SECTION 145 N.I. ACT VI-A-VIS SECTION 200 Cr.P.C.

The relevant portion of the provisions of Section 145 is as follows :

> **"***Evidence on affidavit – (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, (2 of 1974), the evidence of the complainant may be given by him on affidavit and may subject to all just exceptions be read in evidence in any inquiry, trial or other proceeding.....*"

The question is does this provision enable the Court to dispense with the examination of the complainant as mandated by Section 200 Cr.P.C. in dealing with a complaint filed under Section 138 of the N.I. Act. Four steps to reach a correct answer to the question will be (1) to understand the scope of the clause beginning with the word "notwithstanding" and ending with the words "(2 to 1974)" indicated in books on Interpretation of Statutes as the non obstante clause, (2) to understand the meaning of the word "evidence" in the enacting part of Section 145(1) quoted above; (3) to see whether the meaning of the word evidence arrived at in the exercise to answer the question posed above accords with the object and reasons for the amended provisions and lastly (4) to apply the provision of Section 4/5 Cr.P.C..

1. THE NON OBSTANTE CLAUSE

In principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition 2004 at page 318 to page 327 a very detailed account as regards the scope of the non-obstante clause can be read. A large number of English cases and cases from the Supreme Court also has been digested by the author in those pages of the book. A perusal of some of these decisions yields the principle that a provision beginning with a non obstante clause has to be interpreted by first ascertaining the meaning of the enacting part of the provision (in this case the word evidence of the complainant) in accordance with its natural and ordinary meaning and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in the relevant existing law (in this case Section 200 Cr.P..C.) which is in consistent with the new enactment (in this case Section 145 N.I. Act)- This has been paraphrased from ASHWINI KUMAR Vs ARABINDA BOSE, AIR 1952 S.C. 352 which has been quoted in umpteen number of decisions till date. Thus the natural and ordinary meaning of the word evidence in the enacting part of Section 145 N.I. Act is crucial to a correct answer to the question attempted to be answered here.

2. THE MEANING OF THE WORD "EVIDENCE".

The scheme of Section 200, 202 and 203 of the Cr.P.C. has been considered in a few decisions of the Supreme Court, Nirmaljit Singh, AIR 1972 S.C. 2639 is one of among them. These decisions say that the object of the examination on oath of the complainant and his witness (if any) under Section 200 Cr.P.C. and/or of the enquiry under Section 202 Cr.P.C. where "evidence of witness on oath" may be taken is to asertain whether there is a prima-faci case against the accused and to prevent issue of process on a complaint which is either false or vexatious. There appears no doubt that the

proceedings whether under Section 200 Cr.P.C. or under Section 202 Cr.P.C. having the common object indicated above are judicial proceedings within Section 2(i) Cr.P.C. where evidence is or may be legally taken on oath. Any text Book on the Evidence Act says that the word evidence as used in judicial proceedings has several meanings and that the definition of Evidence in Section 3 of the Evidence Act is "incomplete" and that the same is only for the purpose of the Evidence Act. Looking at Law Dictionaries one finds in BLACK'S LAW DICTIONARY (8TH Edition) from pages 595 to 600 several entries in that regard. For purpose of a judicial proceeding "examination" and "Oath" are legal concepts indicated respectively in the Evidence Act, 1872 and the Oaths Act 1969. Whether the expression "examination upon oath the complainant" is equivalent to "taking of evidence of the complainant" can be looked at from the angle of the offence of perjury under Section 191/193 I.P.C. In BHAGIRATHI Vs Emperor AIR 1926 Nagpur 141 the point came up. If the subsequent deposition at the trial contradicts the statement on oath made under Section 200 Cr.P.C. there can be a prosecution for giving false evidence. Thus equivalence of the two expressions had been accepted. Merely because recroding of the statement on oath made under Section 200 Cr.P.C. cannot be used as evidence at the trial against the accused statement does not lose the character of evidence which as indicated earlier has several facets and meanings. Above all even the package of Sections 200 Cr.P.C. and 202 Cr.P.C. has used the words "examination on oath" and "taking of evidence" interchangeably. One may point to the two expressions in Section 202 (2) Cr.P.C. and its proviso.

From all the above the conclusion is that the expression "evidence of the complainant" in the enacting part of Section 145(1) is equivalent to "examination of the complainant on oath" paraphrased from Section 200 Cr.P.C..

3. THE OBJECT AND REASON :

In AIR 1958 S.C. 353 at page 356, AIR 1958 S.C. 414 at page 416 and AIR 1976 S.C. 2386 at page 2389 the following passage from Maxwell on The Interpretation of Statutes, 12th Edition, page 76 can be read thus :-

> **"***The words of a statute, when there is doubt about their meaning, are to be understood in the sense which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained***."**

Then there is the well known Rule in Heydon's case also called the Mischief Rule or the Rule of purposive construction essence of which is that when the material words in s statute are capable of bearing two or more meanings, the rule directs that the meaning which suppresses the mischief and advances the remedy has to be preferred.

