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RESEARCH PAPER

JURIDICAL PROPOSITION TO DISHONOUR OF CHEQUE

BY: Abhishek Upadhyay
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ABSTRACT

Banking law is one of the critical sectors which has been in the front for providing an economic boost to our country vis-à-vis growth and employment. Statistically, the banking sector contributes roughly around 7.7% of the GDP and employs to approx. 1.5 million people. Since there are ample labour and intricacies involved in the banking sector, a proper law was made to regulate and ease the proceedings.

In the last four decades, the field of banking has gone through a paradigm shift and has become more customer-friendly and client-centric. One such friendly way was to replace the conventional method of depositing chunks of notes with a single paper – a cheque. The concept of cheque came with its own demerits. One of the most substantial demerits of cheque arrived in the form of dishonour of the cheque. People started to issue cheques without having sufficient funds in their accounts. This practice led to the decline of money in the trade sector, and gradually people began to lose their credibility and goodwill.

The present paper intends to discuss the judicial approach to the dishonour of a cheque. It seeks to highlight the nuances revolving around the concept of dishonour of a cheque with the decided case laws to underline the apex court approach of our country.

Keywords: Section 138 of the NI Act 1881, Banks involved, A criminal offence, Penalties involved, Judicial interpretation
INTRODUCTION

A cheque can be said as a written instrument that orders the bank to pay for a given certain amount of money on call from the account of the drawer to the bearer of the cheque. It is a broadly used technique of fee. With the advent of digitisation, it has also turned out to be one of the maximum time-honoured techniques used for transactions. Where on the one hand there has been a prodigious upsurge in the range of transactions taking location via cheques, at the contrary there is additionally an insidiously increasing wide variety of cheque dishonouring throughout the nation. The Negotiable Instruments Act, 1881 deals with the issue of cheques dishonouring or the cheque bounce under section 138 in India. There are a huge wide variety of cases filed under this section, and these instances are clogging the courts. Thus, it will become pivotal at this degree to look at in-depth the conduct of cheque dishonour cases within the Indian courts. Albeit it is recognised that the challenges the Indian judiciary faces are plethora in a wide variety, few (if any) information are recognised approximately the hassle of delay inside the Indian judicial machine.

Cases referring to the dishonour of cheques constitute an identified, yet unexplored black hole in this ocean of cases. Negotiable Instruments Act, 1881, pertain to dishonouring of cheques under sections 138-142. The advance judiciary, as well as legislative body, have expressed their want to implement mechanisms for the timely redressal of cases falling under the aforesaid sections on numerous activities in a fast manner. Given the commercial nature of those instances, delay inside the disposal of cheque bounce instances impacts change and commerce as well. In his speech to the Indian Parliament, whilst introducing the Annual Budget for the yr. 2017 – 2018, Finance Minister Arun Jaitley spoke about the want to lessen the time taken to redress cheque jump cases, remarking on the complexity of the litigation system and the period traders ought to spend in litigation with a purpose to recover money. Where India is trying to attain a stage of self-sufficiency and ameliorate its status inside the Ease of Doing Business Index, it turns into paramount to inspect this issue, comprehend it articulately and expedite the instances Negotiable Instruments Act, 1881 raises a criminal liability on the drawer if in case the cheque gets dishonoured via the financial institution on presentation. The modern-day economies of the world that can operate beyond global borders are fully reliable and depend on a very good amount of financial institution drafts as well as Oriental invoices of Exchange Common in India. As "Hundis". Since the check performs an important function in commercial enterprise
transactions, dishonour of the cheque threatens the credibility in the transaction of the cheque through the commercial enterprise. Thus, the purpose of introducing section 138 statutorily seems to be reliability in instilling confidence in the efficiency of banking functions and also transacting the enterprise on the negotiable instruments.

