

NEGOTIABLE INSTRUMENT ACT, 1881

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. Preamble-Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:-

- ✓ This Act may be called the Negotiable Instruments Act, 1881.
- ✓ It extends the whole of India.
- ✓ but nothing herein contained affects the Indian Paper Currency Act, 1871 (3 of 1871), section 21, or affects any local usage relating to any instrument in an oriental language.
- ✓ it shall come into force on ***the first day of March, 1882.***

The Negotiable Instruments Act, 1881

An Act to define and Law relating to negotiable instruments which are Promissory Notes, Bills of Exchange and cheques

Citation	Act No. 26 of 1881
Enacted by	Imperial Legislative Council (India)
Date enacted	9 December 1881
Date commenced	1 March 1882

HISTORY OF THE CODE

The history of the present Act is a long one. The Act was originally drafted in 1866 by the 3rd India Law Commission and introduced in December, 1867 in the Council and it was referred to a Select Committee. Objections were raised by the mercantile community to the numerous deviations from the English Law which it contained (The Bill had to be redrafted in 1877)

After the lapse of a sufficient period for criticism by the Local Governments, the High Courts and the chambers of commerce, the Bill was revised by a Select Committee. In spite of this Bill could not reach the final stage.

In 1880 by the Order of the Secretary of State, the Bill had to be referred to a new Law Commission on the recommendation of the first Law Commission the Bill was re-drafted and again it was sent to a Select Committee which adopted most of the additions recommended by the new Law Commission.

The draft thus prepared for the fourth time was introduced in the Council and was fed into law in 1881 being the Negotiable Instruments Act, 1881 Act No.226 of 1881)

The most important class of Credit Instruments that evolved in India were termed Hundi Their use was most widespread in the twelfth century, and has continued till today.

In a sense, they represent the oldest surviving form of credit instrument. These were used in trade and credit transactions; they were used as remittance instruments for the purpose of transfer of funds from one place to another.

In Modern era Hundi served as Travellers Cheques.

According to Section 13 of the Negotiable Instruments Act, (A negotiable instrument means a promissory note bill of exchange or cheque payable either to order or to bearer.

Main Types of Negotiable Instruments are:

1. Inland Instruments
2. Foreign Instruments
3. Bank Draft

- ❖ In order to ensure promptitude and remedy against the defaulters of the Negotiable Instrument a criminal remedy of penalty was inserted in Negotiable Instruments Act, 1881 by amending it with Negotiable Instruments Act, 1988
- ❖ With the insertion of these provisions in the Act the situation certainly improved and the instances of dishonour have relatively come down but on account of application of different interpretative techniques by different High Courts on different provisions of the Act it further compounded and complicated the situation although on dishonour of cheques the trends of the verdicts of the Supreme Court of India

- ❖ Parliament enacted the Negotiable Instruments (Amendment and Miscellaneous Provisions Act, 2002 (55 of 2002) which is intended to plug the loopholes. This amendment Act inserts five new sections from 43 to 147 touching various limbs of the parent Act and Cheque truncation through digitally were also included and the amendment Act has been recently brought into force on Feb. 6, 2003.

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SECTION 3 INTERPRETATION-CLAUSE

"**Banker**"-"banker" includes any person acting and any post office savings bank

SECTION 4. "Promissory note"

- ✓ A "promissory note" is an instrument in writing
- ✓ (not being a bank-note or a currency-note containing an unconditional undertaking signed by the marker.
- ✓ To pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

- a) "I promise to Pay B or order Rs. 500".
- b) "I acknowledge myself to be indebted to B in Rs 1000, to be paid on demand, for value received."
- c) "Mr. B I. O. U Rs 1000."
- d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- e) "I promise to pay B Rs. 500 first deducting there out any money which he may owe me."
- f) I promise to pay B Rs 500 seven days after my marriage with C.
- g) I promise to pay B Rs 500 on D's death, provided – D leaves me enough to pay that sum.
- h) I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d) , (e), (f), (g) and (h) are not promissory notes.

SECTION 5. "Bill of exchange

- ✓ A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the marker.
- ✓ Directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

- ✓ A promise or order to pay is not “conditional” within the meaning of this section and section 4.
- ✓ By reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which
- ✓ According to the ordinary expectation of mankind, is certain happen, although the time of its happening may be uncertain.
- ✓ The sum payable may be “certain”, within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate exchange, or is according to the course of exchange, and although the instrument provides that,
- ✓ on default of payment of an installment, the balance unpaid shall become due.
The person to whom it is clear that the direction is given or that payment is to be made may be "certain person”,
- ✓ within the meaning of this section and section 4, although he is misnamed or designated by description only.

SECTION 6. "Cheque"

A cheque is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Meaning of Cheque - Different Types of Cheque : Cheque is a negotiable instrument used to make payment in day to day business transaction minimizing the risk and possibility of loss. It is used by individuals, businesses, corporate and others to transact for making and receiving payment.

Definition of Cheque - What is a Cheque ?

As per negotiable instrument act 1881, A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

There are three parties in Cheque Transaction - Drawer, Drawee and Payee.

Drawer (Maker of Cheque) The person who issue the cheque or hold the account with bank

Drawee - The Person who is directed to make the payment against cheque. In case of cheque, it is bank.

Payee - A person whose name is mentioned in the cheque or to whom the drawee makes payment. If drawer has drawn the cheque in favour of self then drawer is payee.

Payment by Cheque is safest way to conduct business transactions as it helps to maintain record in account statement to whom the payment is made by with payment is received. So it becomes easier to track the transactions through bank account statement.

Different Types of Cheque

There may be different types of Cheques depending on how the drawer has issued the Cheque

- Open/Bearer Cheque
- Order Cheque
- Crossed Cheque
- Anti Dated Chem
- Post Dated Cheque
- Stale Cheque
- Mutilated Cheque

Here we will discuss about **different types of cheque** with their features in detail:

This type of Cheques are risky in nature for drawer. When the word "Bearer" on the cheque not crossed or cancelled, the cheque is called a bearer cheque Open/Bearer Cheques are payable to person specified in the instrument or any person who posses it and present for payment over the counter. In case of cheque is lost, person who find it can collect payment from the bank.

Order Cheque

When the word "Bearer" written on cheque is crossed or cancelled it becomes an order cheque. An order Cheque is payable to a specified person named in the cheque or any other to whom it is endorsed.

Crossed Cheque

The person who issue or write the cheque specify its as account payee by simply making two parallel lines on top left or middle or right hand corner of the cheque. This type of cheque cannot be encashed over the counter. Considered as safest type of cheque, it can only be credited to payee's account whose name is mentioned in the Cheque.

Also Read: What is difference between Cheque and Promingory Note

Anti Dated Cheque

Cheque bearing the date earlier than the date of presentation for payment is known as anti dated cheque.