The five paragraph statement of objects and Reasons of Amending Act of 2002 at paragraph 1 lists the "mischief" in the Original Act. At para 2 and 3 details the exercise undertaken to prepare the Bill and at para 4 lists the eleven items of amendment that is the "remedy". Of particular interest is item "(iv)" of the remedies which is "to prescribe procedure for dispensing with preliminary evidence of the complainant." At para 5 the

statement begins thus : "The proposed amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques." The avowed object of the amendments like that of the Code of Civil Procedure (Amendment) Acts of 1999 and 2002 which introduced provision for affidavit in Section 27 C.P.C. and affidavit evidence in Order 18 being speedy disposal no wonder that Section 145 of N.I. Act introduced affidavit evidence at least for the complainant. Even if it is held that examination of the complainant on oath is something other than evidence these words on the principles and extracts from precedents quoted above have to be interpreted to achieve the object of the enactment stated in the statement of Objects and Reasons.

4. SECTION 4/5 Cr.P.C.

Section 145 N.I. Act is a "Special or Local Law" and enacts a "Special form of procedure prescribed by any other law" within Section 5 of Cr.P.C. and as such nothing including Section 200 Cr.P.C. can affect Section 145 N.I. Act. All the four steps thus completed the answer to the question is that the Court may and should act on the affidavit evidence of the complainant both at the stage of the proceeding under Section 200 Cr.P.C. and at the trial stage as well.

THE CASE LAW

Till now informations as regards Six Reported Decisions on the point from Five different High Courts are available. These decisions have been reported as :

1. **GULAM HIDAR ALI KHAN –VS- MANAGING PARTNERS, SHIRDI SAI FINANCE CORPORATION, 2006 (6) ALJ 700- Andhra Pradesh High Court.**

2. **MAMATADEVI –VS- PUSHPADEVI 2005(2) Mah.L.J. 1003- Bombay High Court.**

3. **MAHARAJA DEVELOPERS –VS- UDAY SINGH PRATAP SINGHDEO BHONSLE 2007 Cri.L.J. 2207 – Bombay High Court**

4. **K. SRINIVASA –VS- KASHINATH 2004 Cri.L.J. 4566 – Karnataka High Court.**

5. **VINOD SINGH NEGI –VS- STATE 2005 Cri.L.J. 3827- Uttaranchal High Court.**

6. **PANDA LEASING AND PROPERTIES –VS- HEMANT KUMAR MAHARANA, 2006(2) Crimes 220 – Orissa High Court.**

Except 2007 Cr.L.J. 2207 listed at Sl.3 all the other Five decisions are in conformity with the view propounded above. Surprisingly none of the first three steps discussed above have been considered in this Division Bench decisions of the Bombay High Court and step No.4 was considered only partially.

A close perusal of the Judgment yields the followings :

(a) It has disposed of the decision listed at Sl. No.2 of the same High Court as being only an Obiter dicta.

(b) It principally relied on two Judgments namely; 2000 Cri.L.J. 125 and AIR 2001 S.C. 567- both of which could not have and indeed did not have anything to do with Section 145 of N.I. Act at all, both of which are decisions dealing with Section 142 of N.I. Act.

(c) Reliance on AIR 2001 S.C. 567 is so heavy that even statutory provision of Section 5 of Cr.P.C. was read and considered only to the extent it was considered by the Supreme Court – For purpose of interpreting the scope of the Section 142 N.I. Act, which also began with a non-obstante clause the Supreme Court in AIR 2001 sc 567 considered Section 4 and 5 of the Cr.P.C. and concluded that since Section 142 did not confer any "special jurisdiction or power" of punishment to Magistrates beyond what is there in Section 29(2) Cr.P.C. Section 145 is concerned not with "special jurisdiction or power" but with "special form of procedure prescribed by any other law", the second of the two categories in Section 5 of Cr.P.C.,

(d) At the risk of repetition it has to be stated that the crux of the question is whether "examination on oath of the complainant" in Section 200 Cr.P.C. amounts to "evidence" the word mentioned in the enacting part of Section 145 N.I. Act. The Judgment is totally silent on this crucial aspect of the question.

(e) It has disposed of judgments of Andhrapradesh, Karnataka, Orissa and Uttaranchal High Court judgments supporting the contrary view on the fallacious ground that these judgments are in the teeth of AIR 2001 S.C. 567.

(f) It found no occasion to consider Objects and Reason of the amendment Act. This has happened despite the fact that 2004 Cr.L.J. 4566 from Karnataka High Court based primarily on the Objects and Reasons was placed before the Division Bench of the Bombay High Court.

The route taken to reach the conclusion in 2007 Cr.L.J. 2207 thus is wrong and the resultant conclusion is erroneous.

There is no Judgment of our High Court nor of the Supreme Court on the question considered here. Therefore the subordinate Judiciary within the jurisdiction of Gauhati High Court need not follow 2007 Cr.L.J. 2207 and following the decisions of the High Courts of Andhra Pradesh, Karnataka, Orissa and Uttaranchal may continue to dispense with the examination of the complainant on oath under Section 200 Cr.P.C. and to act on the affidavit filed by the complainant as provided in Section 145 of the N.I. Act.