

LEGAL IMPLICATION OF DISHONOUR OF CHEQUE. ANALYSING JUDICIAL TRENDS AND LEGISLATIVE INTENT

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Abstract

Negotiable Instrument Act, 1881 is an important legislation governing the transactions for the purpose of commercial dealing. The dishonour of Cheques is governed under The Negotiable Instrument Act 1881, which is generally used for the purpose of financial transactions and also has a significant impact on financial transactions. This paper analyses and trends and also focuses upon the intent of legislation behind the enactment of The Negotiable Instrument Act 1881. This act also governs the framework of Cheques in India. Section 138 of this act specifically in consonance with the dishonour of Cheques this section has gone under many amendments it has evolved with the passage of time which has enhanced and improvised the efficiency and effectiveness debt fraudulent practices and transactions, not only legislation but also judicial trends have a significant contribution in evolving section 138 of this act. The courts also emphasize the importance of essentials under section 138 of this act. This act signifies the importance of financial transactions in a right and proper manner, not only that, but also it has provided the punishment of criminal liability as well as civil liability depending upon case to case it also caters the liability in terms of imprisonment, fine, etc. This act does not hamper constitutionality, but also it is in consonance with The Constitution of India. The legislative intent behind the enactment of this law can be clearly observed through this act. Financial integrity is the priority under this act and not in consonance with the act will result in criminal punishment. There are many instances where section 138 of the act faced challenges, but in this evolving time, the enactment and laws should also be evolved for the purpose of consistency. The legislative implication of Cheque dishonor is having a significant outreach at the same time, there are some consequences faced and to which the amendments were developed. This provides trust in the legislature and the needs for the purpose of development in any of the statutes.

Research Question:

What are the Implications of Dishonor of Cheques under the Negotiable Instrument Act?

Introduction:

The Negotiable Instrument Act of 1881 was in pioneer for the organized structure of financial transactions after 1881. There was no statute governing Negotiable Instruments before 1881. There was no legislation governing dishonour of cheques. The importance of cheques now is much different, at that point in time. Cheques were not Financial Instruments, which are standardly accepted widely at that point in

time. Cheques as a financial instrument were widely used in the 19th century in the British Era when banks and banking systems started developing. Going to a legislative intent behind forming the Negotiable Instrument Act 1881, The intent behind the act can be clearly driven From a bear reading of the act⁴³⁸. There was no structured form to govern Negotiable Instruments, to enforce the law upon the Negotiable Instrument, the act of Negotiable Instrument Act, of 1881 introduced Negotiable Instruments are the instruments that can be

⁴³⁸ Vasu Choudhary, Legislative and Judicial Trends in India Relating to Dishonour of Cheque, 5 IJRR 466 (2018).

negotiated. For instance, we can consider it as a Cheque, bill of exchange, promissory note, etc. These instruments can be negotiated in a market to govern this instrument the act of the Negotiable Instrument Act, 1881 was introduced for the purpose of smooth functioning, catering to the protection of creditors and debtors. The provisions of this act were introduced.

Key Provisions of the Dishonor of Cheques under the Negotiable Instrument Act, of 1881:

1. Section 138 of the said Act

“Dishonor 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 of other liability” means a legally enforceable debt or other liability”.

If you see section 138 of the act, it is clear that it is a punishable offense under this act for a period of one year or a fine. The imprisonment may extended for two years in the case of dishonour of cheque⁴³⁹.

2. Section 139 of the said Act

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 139 of the said act gives presumption for the holder of a Cheque as the cheque is given for paying off the debt or other obligations.

3. Section 140 of the said Act

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

⁴³⁹ Aaditya Thorat, A Study on When a Drawer of a Dishonoured Cheque is Protected from the Clutches of the Negotiable Instruments Act, 1881, White Black Legal

presentment for the reasons stated in that section”.

Section 140 of the state act, bars Drawer from taking the defense of ignorance, that is drawer cannot plead for ignorance of insufficient balance when charged under section 138 of the side act.

4. Section 142 of the said Act

Cognizance of offenses.

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

- a. no court shall take cognizance of any offense 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 a 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 142 of this act provides the procedure of taking cognizance of the offense under 138 of this act. Section 142 also prescribes, which court is competent to try the case under section 138, and also prescribes territorial jurisdiction. It also provides a time limit of one month from the date of cause of action to give a complaint in writing, by the Payee or as the case, maybe the holder in due course.

5. Section 143 of the said Act

Power of Court to try cases summarily.

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offenses 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 endeavor shall be made to conclude the trial within six months from the date of filing of the complaint".

Section 143 of the side act Deals with the summary trial of the cases under section 143 of the act came into existence by The Negotiable Instrument (Amendment and Miscellaneous Provision) Act 2002. Section 143(3) specifically mentions the time limit to complete the procedure in six months from the date of filing the complaint by the drawee.

6. Section 147 of the said Act

Offences to be compoundable.

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

Section 147 of the said act makes the offense punishable under the act as compoundable.

Judicial Trend evolve with the Precedents:

MRS Leathers V S Palaniappan and Anrs. 2012 Case

The case identified the presidents to be followed before the offense is made out under section 138 of the said act.

- The cheque must be presented to the bank within **six** months (after the notification of RBI it is reduced to **three** months)
- The Payee or Holder of the said cheque must make a demand by giving a Notice within **thirty** days.
- Drawer failed to make the payment within **fifteen** days from the date on which notice was received.⁴⁴⁰

Ravi Dixit V State of UP and Anr. 2020 Case

The court gave a precedent that the drawee does not have to wait for 15 days after notice if the intention of the drawer to not pay or not to honour the liability is much clear.⁴⁴¹

Conclusion:

The Negotiable Instrument Act, of 1881, caters to the dishonor of Cheques, Cheques under section 138 of the said act. The law and section 138 are getting refund day by day, but the challenge before the courts is to reduce the number of cases⁴⁴². If the above-mentioned cases are deeply drive into, We can easily make out that the law is evolving with the help of the judicial president. The intent of the legislature was very clear to which judicial presidents are given importance as they are in consonant with the intent. The law in section 138 of this act is widespread and also helps in gaining confidence in the law⁴⁴³. This act does not only focus on cheques. But it also has a provision in regard to bills of exchange, promissory notes,

⁴⁴⁰ 5 Choudhary Vasu, 466 Legislative and Judicial Trends in India Relating to Dishonour of Cheque (IJRRA, 2018)

⁴⁴¹ Mayashree Acharya, Consequences of Cheque Bounce Notice, ClearTax (2024)

⁴⁴² Kinshuk Chatterjee, Dishonour of Cheques: Section 138 of the Negotiable Instruments Act, 1881, LiveLaw (2022)

⁴⁴³ The Law on Dishonour of Cheques, XpertsLegal (May 5, 2023)

etc. This law is considered to be a good law. There are no other Statutes, which are in line to act. A personal opinion upon this is to evolve this act as per the evolving time that is to amend this act as per the dynamics of the market and also the other ADM mechanism to be included for the purpose of settlement of issues, considering the pendency of cases in regards to section 138 of the act.

References:

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