

# LEGALFOXES LAW TIMES

## “DISHONOUR OF CHEQUE UNDER NEGOTIABLE INSTRUMENT ACT 1881”

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### **ABSTRACT**

Section Thirty of the Negotiable Instruments Act, 1881 defines the criminal obligation of the drawer in which the drawer is needed to compensate the holder of cheque in case of dishonour through the drawee. In this example, it's far the drawer's however now not the drawee's fault. Section Thirty-One of the Negotiable Instruments Act, 1881 defines the felony duty of the drawee in which drawee is wanted to pay the obligated amount of money to the holder of cheque even as there are sufficient finances inside the drawer's account applicable to the fee of the cheque. If the drawee fails to pay the considered necessary quantity with none lawful justification, in this case, it's miles the drawee's however not the drawer's fault. In unique phrases, crook hints can't be have a look at genuinely due to the fact they may be open to judicial interpretation due to the subjectivity of the times which might be brought earlier than the Judiciary. Similarly, Section Liability of the drawer is state of affairs to dishonor of cheque. Dishonor of cheques as cited in Section 138 of the Negotiable Instruments Act, 1881 is because of insufficient price range inside the drawer's account or due to the amount mentioned within the cheque exceeds the amount that can be paid thru the financial institution below an association among the monetary organization and the drawer of the cheque. However, there also are considered one of a type reasons for dishonor of cheques - Account Closed, Stop Payment Instructions, Refer to Drawer and Not A Clearing Member - that aren't explicitly mentioned.

### **INTRODUCTION**

Negotiable instrument in exercise method a piece of paper containing in writing a proper entitling the holder to say normally cash but once in a while perfect. For the purpose of the Negotiable Instrument Act a “negotiable device” method a promissory be conscious, bill of alternate or cheque. According to Section 6 of the Negotiable Instruments Act, 1881. A “cheque” is a bill of trade drawn on a particular banker and not expressed to be payable otherwise than on call for and it includes the virtual photograph of a truncated cheque and cheque within the virtual shape. In different phrases, a cheque consists of a mandate of the drawer to his banker to pay a particular sum of money to the bearer or the individual stated therein or to his order.<sup>1</sup>

Cheques are used in almost all transactions such as re-payment of loan, payment of salary, bills, fees, etc. A vast majority of cheques are processed and cleared by banks on daily basis. Cheques are issued for the reason of securing proof of payment. Nevertheless, cheques remain a reliable method of payment for many people. On the other hand, it is always advisable to issue crossed

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<sup>1</sup> Pushpanjali Sood, *Dishonour of Cheque: An Overview*, 2 *International Journal Of Law*, 8-11 (2016)

“Account Payee Only” cheques in order to avoid its misuse. A cheque is a negotiable instrument. Crossed and account payee cheques are not negotiable by any person other than the payee. The cheques have to be deposited into the payee's bank account. Legally, the author of the cheque is called ‘drawer’, the person in whose favour, the cheque is drawn is called ‘payee’, and the bank who is directed to pay the amount is known as ‘drawee’. However, cases of cheque bounce are common these days. Sometimes cheques bearing large amounts remain unpaid and are returned by the bank on which they are drawn. A cheque which is issued by the drawer is valid for three months only from the date of issue as per the RBI guidelines earlier it was valid for six months but now it has been reduced to three months.

### **DIFFERENT TYPES OF CHEQUE:**

#### **BEARER CHEQUE**

A man or woman keeping the cheque can withdraw the quantity (simplest if it is signed). Such shape of cheques are very volatile and in case out of region can purpose lack of the quantity mentioned at the cheque.

#### **CROSSED CHEQUE**

A bearer cheque becomes a crossed cheque via way of way of crossing it times with parallel lines on the left-hand top corner. Only person call written on it can get the quantity transferred to his account.

#### **SELF CHEQUE**

As the decision shows the account holders name is written on it to encash cash in physical form from the branch wherein he holds his account.

#### **POST DATED CHEQUE**

Post-dated Cheques are cheques issued with a destiny date on it. Once a cheque is issued it'll be legitimate for three months. It is used for enterprise functions or the making of charge in a destiny date.

#### **BANKER'S CHEQUE**

Such cheques are issued thru the financial group itself and ensures a charge.

#### **TRAVELER'S CHEQUE**

Such cheques can be used for withdrawal of cash on the identical time as touring. It is equal to sporting cash however you may be able to adventure thoroughly with out carrying huge amount. They can be encashed distant places wherein foreign places forex is normally appropriate.