**CRIMINALISATION OF CHEQUE DISHONOR CASES**

History of the banking system was always silent on the issue of disapproval of cheques, and hence criminalisation of cheque dishonour cases is the latest addition, or in widely wide-spread phrases it is surprisingly latest. Before Sec. 138 was even bought up, dishonour of cheques was dealt through the provisions of Civil and Alternative Dispute Resolution, each of which still hold to persist. The civil treatment for a dishonoured cheque includes filing a case for the enforcement of an agreement. As is the case with separate criminal remedies, Section 138 does no longer prevent the organisation of civil healthy and civil remedies are nevertheless to be had to the payee. ADR techniques also can be used for the resolution of cheque bounce cases. Criminal legal responsibility of the payer of a dishonoured cheque additionally exists out of doors the NI Act. Other remedies primarily based in criminal law are to initiate complaints towards the payer under Sections 406 and 420 of the Indian Penal Code (IPC), 1860. It is possible to carry on complaints below the IPC and the NI Act in parallel without falling beneath the double jeopardy rule defined in Article 20(2) of the Constitution of India. According, to the legal bodies, the sole intention for the amendment and inserting of Section 138 was to curb the dishonour of the rampant cheque cases, which had rendered transactions of cheque extremely complicated and complicated to cope with. This mistrust of cheques endorsed a flow towards cash transactions which delivered a host in their very own issues which in flip became basically negative to India's increase. Some of the problems with cash transaction covered counterfeit notes, corruption, and big amounts of untraceable and untenable cash. It changed into against this humongous background that the provisions criminalising the dishonour of cheques have been inserted into the NI Act, with the motive of giving cheques credibility and people a way to remedy related disputes.

The provisions of Section 138 differs from existing criminal provisions as there is an absence to prove the intention to deceit on the part of the drawer. However, offences under Sections 406 and 420 of the IPC are dealt with as cognisable and non-bailable, not like offences under Section 138.
**CONCEPT OF BLANK CHEQUES**

A blank cheque is essentially a cheque that has been duly signed by means of the drawer however it does now not but has the quantity of money this is to be paid to the one whose call is written on it.

**DISHONOR OF BLANK CHEQUES**

Over the time frame, various trends referring to issuance, bouncing and working of blank cheques have taken place via the Hon'ble courts of India. There have been quite a few stances taken by using the Hon'ble courts on these. For instance, in Avon Organics V. Pioneer Products Ltd. And Ors¹, the respondent issued a blank cheque bereft of the date and the quantity.

He sent it with a letter asking for the complainant to offer the blank cheque within the financial institution after a month. The issue raised in this case became whether the blank cheque will come inside the definition of a cheque to be blanketed under Section 138 of The Negotiable Instrument Act, 1881. It changed into located via the High Court that if the cheque isn't drawn for a stated quantity, it would now not be protected within the definition of a bill of change. An act of complainant in writing the quantity and date turned into a material exchange, and it could not be enforced. It became similarly held that alteration without the expertise of the individual that issued the cheque rendered the cheque invalid.

In yet any other case, Bindu V. Sreekantan Naira², it became unequivocally that admission of a signature on a cheque does no longer tantamount to the affirmation of execution. The proper of the accused to oppose that the blank cheque becomes misused by the complainant is not always defeated by way of such mere admission of signature. Slight improvement concerning dishonour of a blank cheque changed into made by using the High Court of Madras, in E.Dhanuskodi V. D.Sreedhar³, the acquittal of the respondent (accused) changed into upheld by using Madras High Court for an offence punishable beneath Section 138 of Negotiable Instruments Act, 1881. The court docket held that different pen, ink, and manipulation of the amount confirmed that the complainant had failed to display due to execution of the cheque.

¹ Avon Organics Ltd. vs Poineer Products Ltd. And Ors. on 4 July, 2003, 2004 (1) CRIMES567 (AP)
² Bindu vs Sreekantan Naira, AIR 2007 (DOC)195 (KER)
³ E. Dhanuskodi vs D. Sreedhar, Criminal Appeal No.814 of 2011
Facts of the case are that the respondent (accused) borrowed a sum of Rs 1,50,000 from the appellant (complainant) and issued a cheque to the appellant toward his liability to pay off the identical. However, the cheque becomes dishonoured. Thereafter, the appellant initiated the method under Section 138 of The Negotiable Instruments Act, 1881, and the trial courtroom convicted the respondent retaining him responsible. However, the Additional District Judge on appeal reversed the decision of the trial courtroom and acquitted the respondent. Thus, an appeal became filed in Madras High Court by the appellant. The High Court of Madras located that the presumptions beneath Sections 118 and 139 of The Negotiable Instruments Act, 1881 in favour of the appellant (complainant) comes to play at the pride of Court that the cheque in question turned into duly done. It became located that execution of the cheque does not mean the mere turning in a blank cheque, however it method that the cheque is given within the full form. It became held that the appellant (complainant) cannot be justified in doing material alteration beyond the expertise of the accused and it would be simply illegal if a complainant is authorised to replenish info of cheque such as date and quantity in a clean cheque beyond the expertise of the accused. Thus, the petition in the present case becomes dismissed, and the acquittal of the respondent becomes upheld.