Note: All Types of Cheque ore valid for three month from the date of issue (or written on cheque)

Post Dated Cheque

Cheque bearing the date which is yet to come in future is called Post Dated Cheque. Cheque is honored only on or after the date (upto three months) written on cheque.

Stale Cheque

A Cheque turns stale after three months of the date written on cheque. A State Cheque be honored by the bank.

Mutilated Cheque

When cheque gets torn into two or more pieces and presented in bank for payment. Such cheques are called mutilated cheques. Bank requires confirmation by the drawer before honoring such cheques.

DIFFERENCE BETWEEN CHEQUE AND PROMISSORY NOTE

Cheque

Cheque is a negotiable instrument in writing drawn on a specified bank directing him to pay certain sum of money to or to the order of certain person or the bearer of instrument. It is considered to be safest mode of money transfer or payment. There may be different type of cheques –

Bearer Cheque, Order Cheque, Crossed, uncrossed, Anti Dated Cheque, Post Dated Cheque, Stale Cheque etc.

There are three parties to a cheque - Drawer (Account holder who issue the cheque), Drawee (Bank with whom the account is maintained), Payee (whose name is mentioned in the cheque or to whom the amount is payable)

Features of Cheque

- Cheque should be writing and signed by the drawer
- It contains an unconditional order.
- It can be paid to bearer on demand
- The amount should be specified and should be clearly mentioned both in figures and words
- It is drawn on a specified bank
- Unlike Bill of Exchange, it does not require, acceptance

Promissory Note

Promissory Note or PN is an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money to the caves or bearer of the instrument at a specified future date or on demand. In other words, it is a written promise to Pay a debt.

Features

- An unconditional undertaking to pay
- Must be in writing
- Amount to be paid should be specified or certain
- Promissory Note must be payable to or order of a certain person or to bearer
- Must be signed by the maker
- Must be stamped as per Indian Stamp Act

Differences - Promissory Note vs Cheque

Here you can read the differences between a Cheque and Promissory Note.

- A Promissory Note is an unconditional promise to make payment either in installment or in one got a future date or on demand. While Cheque in an order to make payment in one time.
- Promissory note can never be conditional while cheque can be conditional.
- There are two parties to a Promissory note - **Maker and Payee** In Case of Cheque, three parties-Drawer, Drawee and Payee.
- Cheque is drawn on a bank while Promissory Note can be made by any individual in favour of his creditor.
- Cheque can be drawn in favour of self mean drawee can be payee but promissory note is always drawn in favour of another person.
- Acceptance is not necessary in case of promissory note but in case of cheque, acceptance is required of the payee before it written.

SECIION 7. "Drawer", "drawee"

The maker of a bill of exchange or cheque is called the drawer, the person thereby directed to pay is called the drawee.

- ✓ **"Drawee in case of need"** When the bill or in any endorsement thereon the name of any person is given in addition to the drawer to be resorted to in case of need, such person is called a "drawee in case of need".
- ✓ **"Acceptor"**: After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".
- ✓ **"Acceptor for honor"** When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honor of the drawer or of any one of the endorser, such person is called an "acceptor for honor".
- ✓ **"Payee"**: The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

SECTION 8. "Holder"

- ✓ The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.
- ✓ Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

SECTION 9. "Holder in due course"

- ✓ "Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if (payable to order), before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

SECTION 10. "Payment in due course"

- ✓ "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

SECTION 11. "Inland instrument"

- ✓ A promissory note, bill of exchange or cheque drawn or made in [India] and made payable in,
- ✓ or drawn upon any person resident in (India) shall be deemed to be an inland instrument.

SECTION 12. "Foreign instrument"

Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.

SECTION 13, "Negotiable instrument"

- ✓ A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation 1: A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation 2: A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Explanation 3: Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

- ✓ A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

SECTION 16. Endorsement "in blank" and "in full"-"endoresee"

- ✓ If the endorser signs his name only, the endorsement is said to be in blank, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of
- ✓ a specified person, the endorsement is said to be in full, and the person so specified is called the "endoresee of the instrument.
- ✓ The provisions of this Act relating to a payee shall apply with the necessary modifications to an endoresee.

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FEW FACTS WHICH YOU MUST REMEMBER

- ✓ If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.
- ✓ A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.
- ✓ In a promissory note or bill of exchange the expressions "at sight" and "on presentment means on demand.
- ✓ The expression after sight means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non acceptance, or protest for non-acceptance.
- ✓ The maturity of a promissory note or bill of exchange is the date at which it falls due.
- ✓ Days of grace: Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.
- ✓ In calculating the date at which a promissory note or bill of exchange, ma payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non acceptance, or protested for non-acceptance, or the event happens or, where the instrument is a bill of exchange made payable at stated number of months after sight and has been accepted for honor, with the day on t which it was so accepted.
- ✓ If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.**(SECTION 23)**
- ✓ In calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens. shall be excluded.**(SECTION 24)**
- ✓ When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.**(SECTION 25)**Explanation: The expression "Public Holiday includes Sundays [*] and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.
- ✓ Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making drawing acceptance, endorsement, delivery and negotiation of a promissory note. bill of exchange or cheque.

- ✓ Minor A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.
- ✓ **Legal representative cannot by delivery only negotiate instrument endorsed by deceased**
- ✓ The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill change or cheque payable to order and endorsed by the deceased but not delivered
- ✓ A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction SECTION 60)
- ✓ Subject to the provisions of section 82,, payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument Section 78
- ✓ When the party to whom notice of dishonor is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient
- ✓ **No notice of dishonor is necessary.**
 - when it is dispensed with by the party entitled thereto;
 - in order to charge the drawer, when he has countermanded payment:
 - when the party charged could not suffer damages for want of notice
 - when the party entitled to notice cannot after due search be found:
 - or the party bound to give notice is, for any other reason, unable without any fault of his own to give it:
 - to charge the drawers, when the acceptor is also a drawer,
 - in the case of a promissory note which is not negotiable;
 - when the party entitled to notice, notwithstanding the facts, promises unconditionally to pay the amount due on the instrument.

✓ **Section 123- Cheque Crossed Generally**

Where a cheque bears across its face an addition of the words and company or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words, not negotiable, that addition shall be deemed a crossing, and the cheque

✓ **Section 124-Cheque crossed specially**

Where a cheque bears across its face an addition of the name of a banker, either with or without the words not negotiable, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

✓ **Section 126 Cheque crossed specially**

Where a cheque is crossed generally, the banker, on whom it is drawn shall not pay it otherwise than to a banker. Payment of cheque crossed specially. - Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

✓ **126. Payment of cheque crossed generally**

Where a cheque is drawn shall not pay it otherwise crossed generally, the than to a banker. banker on whom it

- ✓ Payment of cheque crossed specially: Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Payment of cheque crossed specially more than once

- ✓ Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

✓ **Section 130 Cheque bearing Not Negotiable**

A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable, shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

SECTION 46. Delivery

- ✓ The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.
- ✓ As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or endorsing the instrument, or by a person authorized by him in that behalf.
- ✓ As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein. A promissory note, bill of exchange or cheque payable to bearer negotiable by the delivery thereof.
- ✓ A promissory note, bill of exchange or cheque payable to order negotiable by the holder by endorsement and delivery thereof.