Dishonour is 2 of kinds:

- *Dishonour of bill of change by means of way of non-popularity*
- *Dishonour of promissory study, bill of change or cheque via non-fee*

When presentment for price is made and the maker, acceptor or drawee, due to the reality the case can be, makes default in making the price, there can be dishonour of the tool. And moreover if there are sure times even as presentment for charge is excused and the device is deemed to be dishonoured even without presentment<sup>2</sup>. Thus even as the maker, acceptor or drawee intentionally prevents the presentment of the device is deemed to be dishonoured even without presentment.

### NOTICE OF DISHONOUR

- Notice of dishonour way facts approximately the reality that the tool has been dishonoured
- Notice of dishonour is given to the party sought to be made responsible and, consequently it serves as a warning to the man or woman to whom the eye is for the reason that he have to now be made accountable
- Enormous put off in giving notice of dishonour may placed an end to the plaintiff's right in recognize of the dishonoured tool.

### NOTICE OF DISHONOUR BY WHOM?

Notice of dishonour is to take shipping of with the useful resource of way of someone who desires to make a few in advance celebration of his accountable on the device. Therefore, the kind of phrase may be given:

- Either through the use of using the holder
- A party to the device who remain liable for it

### DISHONOUR OF CHEQUE

A character suffers loads if a cheque issued in his favour is dishonoured due to the insufficiency of price range in the account of the drawer of the cheque. To discourage such dishonour, it's been made an offence by way of an amendment of the Negotiable Instrument Act thru way of the Banking, Public Financial Institution and Negotiable Instrument Laws (Amendment ) Act, 1988<sup>3</sup>.

A new Chapter VII collectively with Sections 138 to 142 has been inserted in the Negotiable Instrument Act. Section 138 makes the dishonour of cheque an offence. The payee or holder in due direction have to have recourse towards the drawer, who may be held responsible for the offence.

### Under Section 138 –

Where any cheque drawn thru the usage of someone on an account maintained with the resource of him with a banker for charge of any sum of money to any other man or woman from out of that account for the release, in whole or detail, of any debt or other criminal responsibility, is decrease returned through the use of the usage of the financial institution unpaid, either because

<sup>2</sup>Melville Madison Bigelow, *Law Of Bills, Notes, And Checks: Illustrated By Leading Cases* (2nd ed. 1880).

<sup>3</sup>Dutta"s, *Commentary on The Negotiable Instruments Act, 1881, at 700* (2013).

of the quantity of money recognition to the credit score score of that account is inadequate to honour the cheque or that it exceeds the amount prepared to be paid from that account with the resource of an agreement made with that monetary group, such man or woman will be deemed to have committed an offence and shall, without prejudice to a few other provision of this Act be punished with imprisonment [a term may be extended to 2 years], or with excellent which can also furthermore enlarge to two times the quantity of the cheque, or with each.

### **Section 138 of the Negotiable Instruments Act, 1881**

Section 138 of the Negotiable Instruments Act, 1881 states the dishonouring of a cheque for reasons said insufficiency of finances, stale cheque, positioned up-dated cheque, alteration, ordinary signature, frozen account and save you charge schooling, and so forth. When any cheque is drawn with the useful resource of an individual person on a selected monetary organization account that is maintained by means of him with a banker for the rate of any high-quality amount of money to each other character out of that bank account for the discharge, in complete or in element, of any amount of debt or each other prison responsibility this is lower again with the useful resource of the financial institution unpaid each due to the motive of the quantity of coins reputation inside the credit score rating score of that economic corporation account is inadequate to honour or if it exceeds the quantity of money organized to be paid from that bank account through an settlement made with the financial organization<sup>4</sup>.

Section 138 of the Negotiable Instruments Act, 1881 includes the following elements-

The cheque have to be drawn via the usage of manner of the accused on a monetary group account it's maintained with the aid of him with a specific banker in a financial enterprise;The amount of cash stated in the cheque is for discharging the criminal duty either simply or in element;The cheque is dishonoured which means it's far lower back unpaid because of inadequate budget or is lower decrease returned because of the truth the amount contained within the cheque exceeds the arrangement made with the financial organization. The offence is said to be dedicated at the exact moment the cheque is decrease returned unpaid to the holder or drawer of the cheque.