However, the Hon'ble Supreme Court took an exclusive view in Bir Singh V. Mukesh Kumar, the issue addressed by way of the Supreme Court was whether or not the payee of a clean cheque is disentitled to the advantage of the presumption beneath Section 139 of the Negotiable Instruments Act, 1881, of a cheque duly drawn having been issued in discharge of a debt or different legal responsibility simplest because he is in a fiduciary courting with the person who has drawn the cheque. The Supreme Court discovered that a naked analysing of Section 139 of the Negotiable Instruments Act, 1881, construes that except the opposite is proved, it is to be presumed that the holder of a cheque obtained the cheque of nature referred in Section 138 of the Negotiable Instruments Act, 1881. It became said that the presumption under Section 139 is a presumption of law in which the law was settled that the onus of proving that the cheque issued turned into not in discharge of any debt or different liability is at the drawer of the cheque. It is compulsory on the courts to elevate the presumption furnished underneath Section 139 of the Negotiable Instruments Act, 1881.

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4 Bir Singh vs Mukesh Kumar, CRIMINAL APPEAL NOS.230-231 OF 2019
5 Advocate M M Mohan, Supreme Court Judgements, ADVOCATE KHOJ, ( Feb 01, 2021, 4:00 P.M )
However, the said presumption is rebuttable and may be rebutted via the accused by using proving the contrary via a main cogent proof that there has been no debt or any other liability. Further, it turned into discovered that the item of Chapter XVII of the Negotiable Instruments Act, 1881, is to infuse credibility to negotiable gadgets along with cheques. That its miles immaterial that the cheque is crammed by using any man or woman apart from the drawer provided it is duly signed through the drawer, and the same would now not invalidate the cheque. The presumption below Section 139 of the Negotiable Instruments Act, 1881 will be attracted. It may be inferred that numerous developments bearing on the dishonour of blank cheques have taken place. The real item of the Negotiable Instruments Act, 1881 is to infuse credibility to negotiable devices and to make sure a speedy trial in cases of dishonour of cheque.

**OTHER REASONS FOR THE DISHONOR OF CHEQUE**

a. **STOP PAYMENT**

Most drawers stop payments due to a cheque being lost or stolen or other reason. In this case, the bank has dishonoured the cheque and has not paid it because the payment has been closed by the drawer.

b. **POST DATED CHEQUES**

The bank may dishonour the cheques because of the date mentioned on the cheque is yet to come. For instance, if a cheque is mentioned with the date of 5th of July 2020 and if it is presented on the date of 1st of July 2020 bank will dishonour it.

c. **BANK ACCOUNT CLOSED**

A particular cheque is dishonoured if, before its presentation, the drawer has closed the bank account.

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NEGOTIABLE INSTRUMENT: DISTINCTLY EXPLAINED

The regulation of negotiable devices is not precise to India; it is a frame of laws bearing on commerce and commercial transactions worldwide. One of these is a cheque, whose use (and misuse) is governed by using section 138 of the NI Act 1881. The NI Act turned into passed into regulation for more than a hundred thirty years in the past in 1881. However, changes introduced in 1998 by sections 138 to 142 (Chapters XVII), relating to dishonoured cheques, brought a much-needed concrete structure related to dishonouring of cheques.

KEY ELEMENTS OF SECTION 138

Section 138 of the NI Act considers that cheque dishonour is an offence of criminal nature and can be punished with the imprisonment up to 2 years or with the punishment which is monetary in nature or by both. The section highlights that if any of the amounts is not honoured by the bank of the drawee and ultimately fails to dispose of the debt or the liability arising out of the unavailability of funds or it exceeds the amount decided in the agreement with bank has surely committed an offence and is liable to be imprisoned without any prejudice to any of the provisions contained in this act.