SECTION 47. Negotiation by delivery

- ✓ Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition] unless such event happens.

Illustration

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it

SECTION 48. Negotiation by endorsement

- ✓ Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [payable to order], is negotiable by the holder by endorsement and delivery thereof.

50. Effect of endorsement

- ✓ The endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation.
- ✓ but the endorsement may by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument,
- ✓ or to receive its contents for the endorser, or for some other specified person.

Illustrations

B signs the following endorsements on different negotiable instruments payable to bearer,

- (a) "pay the contents to C only.
- (b) "pay C for my use".
- (c) "pay C on order for the account to B".
- (d) "the within must be credited to C".

These endorsements exclude the right of further negotiation by C.

- (e) "pay C".
- (f) pay C value in account with the Oriental Bank..
- (g) "pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others".

These endorsements do not exclude the right of further negotiation by C

51. Who may negotiate

- ✓ Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument may,
- ✓ if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, endorse and negotiate the same.

Explanation : Nothing in this section enables a maker or drawer to endorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to endorse or negotiate an instrument, unless he is holder thereof.

Illustration

A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words "or order or any equivalent words. B may negotiate the instrument.

SECTION 58. Instrument obtained by unlawful means or for unlawful consideration

- ✓ When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration,
- ✓ no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder.
- ✓ or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

SECTION 59. Instrument acquired after dishonor or when overdue

- ✓ The holder of a negotiable instrument, who has acquired it after dishonor, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor: Accommodation note or bill
- ✓ Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but endorsed the bill to A. A's title is subject to the same objection as the drawer's title.

61. Presentment for acceptance

- ✓ A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance,
- ✓ If he can, after reasonable search be found by a person entitles to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day,
- ✓ In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonored.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonored.

When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

SECTION 62. Presentment of promissory note for sight

- ✓ A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment.
- ✓ within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

SECTION 65. Hours for presentment

Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

SECTION 80. Interest when no rate specified

✓ When no rate of interest is specified in the instrument, interest on the amount due thereon shall, (notwithstanding any agreement relating to interest between any parties to the instrument), be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon,

✓ or until such date after the institution of a suit to recover such amount as the court directs.

Explanation: When the party charged is the indorser of an instrument dishonored by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonor.

SECTION 82. Discharge from liability

The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon

By cancellation to a holder thereof who cancels such acceptor's or endorser a name with intent to discharge him, and to all parties claiming under such holder,

By release to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge:

By payment to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

SECTION 83. Discharge by allowing drawee more than forty-eight hours to accept

- ✓ If the holder of a bill of exchange allows the drawee more than forty eight hours, exclusive of public holidays,
- ✓ to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

SECTION 85A. Drafts drawn by one branch of a bank on another payable to order

- ✓ Where any draft, that is an order to pay money.
- ✓ drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand,
- ✓ Purports to be endorsed by or on behalf of the payee.
- ✓ The bank is discharged by payment in due course.

SECTION 91. Dishonor by non-acceptance

- ✓ A bill of exchange is said to be dishonored by non-acceptance when the drawees, or one of several drawees not being partners,
- ✓ makes default in acceptance upon being duly required to accept the bill or where presentment is excused and the bill is not accepted.
- ✓ Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonored

92. Dishonor by non-payment

- ✓ A promissory note, bill of exchange or cheque is said to be dishonored by non-payment when the maker of the note,
- ✓ acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

SECTION 93. By and to whom notice should be given

- ✓ When a promissory note, bill of exchange or cheque is dishonored by non-acceptance or non-payment,

- ✓ the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonored to all other parties whom the holder seeks to make severally liable thereon.
- ✓ and to some one of several parties whom he seeks to make jointly liable thereon

Nothing in this section renders it necessary to give notice to the maker of the dishonored promissory note, or the drawee or acceptor of the dishonored bill of exchange or cheque

94. Mode in which notice may be given

- ✓ Notice of dishonor may be given to a duly authorized agent of the person to whom it is required to be given, or,
- ✓ where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee,
- ✓ may be oral or written; may, if written, be sent by post; and may be in any form, but it must inform the party to whom it is given,
- ✓ either in express terms or by reasonable intendment, that the instrument has been dishonored, and in what way, and that he will be held liable thereon;
- ✓ and it must be given within a reasonable time after dishonor, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

SECTION 97. When party to whom notice given is dead

- ✓ When the party to whom notice of dishonor is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient

SECTION 98. When, notice of dishonor is unnecessary

No notice of dishonor is necessary,

- when it is dispensed with by the party entitled thereto;
- in order to charge the drawer, when he has countermanded payment:

- when the party charged could not suffer damages for want of notice;
- when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it.
- to charge the drawers, when the acceptor is also a drawer,
- in the case of a promissory note which is not negotiable;
- when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

99. Noting

- ✓ When a promissory note or bill of exchange has been dishonored by non acceptance or non-payment, the holder may cause such dishonor to be noted by a notary public upon the instrument,
- ✓ or upon a paper attached thereto,
- ✓ or partly upon each, such note must be made within a reasonable time after dishonor, and must specify the date of dishonor, the reason,
- ✓ If any assigned for such dishonor, or if the instrument has not been expressly dishonored, the reason why the holder treats it as dishonored, and the notary's charges.

SECTION 100. Protest

- ✓ When a promissory note or bill of exchange has been dishonored by non acceptance of non-payment, the holder may, within a reasonable time, cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest
- ✓ Protest for better security. When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor,
- ✓ and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

SECTION 102. Notice of protest

- ✓ When a promissory note or bill of exchange is required by law to be protested,

- ✓ notice of such protest must be given instead of notice of dishonor, in the same manner and subject to the same conditions, but the notice may be given by the notary public who makes the protest

Sections 138-142 of the Negotiable Instruments Act, 1881

Section 138 Dishonour of cheque for insufficiency, etc., of funds in the account

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque or with both:

Provided that nothing contained in this section shall apply unless

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier:
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice

Explanation - For the purposes of this section, debt or other liability means a legally enforceable debt or other liability,

Section 139 Presumption in favour of holder.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability

Section 140. Defence which may not be allowed in any prosecution under section 138.

It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Section 141. Offences by companies.

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that 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 be liable for prosecution under this Chapter]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section, -

(a) "company" means anybody corporate and includes a firm or other association of individuals, and

(b) "director in relation to a firm, means a partner in the firm.

Section 142 Cognizance of offences.

