



Date: 17.05.2017

## **A Summary on Cheque Dishonour Cases**

Section 138 of the Negotiable Instruments Act, 1881 creates a statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker.

### **Objective**

The objective of the act is to define the various negotiable instruments such as, promissory notes, bills of exchange, cheque etc. Also to prescribe the liability in case of a failure of the instrument to fulfill its debt due to the default on the part of the payer or to curb scrupulous practices adopted to escape liability in respect of negotiable instruments. However, Section 138 in regard to dishonor of cheque attracts criminal liability. Thus the dishonored of the cheque means the refusal by the bank to pay the amount of cheque to the payee. It is a condition in which the bank does not pay the amount of the cheque to the payee. In fact, when the drawer draws the cheque without following all the rules of issuing cheque or when he/she draws the cheque exceeding the bank balance then the bank dishonors the cheque.

### **Law on Negotiable Instrument, Section 138**

It is manifest that to constitute an offense under Section 138 of the Act; the following ingredients are required to be fulfilled.

1. 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
2. the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;
3. that cheque has been presented to bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;
4. that 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 arranged to be paid from that account by an agreement made with the bank;



5. the payee or the holder in due course of the cheque 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
6. the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

**Essential ingredients of an offence under the section can be summed up as follows:**

1. A person must have drawn a cheque on a bank account maintained by him.
2. The cheque should have been issued in discharge, in whole or in part, of any debt or other liability.
3. The cheque has been presented to the bank within the period of its validity.
4. The cheque is returned by the bank unpaid, either because of funds insufficient or it exceeds the amount arranged to be paid.
5. The payee makes a demand for the payment by giving a notice in writing, within 30 days of the receipt of information by him from the bank.
6. The drawer fails to make payment of the said amount of money within 15 days of the receipt of the said notice.
7. Complaint is made within one month of the date on which the cause-of-action arises.

**Section 141 of NI Act outlines conditions in cases of offences by companies. The following points are important:**

- Every person at the time the offence was committed, was in charge of, and was responsible for the conduct of the business of the company is liable to be prosecuted. In other words, directors, secretary and officers of the company may be liable.
- The company is also liable to be prosecuted.

**SUCCESSIVE PRESENTATION OF CHEQUE AND CAUSE OF ACTION:**

The crucial question of law for decision before the Hon'ble court was whether a payee or holder of a cheque can issue a statutory notice to the drawer each time the cheque is dishonored and institute proceedings solely on the basis of a second or successive statutory notice?



- In MSR Leathers case, it was held that there is nothing in the provisions of the Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonour of the cheque on its presentation.

### **SECURITY CHEQUE**

Crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability.

The Supreme Court held that the dishonour of a post-dated cheque given for repayment of loan installment, which is also described as "security" in the loan agreement, is covered by Section 138 of the Negotiable Instruments Act, 1881.

### **JURISDICTION**

The Negotiable Instruments (Amendment) Bill, 2015 was passed by the Parliament. The Negotiable Instruments (Amendment) Act, 2015 received the assent of the President on the 26th December, 2015 and has been published in the Gazette of India, Extraordinary on 29th December, 2015. The provisions of the Negotiable Instruments (Amendment) Act, 2015 shall be deemed to have come into force on the 15th Day of June, 2015, the day on which the Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated to further amend the Negotiable Instruments Act, 1881.

Latest Jurisdiction

**Section 142 of the Amended Act reads as follows:-**



"(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."

Earlier, prior to this Amendment, the Hon'ble Supreme Court, in its judgment dated 1st August, 2014, in the case of Dashrath Rupsingh Rathod versus State of Maharashtra and another (Criminal Appeal No. 2287 of 2009) held that the territorial jurisdiction for cases relating to offence of dishonour of cheques is restricted to the court within whose local jurisdiction such offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.

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