaints under Section 138 of N. I. Act regarding dishonoured cheques **is where the Bank on which the cheque stood drawn”**
3. The main Full Bench Judgment dated 01 August, 2014 under reference, is also supplemented by the Judgment of Hon’ble Justice Mr. T. S. Thakur wherein the decision has been summed up by way of para no 31 as under:

“31. To sum up:

- (i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.
- (ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

- (iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if
  - (a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.
  - (b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and
  - (c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.
- (iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.
- (v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.
- (vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.
- (vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.”

### III

#### For reaching implications of the decision

4. The full Bench judgment dated 01 August, 2014 under reference, makes us conscious particularly in its para no 20, about the implications of the decision, regarding the pending complaints under section 138 of the N.I. Act as well.

Link of the above referred Judgment

<http://judis.nic.in/supremecourt/imgs1.aspx?filename=41801>

\*