[1] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period:]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.)

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated, or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account is situated.

Explanation - For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account]

Section 1424 Validation for transfer of pending cases.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment decree, order or direction of any court all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Order 6 of 2015), shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015 (26 of 2015), more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Order 6 of 2015), before which the first case was filed and is pending, as if that sub section had been in force at all material times]

Section 143 Power of Court to try cases summarily.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be apply to such trials

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint

Section 143A Power to direct interim compensation.

1143A Power to direct interim compensation (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint, and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.)

Section 144 Mode of service of summons.

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974) and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain by speed post or by such courier services as are approved by a Court of Session

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorized by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

Section 145 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 enquiry, trial or other proceeding under the said Code

(2) The Court may, if it thinks fit and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

Section 146 Bank's slip prima facie evidence of certain facts.

The Court shall, in respect of every proceeding under this Chapter on production of Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque unless and until such fact is disproved

Section 147 Offences to be compoundable.

Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), every offence punishable under this Act shall be compoundable]

Section 148 Power of Appellate Court to order payment pending appeal against conviction.

1148 Power of Appellate Court to order payment pending appeal against conviction - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court.

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty day from the date of the order, or within such further period not exceeding thirty day as may be directed by the Court on sufficient cause being shown by the complainant

Introduction

Over the years there have been many important changes in the way cheques are issued/bounced/dealt with Commercial globalisation has resulted in giving a big boost to our country. With the rapid increase in commerce and trade, use of cheque also increased and so did the cheque bouncing disputes. The object of Sections 138-142 of the Negotiable Instruments Act 1881 is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques.

Section 138 casts a criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the bank on presentation. Section 138 was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques. However, with a view to avert unnecessary prosecution of an honest drawer of the cheque and with view to give an opportunity to him to make amends, the prosecution under Section 138 of the Act has been made subject to certain conditions. These conditions are stipulated in the proviso to Section 138.

In criminal law, commission of offence is one thing and prosecution is quite another. Commission of offence is governed by Section 138 of the Act. Prosecution is governed by **Section 142** of the Act. It is also noteworthy that Section 138 while making dishonour of a cheque an offence punishable with imprisonment and fine, also provides for safeguards to protect drawers of such instruments where dishonour may take place for reasons other than those arising out of dishonest intentions. It envisages service of a notice upon the drawer of

the instrument calling upon him to make the payment covered by the cheque and permits prosecution only after the expiry of the statutory period and upon failure of the drawer to make the payment within the said period.

Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account -

Where any cheque drawn by a person on an account maintained by him with a banker for payment of an amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability is returned by the bank unpaid either the amount of money standing to the credit of that account is not in honour of the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to three years or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in this section shall apply unless –

(a) the cheque has been presented to the bank within a period of months from the date on which it is drawn or within the period of its validity whichever is earlier:

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice

Explanation - For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

Classification of Offence

An offence committed under Section 138 is a non-cognizable offence (a case in which a police officer cannot arrest the accused without an arrest warrant), Also, it is a bailable offence.

Cases

Ingredients

The ingredients of the offence under Section 138 are:

- (a) cheque is drawn by the accused on an account maintained by him with a banker,
- (b) the cheque amount is in discharge of a debt or liability, and
- (c) the cheque is returned unpaid for insufficiency of funds or that the amount exceeds the arrangement made with the bank, the offence standing committed the moment the cheque is returned unpaid.

1. Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129.

Further steps laid down by way of the proviso are distinct from the ingredients of the offence which the enacting provision creates and makes punishable. Thus, an offence within the contemplation of Section 138 is complete with the dishonour of the cheque but taking cognizance of the same by any court is forbidden so long as the complainant does not have the cause of action to file a complaint in terms of clause (c) of the proviso read with Section 142.

Conditions precedent for constituting an offence under S. 138

There are three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable.

- (i) The cheque ought to have been presented to the bank within a period of 6 months [3 months]* from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (ii) The payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.
- (iii) The drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

2. MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177

It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque,

Sentence

3. Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560.

The sentence prescribed under Section 138 is up to two years or with fine which may extend to twice the amount or with both. What needs to be noted is the fact that power under Section 357(13) CrPC to direct payment of compensation is in addition to the said prescribed sentence, if sentence of fine is not imposed. The direction to pay compensation can be enforced by default sentence under Section 64 IPC and by recovery procedure prescribed under Section 431 CrPC.

Compounding of offence [recording of compromise between parties]

Section 147 makes offence punishable under the provisions of NI Act compoundable.

4- Rameshbhai Sombhai Patel v. Dineshbhai Achalanand Rathi, 2004 SCC OnLine Guj 469

If the original complainant comes to the Court and says that he is withdrawing himself from prosecution count of compromise and he has compounded the matter then the charges and sentence have to be set aside. No court permission to compound the offence is required,

5. Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 500

Though compounding requires consent of both parties, even in absence of such consent, the court in the interests of justice, on being satisfied that the complainant has been duly compensated can in its discretion close the proceedings and discharge the accused,

Quashing of complaint by the High Court under S. 482 CrPC [inherent powers]

6. Gunmala Sales (r) Ltd. v. Anu Mehta, (2018) 1 SCC 103.

If an accused wants the process under Sections 140 and 141 to be quashed by filing petition under Section 482 CrPC, he must make out a case that making him stand the trial would be an abuse of process of court.

Where to file a case for 8. 138 offence?

If cheque delivered for collection through an account

If the cheque is delivered for collection through an account, the case will be tried by the court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class within whose local jurisdiction the branch of the bank where the payee or holder in the due course, as the case may be, maintains the account is situated (section 142(2)(a))

If cheque presented for payment by payee or holder in due course otherwise through an account

In such a situation, the case will be tried by the court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class within whose local jurisdiction the branch of the drawee bank where the drawer of the cheque maintains the account is situated. Section 142(2)(b)

Debt or other liability

7. Nanda v. Nandkishor, 2010 SCC Online Bom 54

Explanation to Section 138 is abundantly clear that the must have been received by the complainant against a "legally dishonoured cheque enforceable debt or liability"

Liability of a guarantor

8. ICDS Ltd. v. Beena Shabeer, (2002) 6 SCC 426

The words any "cheque" and other "liability" in Section 138 clarifies the legislative intent. If the cheque is given towards any liability which may have been incurred even by someone else (such as in a case of a guarantor, the person who draws the cheque is liable for prosecution in case of dishonour of the cheque.

Mens rea not required for offence under S. 138

The objective of Parliament was to strengthen the use of cheques, distinct from other negotiable instruments, as mercantile tender and therefore it became essential for Section 138 to be freed from the requirement of proving mens rea i.e. guilty state of mind)

9. Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 19 SCC 129.

