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## LEGAL CONSEQUENCES OF DISHONOUR OF CHEQUE: AN ANALYSIS

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### **Abstract:**

Cheques are used in almost all transactions such as re-payment of loan, payment of salary, bills, fees, etc. A vast majority of cheques are processed and cleared by banks on daily basis. Cheques are issued for the reason of securing proof of payment. Nevertheless, cheques remain a reliable method of payment for many people. On the other hand, it is always advisable to issue crossed "Account Payee Only" cheques in order to avoid its misuse. A Cheque is a negotiable instrument. Crossed and account payee cheques are not negotiable by any person other than the payee. The cheques have to be deposited into the payee's bank account. Legally, the author of the Cheque is called drawee, the person in whose favour, the Cheque is drawn is called „payee“, and the bank who is directed to pay the amount is known as drawee. Dishonour of the cheque is one of the major issues faced by the parties while transferring money through negotiable instruments. The Dishonour of cheques became popular and frequent in courts of law and the law relating to the same developed in such a rapid pace covering almost several aspects which may arise in the day to day disposal of such cases by the courts.

**Keywords:** Cheques, Commerce, Socio-Economic Justice

### **Introduction:**

Advent of cheques in the market have given a new dimension to the commercial and corporate world, its time when people have preferred to carry and execute a small piece of paper called Cheque than carrying the currency worth the value of Cheque. Dealings in cheques are vital and important not only for banking purposes but also for the commerce and industry and the economy of the country. But pursuant to the rise in dealings with cheques also rises the practice of giving cheques without any intention of honoring them. Cheques are used in almost all transactions such as re-payment of loan, payment of salary, bills, fees, etc. A vast majority of cheques are processed and cleared by banks on daily basis. Cheques are issued for the reason of securing proof of payment. Nevertheless, cheques remain a reliable method of payment for many people. On the other hand, it is always advisable to issue crossed "Account Payee Only" cheques in order to avoid its misuse. A Cheque is a negotiable instrument. Crossed and account payee cheques are not negotiable by any person other than the payee. The cheques have to be deposited into the payee's bank account. Legally, the author of the Cheque is called

drawer, the person in whose favour, the Cheque is drawn is called payee, and the bank who is directed to pay the amount is known as drawee. However, cases of Cheque bounce are common these days. Sometimes cheques bearing large amounts remain unpaid and are returned by the bank on which they are drawn.

### **Legal Provisions:**

A “Cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I- For the purposes of this section, the expressions:

- a) A cheque in the electronic form means a cheque which contains the exact mirror image of a paper cheque and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system.
- b) A truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further.

### **Physical movement of the cheque in writing:**

Explanation-II- For the purposes of this section, the expression “clearing house” means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.

### **E-cheque:**

Electronic cheque (e-cheque) is the image of a normal paper cheque generated, written and signed in a secure system using digital signature and asymmetric crypto system. Simply said an electronic cheque is nothing more than an ordinary cheque produced on a computer system and instead of signing it in ink, it is signed using the digital equivalent of ink. After the coming into force of The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, legal recognition has been accorded to e-cheques and they have been brought at par with the normal cheques. Now a, cheque includes an e-cheque.

### **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 extend 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 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. 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. 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.

### **What amounts to Dishonour of Cheque?**

Law on the dishonor of cheque is mentioned from section 138 to 142 of the Negotiable Instruments Act 1881 as amended by Negotiable Instruments (Amendment) Act 2015 which is as follows :

- A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account.
- The cheque has been presented to the bank within the period of three months from the date on which it is drawn or within the period of its validity whichever is earlier.
- That the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount to be paid from that account by an agreement made with the bank.
- The payee or the holder in due course of the cheque makes a demand of the said payment by giving notice in writing to the drawer of the cheque within 30 days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid.
- Drawee fails to make the payment within 15 days of the receipt of the said notice When a cheque is presented in the concerned bank by the drawee within the stipulated time i.e. within the three months from the date of issue the drawee bank issues, Check Return Memo to the payee mentioning the reason for non-payment.

### **Notice Of Dishonour :**

Notice of dishonour means information about the fact that the instrument has been dishonoured. Notice of dishonour is given to the party sought to be made liable and, therefore it serves as a warning to the person to whom the notice is given that he could now be made liable. Enormous delay in giving notice of dishonour may put an end to the plaintiff's right in respect of the dishonoured instrument.

### **Notice of Dishonour by Whom?**

Notice of dishonour is to be given by a person who wants to make some prior party of his liable on the instrument. Therefore, such a notice may be given:

1. Either by the holder
2. A party to the instrument who remain liable for it

**Dishonour of Cheque:**

A person suffers a lot if a cheque issued in his favour is dishonoured due to the insufficiency of funds in the account of the drawer of the cheque. To discourage such dishonour, it has been made an offence by an amendment of the Negotiable Instrument Act by the Banking, Public Financial Institution and Negotiable Instrument Laws (Amendment) Act, 1986.