Certain conditions and nuances should be followed by the drawee to attract drawer’s liability under the scope of the aforesaid section:

i. The presentation of the cheque should be done within six months from the period the cheque is drawn or within the validity of the cheque.

ii. The drawee has to demand the money by giving the notice to the drawer within thirty days of receiving a cheque memo return. A cheque memo return is an official statement declared by the bank stating reasons for dishonouring of cheque

iii. The drawer fails to return the said amount to the payee or the holder within fifteen days of receiving the notice from the drawee.
NECESSITIES ENCOMPASSED:

1. **PURPOSE FOR THE CHEQUE ISSUANCE**

   It is vitally important that the cheque dishonoured needs to have issued against the disposal of any debt or different legal responsibility of the drawer to the drawee. The expression 'debt or other legal responsibility' means the debt is legally enforceable or other legal responsibility.

   Maruti Udyog vs Narendra\(^7\), the apex court was of the view that the may presume to speculate that the cheque holder received the cheque for disposal of a particular debt or legal responsibility and the benefit of the doubt will be given to the drawee until contrary to the same is proved by the drawer. Similarly, in the case of Tamil Nadu Retrenched Census Employees Association (Appellant) vs K. Thennan (Respondent)\(^8\), it is presumed that the offence under section 138 cannot be negated and the bail charge of a recommended prison charge may be categorised as a legal debt which is legally enforceable.

2. **PRESENTATION OF THE CHEQUE**

   The cheque should always be presented within its period of validity. The cheques, in general, are valid up to a period of six months but there are exceptions to it as some of the cheques are valid only for a period of three months. The bank to which the cheque is to be received with its validity period is an important question, the court divided on this matter, but the general sense says that it should be the bank of the drawer where the cheque should reach within the validation period, and it is in the hand of the bank to accept or reject the cheque depending on the status of that present date.

   In Sadanandan Bhadran (Appellant) V. Madhvan Sunil Kumar (Respondent)\(^9\)

   In the three judges bench in the above-mentioned case said it was clearly stated that nowhere in the provisions of section 138 of the Negotiable Instrument Act it is written that there is any kind of hindrance from the presentation of cheque in a successive manner, and even in

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\(^7\) Maruti Udyog vs Narendra, (1999)1,SCC 113
\(^8\) Tamil Nadu Retrenched Census Employees Association vs K. Thennan, AIR 2007 Mad (1999)
\(^9\) Sadanandan Bhadran vs Madhvan Sunil Kumar, 1998 CrLJ 4066 (SC)
the successive time. the cheque gets dishonoured by the bank; it will strictly attract the provisions of the criminal offence

**WHAT SHALL CONSTITUTE THE OFFENCE**

Essentials to be fulfilled to fall under the ambit of a criminal offence vis-à-vis Section 138 of NI Act 1881, are as following:

a. The drawer should hold some debt which is legally enforceable towards the payee of the cheque, and the said cheque is drawn to dispose of such amount of debt.

b. A cheque is not honoured by the branch of the bank due to insufficiency balance or in cases where the sum mentioned exceeds the withdrawal limit, which is mentioned in the agreement with the bank made.

c. The presentation should be made within the period of six months or from the date of drawing of the cheque or till the validity of the cheque.

**IMPORTANT TAKEAWAYS TO INITIATE PROCEEDINGS UNDER 138 OF NI ACT 1881**

1. **NOTICE OF THE CHEQUE**

Notice of the cheque is a very crucial stage. If there is a default of payment made even after the expiry of fifteen days from the receipt of the notice given to the drawer, then it is an offence. **The key ingredient for attracting of offence section 138 of the NI Act is a misstep taken by the payer to make payment within 15 days of the service of the notice, and by being silent or with a disagreement within 15 days from the notice.**

The requirement of giving an awareness receipt is mandatory. The most important problem is the serving of the notice to the accused as accused makes all efforts to keep away from the receipt of the notice. In order to address such situations, the courts have advanced a precept known as a deemed provider of a note underneath phase 138(b). The criminal function regarding deemed service of a word U/s 138(b) has been that whenever a note is despatched via the payee to the drawer of the cheque and the stated note is refused to be

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10 Sakshi Sairwal and Muskan Kapoor, Decriminalising section 138 of the Negotiable Instrument Act 1881, LEXOLOGY (Feb 01, 2021, 10:30 AM), https://www.lexology.com/library/detail.aspx?g=c1f86808-e817-4ed7-ab7ab6361d5c3c6
taken, or the addressee intentionally avoids its provider; then the court may presume that
the notice was deemed to be served to the drawer.