### **Exceptions**

The exceptions to such provision are that not anything contained in the section shall follow until-

the cheque has been provided to the respective economic organization inside the period of its validity or inner six months of time from the date on which the cheque turn out to be drawn from the economic enterprise, whichever is earlier.The payee (character who receives the payment) in due direction of the cheque has made a name for for the fee of the amount of money through the use of supplying notice or in writing to the individual that has drawn the cheque. He need to interior fifteen days of the receipt of information from the monetary organization regarding the returning of the cheque it truly is unpaid.If the drawer fails to make the price of the said sum of money to the respective payee or the person that is to get preserve of the coins internal fifteen days of the receipt of statistics of the eye obtained.

### **ESSENTIAL FOR AN ACTION UNDER SECTION 138**

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*4 Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal, 1999(2) RCR(Civil) 615*

There need to be dishonour of cheque

Section 138 makes dishonour of cheque in certain cases an offence. Cheque is the most not unusual mode of creating the fee. In order to duly protect the hobby of its payee, holder in due direction, there is an try to discourage dishonour of a cheque thru manner of creating it an offence. These provisions do no longer cowl the dishonour of different negotiable devices.

### **Payment in discharge of debtor jail responsibility**

The cheque need to were drawn through someone on an account with a banker for rate of cash to each different person for the discharge, in entire or factor, of any debt or unique prison duty.

The debt or different felony obligation in this form of case way a legally enforceable debt or exclusive prison responsibility.

If the payment via the usage of manner of cheque is made as gift or charity, it isn't the price for legally enforceable debt or felony responsibility. The dishonour of such cheque does now not appeal to the provisions of Section 138 of the Negotiable Instrument Act.

### **THE LAW RELATING TO NEGOTIABLE INSTRUMENTS**

The law relating to negotiable instruments is not the law of one nation or of one particular demographic area, it is the law of the commercial world in general, for, it consists of certain principles of equity and usages of trade which general convenience and commonsense of justice had established to regulate the dealing of merchants and mariners in all the commercial countries of the civilised world. Even now the laws of several countries in Europe are, at least so far as general principles are concerned, similar in many respects. Of course, on questions of detail, different countries have solved the various problems in different ways, but the essentials are the same, and this similarity of law is a pre-requisite for the vast international transactions that are carried on among the different countries.<sup>5</sup>

In the case of *TomyJacob Kattikaran v. Thomas Manjaly* <sup>6</sup>

The Supreme Court has held that if it changed into hooked up that the appellant did now not serve a word at the drawer within the period prescribed underneath Section 138 of the Act, the acquittal of the drawer is justified.

In *Bharat N. Mehtha v. Mansi Finance (Chennai) Ltd.*<sup>7</sup> it has been held that the words 'any suit or other proceedings' in the insolvency Act do not refer to personal act committed by the accused committing offence and thus, proceedings under section 138 are not barred.

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<sup>5</sup> Bhashya & Adiga, The Negotiable Instruments Act, 34 (Sage Publications, New Delhi, 18<sup>th</sup> edn., 2008)

<sup>6</sup> A.I.R 1998 S.C. 366

<sup>7</sup> (2000)1 Crimes 490.

In **Prudential Capital Market Ltd. v. State of Bihar**<sup>8</sup>, the Supreme Court held that there was no provision under the Reserve Bank of India Act 1934 which prohibited any criminal proceedings under other Acts to continue against Non- Banking Finance Companies. The Provision of Section 58E bars taking cognizance of offences commissioned under the said Act namely the Reserve Bank of India Act 1934.

In **M/s S.R. Nagraj and Co. v. M/s Shri Ganesh Oil Mills**<sup>9</sup>, the provisions of Karnataka Agricultural Produce Marketing (Regulation) Act 1966 provided that suit or other proceedings for recovery of amount due shall not be filed, without obtaining sanction from the Market Committee. It was held that sanction was only required for disputes of Civil Nature and did not apply to criminal prosecution and thus, proceedings initiated under section 138 for the Act for dishonour of cheque were maintainable, without the requirement of any sanction.

### **CIRCUMSTANCES IN WHICH A BANKER IS JUSTIFIED IN DISHONOURING CUSTOMER'S CHEQUE**

#### **PAYMENT COUNTERMANDED BY THE DRAWER**

When the cheque drawer of the cheque countermands the price, this is it problems the steerage to the economic institution no longer to make the price. On receipt of a legitimate prevent fee order, the cheque want to be returned unpaid with the commentary "payment countermanded by using the use of drawer"

#### **NOTICE OF DRAWER'S DEATH**

On receipt of the showed facts of loss of lifestyles of account holder, cheques signed by means of him have to be once more unpaid with the assertion "Drawer decea sed"<sup>10</sup>.