This has been achieved by deeming the commission of an offence *dehors mens rea* not only under Section 138 but also by virtue of the succeeding two sections. Section 139 carves out the presumption that the holder of a cheque has received it for the discharge of any liability. Section 140 clarifies that it will not be available as a defence to the drawer that he had no reason to believe, when he issued the cheque, that it would be dishonored,

Can a case be filed if the cheque is presented for encashment more than once?

10. MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177.

The holder or payee of the cheque may present the cheque for encashment on any number of occasions within the period of its validity [three months from the date of issue. A dishonour, whether based on a second or any successive presentation of a cheque for encashment, would be a dishonour within the meaning of Section 138,

"Stop payment instructions by the drawer

11. MMTCL Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234.

A complaint under Section 138 can be made not only when the cheque is dishonoured for reason of funds being insufficient to honour the cheque or if the amount of the cheque exceeds the amount in the account, but also where the drawer of the cheque instructs its bank to stop payment. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque and that the stop-payment notice had been issued because of other valid causes, then offence under Section 138 would not be made out.

Case of a post-dated cheque

12. Goaplast (P) Ltd. v. Chico Ursula D'Souza, [2003] 3 SCC 232.

On the faith of payment by way of a post-dated cheque, the payee alters his position by accepting the cheque. If stoppage of payment before the due date of the cheque is allowed to take the transaction out of the purview of Section 138, it will shake the confidence which a cheque is otherwise intended to inspire regarding payment being available on the due date,

"Account closed" by the drawer

13. NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253.

Return of a cheque on account of account being closed would be similar to a situation where the cheque is returned on account of insufficiency of funds in the account of the drawer of the cheque which squarely brings the case within Section 138.

"Signatures do not match"

14. Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375.

Notice under S. 138

15. C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555.

The expression "amount of money is insufficient appearing in Section 138 of the Act is a genus and dishonour for reasons such as "account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the signatures do not match" or that the "image is not found", would constitute a dishonour within the meaning of Section 138 of the Act

When the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of clause (b) of proviso to Section 138 of the Act stands complied with. It is needless to emphasize that the complaint must contain basic facts regarding the mode and manner of the issuance of notice to the drawer of the cheque,

Presumption as to service of Notice

16. N. Parameswaran Unni v. G. Kannan, (2017) 5 SCC 737.

It is clear from Section 27 of the General Clauses Act, 1897 and Section 114 of the Evidence Act, 1872 that once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. However, the drawer is at liberty to rebut this presumption,

What if addressee refuses to receive Notice

17. N. Parameswaran Unni v. G. Kannan, (2017) 5 SCC 737

The Supreme Court in a catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or

"house locked" or "shop closed" or "addressee not in station or intimation served, addressee absent", due service has to be presumed..

Payment may be made within 15 days of receiving summons if Notice not received

18. C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555.

Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected,

Presumption under S. 139

19. Basalingappa v. Mudibassapa, 2019 SCC OnLine SC 491.

Once the execution of cheque is admitted, Section 139 creates a presumption that the holder of a cheque receives the cheque in discharge, in whole or in part, of any debt or other liability. This presumption is no doubt rebuttable at trial but there is no gainsaying that the same favours the complainant and shifts the burden to the drawer of the instrument in case the same is dishonoured) to prove that the instrument was without any lawful consideration,

20 Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375

Note - Presumption under Section 139 is frequently read with Section 115 providing presumption of consideration, presumption as to date on the Case of a blank cheque instrument, etc.

Case of Blank Cheque

21. Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197

If a signed blank cheque is voluntarily handed over to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The burden would still be on the accused to prove that the cheque was not in discharge of a debt of liability by adducing evidence. It is immaterial that the cheque may have been filed in by any person other than the drawer, if the cheque is duly signed by the drawer,

Case of fiduciary relationship between complainant and accused [relationship of trust and confidence)

22. Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197.

The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139, in the absence of evidence of exercise of undue influence or coercion

Rebutting the presumption

23. Rangappa v. Sri Mohan, (2010) 11 SCC 441

When an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his own.

Not necessary for accused to appear in witness box for rebuttal

24. Basalingappa v. Mudibassapa, 2019 SCC OnLine SC 491.

It is not necessary for the accused to come in the witness box in support of his defence. Section 139 Imposes an evidentiary burden and not a persuasive burden,

Complainant to prove financial capacity if disputed by accused

25. Basalingappa v. Mudibassapa, 2019 SCC OnLine SC 491

Complaint by a company

26 Associated Cement Co. Ltd. v. Keshvanand, (1998) LBCC 687.

It is incumbent upon the complainant to prove his financial capacity to extend the loans in question, if the accused disputes the same

The complainant has to be a corporeal person who is capable of making a physical appearance in the court. If a complaint is made in the name of an incorporeal person like a company or corporation) it is necessary that a natural person represents such juristic person in the court. There may be occasions when different persons can represent the company.

Defect can be rectified later

27. MMTCL Ltd. v. Medchl Chemicals and Pharma (P) Ltd.. (2002) 1 SCC 234

Even if initially there was no authority given by the company in favour of the de Jucto complainant, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company.

Offence by companies and vicarious liability of officers of the Company

28. Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1.

Three categories of persons can be discerned from Section 141 who are brought within the purview of the penal liability through the legal fiction envisaged in the section. They are: (1) the company which committed the offence, (2) everyone who was in charge of and was responsible for the business of the company, and any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence,

29 SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89.

Case against the Directors

Section 141 extends criminal liability on account of dishonor of cheque in case of a company to every person who at the time of the offence, was in charge of and was responsible for the conduct of the business of the company. By a deeming provision contained in Section 141, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly,

30. National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330.

A director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions,

Impleading the Company as accused necessary

The commission of offence by the company is an express condition precedent to attract the vicarious liability of others. For maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative.

31. Anecta Hada v. Godfather Travels & Tours (P) Ltd., (2012) S SCC 661.

The only exception would be in a case where the company cannot be prosecuted against without obtaining sanction of a court of law or other authority. In such case, trial against the other accused may be proceeded against if ingredients of Sections 138 and 141 are otherwise fulfilled.

Necessary averments in complaint to put vicarious liability

32. National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330

For making directors liable for the offences committed by the company under Section 141, there must be specific averments against the directors, showing as to how and in what manner they were responsible for the conduct of the business of the company..

Case of a Managing Director and signatory of a cheque

Specific averments against the Managing Director or Joint Managing Director are not required to be made in the complaint. Hy virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141 So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub section (2) of Section 141.

Offence by a partnership firm and vicarious liability of partners

33. Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655.

For the purpose of Section 141, a firm comes within the ambit of a company. Partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned,

Online proceedings

34. Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560.

At least some number of Section 138 cases can be decided online. If complaint with affidavits and documents can be filed online, process issued online and the accused pays the specified amount online, it may obviate the need for personal appearance of the complainant or the

accused. Only if the accused contests, need for appearance of parties may arise which may be through counsel and wherever viable, video-conferencing can be used. Personal appearances can be dispensed with on suitable self-operating conditions. This is a matter to be considered by the High Courts and wherever viable, appropriate directions can be issued.