2. **FILING OF COMPLAINT**

If the drawer fails even after fifteen days from receiving the receipt of the notice, the payee
can file a complaint. The complaint must be filed before a **Civil Judge**. (The courtroom may
additionally take attention of a grievance after the prescribed duration if the payee affords a
first-class purpose for the postpone.). If someone is convicted below Section 138 of the NI
Act, he or she is punishable with years' imprisonment, or a first-class, or each. As it is in
line with the First Schedule of the Code of Criminal Procedure (CrPC), 1973, cases filed
under section 138 of the NI Act, are bailable and non-cognisable in nature.

3. **JURISDICTION**

**K. BHASKARAN vs. SHANKARAN VAIDHYAN BALAN & ANR**\(^\text{11}\)

The appeal was filed in the apex court by the accused after the acquittal, one of the issues
raised in the appeal was regarding the jurisdiction (territorial) of the judge who tried the
case as the dishonour of cheque occurred in the other district of the state Kerala.

The supreme court in the above-mentioned case has decided the jurisdiction in the given
following cases: -

i. The place where the cheque was drawn.
ii. Where the payment was to be made
iii. Where the presentation of the cheque was made for the payment of the said
amount.
iv. Where dishonour of cheque took place.
v. Where the notice was sent for the drawer.

\(^\text{11} \) K. Bhaskaran vs Shankaran VAidhyan Balan & Anr, AIR 1999 SC 3762
The liberty is given to the complainant to choose any of these courts having jurisdiction of any of these areas local territory in which any of the above-mentioned points have occurred. As the judgement given in the above case is based on the provisions discussed in the section

The decision given by the apex court was highly scrutinised by the three judges bench in the matter of **DASRATH RUPSingh RATHOD vs STATE OF MAHARASTRA &ANR**

\[12\] and said that the case would be tried **only in the court where the jurisdiction of the drawee bank where the cheque had been dishonoured.**

4. **PUNISHMENT**

Section 138 of the NIAct, 1881 deals with offences related to the issue of cheque disapproval by the bank. In section 138 of the Act, it is clearly categorised the act of disapproval of cheque as a criminal offence, and the accused is imprisoned up to a time period of two years or with the penalty in terms of money or with both. The offence is bailable, compoundable and non-cognisable. The chance of returning the said amount in the cheque can be given in the form of written notice to the defaulter if the payee takes a decision of proceeding legally.

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\[12\] Dasrath Rupsingh Rathod vs State of Maharashtra and Anr, 9 SCC 129
CONCLUSION

Over time, humans have favoured carrying and executing a small piece of paper termed as cheque, compared to chunks of notes. A truncated system is detrimental to the nation’s monetary health as a result of the rhetoric interest of the people. One of the most concerning problems, which we are dealing with in the smooth and convenient operation of the cheque system, is the dishonour of cheques, which is threatening the reliability of this negotiable device. An offence under 138 is an offence without any mens rea, but it is based on a negotiable instrument, i.e. cheque. If a cheque is issued in discharge of a legally enforceable debt and on presentation of the cheque for encashment the same is dishonoured, and the offence will come into existence under section 138 of the N.I act. To discourage this, some cheques have been dishonoured by the banking public through an amendment done to the Negotiable Instruments Act, 1881. After the said amendment, a new chapter is included as section 138 to 142 has been inserted in the Negotiable Instruments Act, 1881. Dishonour of cheques prior to the 12 months in 1988, and it is treated as an offence under Indian Penal Code. A misdemeanour of the punitive measure has been added into the Negotiable Instruments Act, 1881, to bring some promptness to the measures against the defaulters of the cheques and to create some integrity of the holders of the Negotiable Instruments. A complaint under section 138 of the Act cannot be quashed or dismissed merely because the notice was not served on the accused or drawer, without enquiring into the circumstances leading to the non-serving of the notice. The burden is on the complainant to show that the accused has managed to get incorrect postal order endorsement made.

It is erroneous to construe that section 138 would not apply from a closed bank account, section 138 does not call for such a narrow construction, and such an interpretation would defeat the provision of the act. Complainant is not required to adduce the number of witnesses and bulk of documentary evidence on the question. Although the amendments in the Negotiable Instruments Act, 1881 are helpful in preventing the offence of cheque bouncing, they cannot be said to be an absolute success in stopping the crime.

13 Pragya Aishwarya, Dishnour of cheques, LEGAL SERVICES INDIA, (Feb 01, 2021, 12:00 PM), http://www.legalservicesindia.com/article/236/Dishonour-Of-Cheques.html