#### **NOTICE OF CUSTOMER'S INSANITY**

Where the account holder is licensed as insane by means of a mentioned medical practitioner then the cheques signed with the aid of using him ought to be signed with the useful resource of him need to be decrease lower back unpaid.

#### **NOTICE OF CUSTOMER'S INSOLVENCY**

Where a customer is adjudged insolvent, the banker should refuse to pay cheques drawn with the useful resource of using the client.

#### **LIQUIDATION OF COMPANY**

When a bank receives be aware from the liquidator in accordance with the provisions of Companies Act, requiring to pay the stability to liquidator's account , all of the cheques through the companies must be over again unpaid.

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<sup>8</sup> (2000)102 Comp. Cas 442 SC.

<sup>9</sup> (2000)1 BC 437

<sup>10</sup> Article- Effect of Recent Amendments in Negotiable Instruments Act on the Pending Cases as well as Appeals

### **OFFENCE BY COMPANY**

A juristic individual like included companies and partnership agencies also are made answerable for the offence of dishonour of cheque defined below phase 138.

Under Section 141 –

- If the individual committing an offence below segment 138 is a corporation, all and sundry who, on the time the offence have become devoted, changed into in charge of, and modified into accountable to the agency for the behavior of the business enterprise of the organization, further to the employer, will be deemed to be responsible of the offence and will be prone to be proceeded towards and punished therefore.<sup>11</sup>

Provided that now not a few issue contained on this sub-section shall render any individual vulnerable to punishment if he proves that the offence modified into devoted with out his expertise, or that he had exercised all due diligence to prevent the rate of such offence

Explanation- For the cause of this segment –

- “Company” manner any frame organization and consists of a corporation or distinct association of humans; and
- “Director” in phrases of a firm, approach a companion inside the agency

Section 141 covers three commands of man or woman chargeable for offence below Section 138-

- The organization as foremost perpetrator
- Persons who have been in rate and had been responsible for the organisation of business organization
- Any excellent individual who's director or a supervisor or secretary or officer of the corporation

### **CONDITION ESSENTIAL FOR COGNIZANCE**

For starting court cases in competition to the drawer of dishonoured cheque drawee has to fulfil following conditions –

The payee or the holder in due direction has to report a written grievance.

*The payee or the holder in due course has to file a written complaint.*

*The complaint is to be made within one month of the date on which the cause of action arose under clause (c) of the proviso to Section 138*

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<sup>11</sup> Article- Legal Notice under Section 138 Returned Unclaimed

*Only the court of Metropolitan Magistrate or a Judicial Magistrate of First Class is empowered to try the offence defined under the provision of Section 138.*

The grievance is to be made inside one month of the date on which the reason of motion arose below clause (c) of the proviso to Section 138. Only the court of Metropolitan Magistrate or a Judicial Magistrate of First Class is empowered to try the offence defined below the supply of Section 138.

## **LIABILITY OF A DRAWER OF A DISHONoured CHEQUE**

### **Civil liability**

Where a cheque is dishonoured, the primary function of the drawer of the cheque will become that of a primary debtor to the holder. The holder can supply civil wholesome much like any creditor to get higher the amount from the drawer making him reliable as essential debtor.

### **Criminal liability**

A drawer of a cheque is deemed to have committed a criminal offence whilst the cheque drawn with the resource of the use of him is dishonoured thru the drawee because of insufficiency of finances.

The criminal obligation of a drawer in case of dishonour of cheque is dealt in segment 138 to Section 142 of Negotiable Instrument Act 1881.

## **MAXIMUM PUNISHMENT**

The maximum punishment for such an offence is imprisonment upto 2 years or extraordinary upto twice the quantity of cheque or every.

Where the cheque is drawn with the useful aid of a agency, a company, or association of individuals, the punishment can be provided to every person who come to be in-rate of and feature grow to be accountable for its behavior of agency and also to the company.

## **HISTORY AND EVOLUTION OF THE ACT IN PURSUANCE WITH SECTION 138, NEGOTIABLE INSTRUMENTS ACT, 1881**

Negotiable Instruments had been applied in commercial worldwide for an extended term as one of the on hand modes of shifting coins. Development in banking region and with the hole of new branches, cheque have emerge as honestly one of the famous Negotiable Instrument.

A cheque is an stated bill of alternate this is consequences typical in lieu of charge of cash and it is negotiable. However, through the fall of ethical requirements, even those Negotiable Instruments like cheques issued, started dropping their credibility thru using now not being honoured on presentment. It grow to be observed that an motion inside the civil court for series of the proceeds of negotiable tool like a cheque tarried, consequently defeating the very reason of recognizing a negotiable device as a speedy vehicle of commerce.<sup>12</sup>

<sup>12</sup> (1993) 1 Crimes 723 (Andhra Pradesh).