Interim compensation to the complainant

Section 143-A empowers the Court trying an offence under Section 138, to order the drawer of the cheque to pay interim compensation to the complainant which shall not be more than 20% of the amount of the cheque. Such interim compensation has to be paid by the drawer within a period of 60 days (extendable by 30 days) from the date of the order directing such compensation. Such compensation may be recovered as if it were a debt under Section 421 CPC. If the drawer of the cheque is acquitted, the complainant has to repay the amount of such compensation received within 60 days (extendable by 30 days) from the date of the acquittal order. The complainant has also to pay interest on such amount at the bank rate as published by RBI prevalent at the beginning of the relevant financial year.

Payment pending appeal against conviction

A drawer of cheque who is convicted under Section 138, may file an appeal against his conviction. In such a case, by the provision of Section 148, the Appellate Court can order him to deposit such sum which shall be at least 20% of the compensation or fine awarded by the trial court. Such amount is payable in addition to any interim compensation paid under Section 143-A. The Court release such amount to the complainant at any time during pendency of the appeal. In case of appellant's acquittal, the complainant has to repay the amount to him in the same manner as mentioned above under "interim compensation to the complainant".

Case Law

Dayawati vs Yogesh Kumar Gosain on 17 October, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

GITA MITTAL, ACTING CHIEF JUSTICE

Under Section 138 of the Negotiable Instruments Act ("NI Act" hereafter) passed an order dated 13th January, 2016, the following questions under Section 395 of the Code of Criminal Procedure ("Cr.P.C hereafter) to this court for consideration:

- "1. What is the legality of referral of a criminal compoundable case (such as one u/s 138 of the Ni Act) to mediation?
2. Can the Mediation and Conciliation Rules, 2004 formulated in exercise of powers under the CPC be imported and applied in criminal cases? If not, how to fill the legal vacuum? is there a need for separate rules framed in this regard (possibly u/s 477 of the CPC)?
3. In cases where the dispute has already been referred to mediation- What is the procedure to be followed thereafter? Is the matter to be disposed of taking the very mediated settlement agreement to be evidence of compounding of the case and dispose of the case, or the same is to be kept pending, awaiting compliance thereof (for example, when the payments are spread over a long period of time, as is usually the case in such settlement agreements)?
4. if the settlement in Mediation is not complied with is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?
5. If the Mediated Settlement Agreement by itself, is taken to be tantamount to a decree, then, how the same is to be executed? is the complainant to be relegated to file an application for execution in a civil court? If yes, what should be the appropriate orders with respect to the criminal complaint case at hand. What would be the effect of such a mediated settlement vis-à-vis the complaint case?"

Reference answered

118. In view of the above, the reference made by the Id. Metropolitan Magistrate by the order dated 13th January, 2016 (extracted in para I above) is answered thus :

Question 1: What is the legality of referral of a criminal compoundable case (such as on u/s 138 of the NI Act) to mediation?

It is legal to refer a criminal compoundable case as one under Section 138 of the NI Act to mediation

Question II: Can the Mediation and Conciliation Rules, 2004 formulated in exercise of powers under the CPC. be imported and applied in criminal cases? If not, how to fill the legal vacuum? Is there a need for separate rules framed in this regard (possibly us 477 of the CrPC)?

The Delhi Mediation and Conciliation Rules, 2004 issued in exercise of the rule making power under Part-10 and Clause (d) of sub-section (ii) of Section 89 as well as all other powers enabling the High Court of Delhi to make such rules, applies to mediation arising out of civil as well as criminal cases.

Question III In cases where the dispute has already been referred to mediation - What is the procedure to be followed thereafter? Is the matter to be disposed of taking the very mediated settlement agreement to be evidence of compounding of the case and dispose of the case, or the same is to be kept pending, awaiting compliance thereof (for example. when the payments are spread over a long period of time, as is usually the case in such settlement agreements)?

In the context of reference of the parties, In a case arising under Section 138 of the NI Act, to mediation is concerned, the following procedure is required to be followed:

III (i) When the respondent first enters appearance in a complaint under Section 138 of the NI Act before proceeding further with the case, the Magistrate may proceed to record admission and denial of documents in accordance with Section 294 of the Cr.P.C. and if satisfied, at any stage before the complaint is taken up for hearing, there exist elements of settlement, the magistrate shall inquire from the parties if they are open to exploring possibility of an amicable resolution of the disputes.

III (ii) If the parties are so inclined, they should be informed by the court of the various mechanisms available to them by which they can arrive at such settlement including, out of court settlement: referral to Lok Adalat under the Legal Services Authorities Act 1987; referral to the court annexed mediation centre as well as conciliation under the Arbitration and Conciliation Act, 1996.

III (iii) Once the parties have chosen the appropriate mechanism which they would be willing to use to resolve their disputes, the court should refer the parties to such forum while stipulating the prescribed time period, within which the matter should be negotiated (ideally a period of six weeks) and the next date of hearing when the case should be again placed before the concerned court to enable it to monitor the progress and outcome of such negotiations.

III (iv) In the event that the parties seek reference to mediation, the court should list the matter before the concerned mediation centre/mediator on a fixed date directing the presence of the parties/authorized representatives before the mediator on the said date.

III (v) If referred to mediation, the courts, as well as the mediators, should encourage parties to resolve their overall disputes, not confined to the case in which the reference is made or the subject matter of the criminal complaint which relates only to dishonouring of a particular cheque.

III (vi) The parties should endeavour to interact/discuss their individual resolutions proposals with each other as well and facilitate as many interactions necessary for efficient resolution within the period granted by the court. The parties shall be directed to appear before the mediator in a time bound manner keeping in view the time period fixed by the magistrate.

III (vi) in the event that all parties seek extension of time beyond the initial six work period, the magistrate may, after considering the progress of the mediation proceedings in the interest of justice, grant extension of time to the parties for facilitating the settlement. For the purposes of such extension, the magistrate may call for an interim report from the mediator, however keeping in mind the confidentiality attached to the mediation process, Upon being satisfied that bona fide and sincere efforts for settlement were being made by the parties, the magistrate may fix a reasonable time period for the parties to appear before the mediator appointing a next date of hearing for a report on the progress in the mediation. Such time period would depend on the facts and circumstances and is best left to the discretion of the magistrate who would appoint the same keeping in view the best interest of both parties.