**Five ingredients of the offence under S-138:**

The offence under Sec-138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts, which are components of the said offence;

1. Drawing of the cheque,
2. Presentation of the cheque to the bank,
3. Returning the cheque unpaid by the drawee bank,
4. Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.
5. Failure of the drawer to make payment within 15 days of the receipt of the notice.

**Liability of a Drawer of a Dishonoured Cheque:**

- **Civil liability:** Where a cheque is dishonoured, the legal position of the drawer of the cheque becomes that of a principal debtor to the holder. The holder can bring civil suit just like any creditor to recover the amount from the drawer making him liable as principal debtor.
- **Criminal liability:** A drawer of a cheque is deemed to have committed a criminal offence when the cheque drawn by him is dishonoured by the drawee on account of insufficiency of funds. The criminal liability of a drawer in case of dishonour of cheque is dealt in section 138 to Section 142 of Negotiable Instrument Act.

**Judgments bring out the correct Legal Position:****Rakesh Nemkumar Porwal vs. Narayan Dhondu Joglekar (1993 1 CR 268):**

(1993 CRI L J 680) = (1993 MH L J 630) = (72 CC 822) DB BOM Any reason for dishonour is an offence.

**J. Veeraraghavan v. Lalith Kumar (1995 3 CRI 205):**

(1995 83 CC 853) = (1995 CRI L J 1882) MAD DB Any reason for dishonour is an offence. S. 138 of the NI Act Marginal Note stating "Dishonour of cheque for insufficiency etc. of funds in accounts" addition of word "etc." cannot be considered to be an accident. Disagreeing with Hunasikathimath case of Karnataka H.C., who following Punjab and Haryana H.C. in the case of Abdul Samad by a learned single Judge of Bombay H.C. in the case of Om Prakash (1992 (3) Crimes 3006, terming them as rigid and wooden view states: "there is no other go for us except to agree to disagree with the views expressed herein, in as much as such a view, apart from suffering from a serious infirmity of erroneous interpretation of the relevant provisions of the Act, is to frustrate the very object and purpose for which the relevant provisions had been introduced by the amending Act. It is to be noted that this sort of a view is not negligibly supported by the very title of the Chapter of penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts (Emphasis supplied.) Equally important it

is to note that the marginal note to sec. 138 of the Act. Top of all, such sort of a view, if accepted and followed, the statutory provisions of Chapter 17, introduced by amending Act, would become a dead letter and a non-sense situation would be created, in the sense of posing insurmountable obstacle in the free negotiability and acceptability of the cheques in the fast moving commercial transactions at regional, national.

### **Position on and after K. Bhaskaran vs. Shankaran:**

Hon'ble Apex court in the above mentioned case of Bhaskaran held that jurisdiction to initiate prosecution lies at the following places:

- Where Cheque is drawn
- Where payment had to be made
- Where Cheque is presented for payment
- Where Cheque is dishonoured
- Where notice is served up to drawer

However, recently in case of Dashrath Rupsingh Rathod vs. State of Maharashtra, reported in MANU /SC/ 0655/ 2014 interpreted various provisions of Sec.138 of Negotiable Instruments Act and held the following:

An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or the reason that the amount exceeds the arrangement made with the bank. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138(1).

### **Pre-Requisites and Documents for filing a Cheque Bounce Case:**

1. Original Cheque
2. Return Memo (Bank Slip)
3. The statutory demand notice
4. Postal receipt of the notice you had issued
5. Any other document/s with the permission of Hon'ble court having the jurisdiction to try the case
6. Original copy of power of attorney, authorizing the attorney to present the complaint.

### **Defence that may be taken:**

If the matter is examined critically, then the following may be a set of defence that may be taken are as follows:-

- Absence of a legally enforceable debt or liability.
- Cheque was not returned for the reasons constituting an offence.
- Complaint is not as per time period provided in sections 138 and 142, i.e., the plea of limitation.
- Absence of legal notice of 15 days.
- Lack of Jurisdiction.
- No return of Cheque to the payee. Compoundable Offence



By an amendment introduced in 2002, under Section 147, an offence related to the dishonour of a Cheque and every other offence punishable under the Negotiable Instruments Act, 1881 can be privately settled.

### Conclusion:

Dishonour of the Cheque is one of the major issues faced by the parties while transferring money through negotiable instruments. The Dishonour of cheques became popular and frequent in courts of law and the law relating to the same developed in such a rapid pace covering almost several aspects which may arise in the day to day disposal of such cases by the courts<sup>16</sup>. It will make the drawer liable even though he was unaware of the insufficiency of the fund in his account within a prescribed limit of time. But the law itself provides a reasonable time for them to repay back the amount to the payee. The default made after such a period has to be considered as a criminal act as it involves an unlawful intention of not paying back the money to the deserving party. Thus, the law makes it clear that the parties while signing a cheque have to be aware of the amount of money in their concerned banks.

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