The provisions have additionally been made that to represent the stated offence –

- a. Such cheque should no longer had been furnished to the economic employer within a period of six months of the date of its drawal or within the period of its validity, whichever is earlier; and
- b. The payee or the holder in due direction of such cheque have to have made a name for for the charge of the said amount of cash with the beneficial useful resource of giving a be aware, in writing to the drawer of the cheque inside fifteen days of the receipt of the facts by means of manner of way of him from the financial group concerning the return of the cheque unpaid; and
- c. The drawer of such cheque have to have did now not make the charge of the said sum of money to the payee or the holder in due course of the cheque inner fifteen days of the receipt of the stated word.

It has moreover been supplied that it will likely be presumed, except the opportunity is proved, that the holder of such cheque received the cheque in discharge of a prison obligation. Defenses which also can or might not be allowed in any prosecution for such offence have additionally been provided to make the provisions powerful. "

The Bill supplied excessive first-class huge safeguards to make sure that right and sincere customers of the financial institution had been now not burdened. These safeguards covered-

- a. That no court shall take cognizance of such offence except on a complaint, in writing made to the payee or the holder in due route of the cheque;
- b. That such grievance is made indoors one month of the date on which the motive of motion arises; and
- c. That no courtroom now not so accurate as that of a Metropolitan Magistrate or a Judicial Magistrate of the number one elegance shall try this form of offence.

In the case of *Dalmia Cement(Bharat) Ltd. V Galaxy Traders and Agencies Ltd*<sup>13</sup>., the Apex Court cited the object of Section 138 of the Act. The courtroom determined that the Act modified into enacted and phase 138 thereof blanketed with an extensive object of creating a unique provision via incorporating a strict prison duty so far because the cheque, a negotiable tool, is worried. The law relating to the negotiable devices is the law of commercial enterprise international legislated to facilitate the sports activities in trade and change making provision of giving sanctity to the gadgets of credit score which might be deemed to be convertible into coins and without trouble first-class from one person to each specific.

### **NEW NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2015**

It can be noted that the Apex Court ruling in DashrathRathod case most effective looks after traditional technique of cheque clearance. As consistent with this technique the cheque bodily travels from the economic agency department in which it's far furnished to the drawee financial agency department. The desire as a quit result posed problems within the modern-day-day day

<sup>13</sup> **Dalmia Cement(Bharat) Ltd. V Galaxy Traders and Agencies Ltd**

cheque truncation gadget, wherein the cheque does not excursion to drawee monetary organization. Financial establishments and banks advised difficulty in dealing with the scenario<sup>14</sup>

"The proposed amendments to the Negotiable Instruments Act, 1881 ("The NI Act") are targeted on clarifying the jurisdiction related problems for filing instances for offence devoted below segment 138 of the NI Act. The clarification of jurisdictional issues may be ideal from the fairness thing of view as this can be inside the interests of the complainant and might additionally make certain a honest trial. The readability on jurisdictional trouble for attempting the instances of cheque bouncing may want to growth the credibility of the cheque as a economic device. This may assist the trade and trade in preferred and permit the lending institution, collectively with banks, to keep to extend financing to the economic system, without the apprehension of the loan default as a result of bouncing of a cheque.

### **CONCLUSION**

As we trace the records and status quo of the Negotiable Instruments Act, 1881 and interest on the jurisdictional debate underneath Section 138, which offers with dishonor of cheques, we study the necessities which forced the Courts and the Government to undertake landmark adjustments in the law. The modern day exchange and the present ordinary law being the 2015 Ordinance, has the impact of nullifying the regulation as laid down thru the Supreme Court in 2014, Dasrat Rathod case. The jail impact of the Ordinance is that, so that you can institute a grievance below Section 138, the same need to be instituted as constant with : If the cheque is added for series thru an account, the branch of the financial institution in which the payee or holder, keeps the account, is located; or If the cheque is offered for rate through manner of the payee or holder in any other case through his account, the department of the drawee financial company in which the drawer continues the account, is located. This law comes with a promise to clear up and beneficial useful resource in not only the rapid disposal of the pending times pertaining to proceedings underneath 138, however moreover to deliver a sanctity to the tool with the useful resource of in search of to clamp down on defaults in bills. It clarifies the criminal role as to jurisdiction and moreover seeks to maintain up with the modern banking tool.

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