Contents of the settlement III (viii) If a settlement is reached during the mediation, the settlement agreement which is drawn-up must incorporate

- (a) a clear stipulation as to the amount which is agreed to be paid by the party,
- (b) a clear and simple mechanism/method of payment and the manner and mode of payment:
- (c) undertakings of all parties to abide and be bound by the terms of the settlement must be contained in the agreement to ensure that the parties comply with the terms agreed upon;
- (d) a clear stipulation, if agreed upon, of the penalty which would ensue to the party if a default of the agreed terms is committed in addition to the consequences of the breach of the terms of the settlement;
- (e) an unequivocal declaration that both parties have executed the agreement after understanding the terms of the settlement agreement as well as of the consequences of its breach;
- (f) a stipulation regarding the voluntariness of the settlement and declaration that the executors of the settlement agreement were executing and signing the same without any kind of force, pressure and undue influence.

III (ix) The mediator should forward a carefully executed settlement agreement duly signed by both parties along with his report to the court on the date fixed, when the parties or their authorized representatives would appear before the court.

Proceedings before the court III (x) The magistrate would adopt a procedure akin to that followed by the civil court under Order XXIII of the CP.C III (xi) The magistrate should record a statement on oath of the parties affirming the terms of the settlement that it was entered into voluntarily, of the free will of the parties, after fully understanding the contents and implications thereof, affirming the contents of the agreement placed before the court; confirming their signatures thereon. A clear undertaking to abide by the terms of the settlement should also be recorded as a matter of abundant caution III (xii) A statement to the above effect may be obtained on affidavit. However, the magistrate must record a statement of the parties proving the affidavit and the settlement agreement on court record.

III (xiii) The magistrate should independently apply his judicial mind and satisfy himself that the settlement agreement is genuine, equitable, lawful, not opposed to public policy, voluntary and that there is no legal impediment in accepting the same. III (xiv) Pursuant to recording of the statement of the parties, the magistrate should specifically accept the statement of the parties as well as their undertakings and hold them bound by the terms of

the settlement terms entered into by and between them. This order should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 read with Section 421 of the Cr.P.C.

III (xv) Upon receiving a request from the complainant, that on account of the compromise vide the settlement agreement, it is withdrawing himself from prosecution, the matter has to be compounded. Such prayer of the complainant has to be accepted in keeping with the scheme of Section 147 of the NI Act. (Ref.:(2005) CrilJ 431, **Rameshbhai Somabhai Patel v. Dineshbhai Achalanand Rathi**) At this point, the trial court should discharge/acquit the accused person, depending on the stage of the case This procedure should be followed even where the settlement terms require implementation of the terms and payment over a period of time.

III (xvi) In the event that after various rounds of mediation, the parties conclude that the matter cannot be amicably resolved or settled, information to this effect should be placed before the magistrate who should proceed in that complaint on merits, as per the procedure prescribed by law.

III (xvii) The magistrate should ensure strict compliance with the guidelines and principles laid down by the Supreme Court in the pronouncement reported at (2010) S SCC 663. **Damodar S. Prabhu v. Sayed Babalal H** and so far as the settlement at the later stage is concerned in (2014) 10 SCC 690 **Madhya Pradesh State Legal Services Authority v. Prateck Jain.**

III (xvii) We may also refer to a criminal case wherein there is an underlying civil dispute. While the parties may not be either permitted in law to compound the criminal may not be willing to compound the criminal case, they may be willing to explore the possibility of a negotiated settlement of their civil disputes. There is no legal prohibition to the parties seeking mediation so far as the underlying civil dispute is concerned. In case a settlement is reached, the principles laid down by us would apply to settlement of such underlying civil disputes as well.

In case reference in a criminal case is restricted to only an underlying civil dispute and a settlement is reached in mediation, the referring court could require the mediator to place such settlement in the civil litigation between the parties which would proceed in the matter in accordance with prescribed procedure.

Question IV: If the settlement in Mediation is not complied with is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?

In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed:

IV (i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate would pass an order under Section 431 read with Section 421 of the Cr.P.C. to recover the amount agreed to be paid by the accused in the same manner as a fine would be recovered.

IV (ii) Additionally, for breach of the undertaking given to the magistrate court, the court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceeding under Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof.

Question V: If the Mediated Settlement Agreement, by itself, is taken to be tantamount to a decree, then, how the same is to be executed? Is the complainant to be relegated to file an application for execution in a civil court? And if yes, what should be the appropriate orders with respect to the criminal complaint case at hand. What would be the effect of such a mediated settlement vis-à-vis the complaint case?

V (i) The settlement reached in mediation arising out of a criminal case does not tantamount to a decree by a civil court and cannot be executed in a civil court.

However, a settlement in mediation arising out of referral in a civil case by a civil court, can result in a decree upon compliance with the procedure under Order XXIII of the C.P.C. This can never be so in a mediation settlement arising out of a criminal case.

119. The present reference, under Section 395(2) of the CPC, is answered in the above

120. We place on record our deep appreciation for the amici curiae: Mr. J.P. Sengh Senior Advocate, Ms. Veena Ralli. Advocate and Mr. Siddharth Agarwal, Advocate, who have rendered indispensable and worthy assistance to us, in this matter.

Dasrath Rupsingh Rathod v. State of Maharashtra (2014) 9 SCC 129

In (2014) 9 SCC 129 wherein at Paragraph-17 it has been held thus:-

17. The marginal note of Section 138 of the NI Act explicitly defines the offence as being the dishonour of cheques for insufficiency, etc of funds in the account Of course, the headings, captions or opening words of a piece of legislation are normally not strictly or comprehensively determinative of the Sweep of the actual section itself but it does presage its intendment. See *Prick India Ltd v Union of India* and *Forage & Co v Municipal Corpn of Greater Bombay* Accordingly, unless the provisions of the section clearly point to the contrary, the offence is concerned with the dishonour of a cheque, and in the conundrum before us the body of this provision speaks in the same timbre since it refers to a cheque being returned by the bank unpaid None of the provisions of IPC have been rendered nugatory by section 138 of the NI Act and both operate on their own. It is trite that mens rea is the quintessential of every crime. The objective of Parliament was to strengthen the use of cheques, distinct from other negotiable instruments, as mercantile tender and therefore it became essential for Section 138 of the Ni Act offence to be freed from the requirement of proving mens rea. This has been achieved by deeming the commission of an offence de hors mens rea not only under Section 138 but also by virtue of the succeeding two sections Section 139 carves out the presumption that the holder of a cheque has received it for the discharge of any liability Section 140 clarifies that it will not be available as a defence to the drawer that he had no reason to believe, when he issued the cheque, that it would be dishonoured. Section 138 unequivocally states that the offence is committed no sooner the drawee bank returns the cheque unpaid

The question of territorial jurisdiction which has been raised by the counsel for the petitioner to the effect that the District of Ranchi does not have any) case also answered on to the case of *Dashrath Rig Singh Rathod (Supra)*, wherein at Paragraph 21 has been held thus:-

21 The interpretation of Section 138 of the NI Act which commends that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly, JMFC at the place where this occurs a ordinary where the complaint must be filed entertained and tried The cognizance of the crime by JMFC at that place however, can be taken on when the concomitants of constituents contemplated by the section concatenate with each other We clarify had the place of the issuance or delivery of the statutory notice or where the complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the complaints even though non compliance therewith will inexorably lead to the dismissal of the complaint it cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the Ni Act The vindication of this view is duly manifested by the decisions and conclusion arrived at by the High Courts even in the few cases that we shall

decide by this judgment We clarify that i the complainant is statutorily bound to comply with section 177, etc of CPC and therefore the place or suit where the section 138 complaint is to be filed is not of his choosing The territorial jurisdiction is restricted to the court with whose local jurisdiction the offence was committed, which in the present contest is when the cheque is dishonoured by the bank on which it is drawn.

M/S Meters and Instruments Private Limited & Anr. v. Kanchan Mehta

ADARSH KUMAR GOEL. J

PARRA.

3. Few Facts: The Respondent Kanchan Mehta filed complaint dated 15th July, 2016 alleging that the appellants were to pay a monthly amount to her under an agreement. Cheque dated 31 st March, 2016 was given for Rs.29.319/-in discharge of legal liability but the same was returned unpaid for want of sufficient funds, In spite of service of legal notice, the amount Isaving not been paid, the appellants committed the offence under Section 138 of the Act. The Magistrate vide order dated 24th August, 2016, after considering the complaint the preliminary evidence, summoned the appellants. The Magistrate in the dated 15 November 2016 observed that the case could not be tried as summarily as sentence of more than one year may have to be passed and be tried as summons case. Notice of accusation dated 9th November, 2016 was served under Section 251 Cr.PC.

4. Appellant No 2. who is the Director of appellant No.1, made a statement that he was ready be make the payment of the cheque amount However, the complainant declined to accept the demand draft. The case was adjourned for evidence. The appellants filed an application under Section 147 of the Act on 13th January, 2017 relying upon the judgment of this Court in Damodar versus Saved Babalas 11 The application was dismissed in view of the judgment of this Court in JIK industries Ltd. versus Amartal versus Jumania which required consent of the complainant for compounding. The High Court did not find ground to interfere with the order of the Magistrate Facts of other two cases are identical. Hence these appeals

18. From the above discussion following aspects emerge

(i) Once under Section 138 of the Act is primarily a civil wrong. Burden of prey is on accused in se presumption under Section 139 but the standard of such proof is preponderance of probabilities. The same has to be normally tried summarily as per prints of summary trial under the Cr.PC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the Court

can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

(iii) Though compounding requires consent of both parties, even in absence of such consent, the Court in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

(iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143 to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

(v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence

exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such email ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the Court and the complainant by e mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such content. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea bargaining. Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within m months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

21. It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court.

Smt. Asha Baldwa v. Ram Gopal

In the case, the Petitioner had instituted petition under Section 482 of CrPC for quashing of the entire proceeding of criminal case qua the petitioner for offence under Section 138 of NI Act.

In the case, it was alleged that the dishonored cheque was handed over to the present respondent by the petitioner and, therefore, she was consenting party to the act of giving the cheque and hence responsible for any proceedings in consequence of giving the cheque

The Petitioner in the case contended that as per Section 141(2) of the Negotiable Instrument Act, 1881 the allegation can only be leveled against the Company or its partners or its Directors only when the offence was committed with the consent or connivance or, is attributable to, any neglect on the part of, any director, manager, secretary or partners.

Key takeaways from the case

That the legislative intention while making a specific provision of Company/Firm was that any person who was not directly responsible or merely a Director of Company or Firm could be held guilty for the alleged offence, only if he had committed offence with the consent of such person.

That on a bare reading of the complaint as well as the record, it is clear that only role of the petitioner is that she handed over the cheque but it has not been alleged that what was her role in consenting to the offence that is a default or dishonoring of the cheque.

That the purport of the special law under the Negotiable Instrument Act is to ensure that the promise to pay is abided by the person so promising. The provision under Section 139 of the NI Act is that it shall be presumed that the holder of a cheque received the cheque of the nature referred to in Section 138 of NI Act for the discharge, in whole or in part, of any debt or other liability

That the legislative intention was that the holder of the cheque shall be entitled to receive the amount so promised from the person from whom the cheque is received. Any person, other than the person could be held responsible under Section 141(2) of the NI Act only when he is an office bearer of the Company or Firm

That a bare reading of the complaint as well as the relevant law, on the face of it, makes it clear that the offence is not made out against the present petitioner as she neither issued the cheque and it has not been attributed to her and the allegation was that she had handed over the cheques which does not mean she had consented to offence by any stretch of imagination.

K. Bhaskaran vs Sankaran Vaidhyan Balan And Anr on 29 September, 1999

Bench: K.T. Thomas, M.B. Shah

The High Court has imposed a sentence of imprisonment for 6 months and a fine of Rs. one lakh on the accused. Section 138 of the Act provides punishment with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of

cheque or with both. But the court cannot obviate the jurisdictional limit prescribed in Section 386 of the Code. Though the said provision confers power on the Court of appeal to reverse an order of acquittal and find the accused guilty and pass sentence on him according to law, even the High Court when it is the Court of appeal has to conform to the second proviso to the Section 386 of the Code. It reads thus

"Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal

In this context a reference to Section 29(2) of the Code is necessary as it contains a limitation for the magistrate of first class in the matter of imposing fine as a sentence or as a part of the sentence, Section 29(2) reads thus:

The court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both

The trial in this case was held before a Judicial Magistrate of first class who could not have imposed a fine exceeding Rs. 5,000 besides imprisonment. The High Court while connecting the accused in the same case could not impose a sentence of fine exceeding the said limit. It is true, if a judicial magistrate of first class were to order compensation to be paid to the complainant from out of the fine realized the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of Rupees five thousand

However, the magistrate in such cases can alleviate the grievance of the complainant by making report to Section 357(3) of the Code. It is well to remember that this Court has emphasized the need for making liberal use of that provision, (*Hari Kishan and State of Haryana v. Sukhbir Singh and Ors.* AIR S (1988) SC 2127) No limit is mentioned in the subsection and therefore, a magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, men (the trial was before a court of magistrate of first class in respect of a cheque which covers an amount exceeding Rs. 5,000 the Court has power to award compensation to be paid to the complainant.

The question of sentence and award of compensation must be considered by the Trial Court We deem it feasible that the magistrate shall hear the prosecution and the accused on those aspects. Of course, if the complainant and accused settle their disputes regarding this

cheque, in the meanwhile, that fact can certainly be taken into consideration in determining the extent or quantum of sentence

We therefore, uphold the conviction of the offence under Section 138 of the Act but we set aside the sentence awarded by the High Court for enabling the trial court to pass orders on the question of sentence and the compensation, if any payable.

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