

LEGALFOXES LAW TIMES

CHEQUE DISHONOR (AN OFFENCE UNDER SECTION-138 NI ACT)

By Misha Jain

“Negotiable” means anything which is able to be transferred and “Instrument” is a paper by which a right is constructed in favor of any other person. Negotiable Instruments Act, 1881 provide rules and regulations regarding transactions involving promissory notes, bills of exchange and cheques etc. A cheque is a “bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand”¹. Section 138 to 148 of the Negotiable Instruments Act, 1881 deals with cheque dishonor cases. These sections are relevant so as to create confidence in the transactions involving negotiable instruments such as cheques, bills of exchange, promissory notes and Banking Systems. These sections promise the credibility of the cheque as a mode of payment. It ensures that cheque is transferred and accepted as a mode of payment in a good faith and not with any mal intention.

Various types of cheques which exist are:-

1. Order Cheque- It is the type of the cheque where only the person or party, whose name is mentioned on the cheque, can withdraw the cheque amount. Here only the payee in whose favour the cheque is issued and whose name is mentioned on the cheque, can go to the bank and encash the cheque amount.
2. Self Cheque- It is the kind of a cheque where, if the drawer himself wants cash from the bank then he can issue the cheque in his own favor by writing ‘SELF’ on the cheque instead of writing payee’s name.
3. Bearer Cheque- It is the kind of the cheque where whosoever conveys the cheque to the bank has the power to encash it. The person who bears the cheque can withdraw the cash from the bank.

¹ Section 6 of the Negotiable Instruments Act, 1881

4. Crossed cheque- In this type of cheque no encashment of cheque is there. Here only the cheque amount is transferred from drawer's bank account to payee's bank account by submitting the cheque to the bank. It can also be done by any third party.
5. Post- dated cheque- In this kind of cheque drawer wants the payee to withdraw the cash on the later date than the date on which it is filled.
6. Anti Dated cheque- Here the drawer fills the date which is prior to the present date.
7. Account Payee cheque- Here the cheque amount is directly transferred to the payee's account from the drawer's account but unlike crossed cheque, no third party can involve in such type of transaction.
8. Blank Cheque- In such type of cheque, only drawer's signature is present on the cheque and all other fields are remained blank then it is called Blank Cheque.
9. Multilated cheque- This type of cheque reaches to the bank in a tattered condition. If it splits into 2 or more parts and the relevant information on the cheque is not visible then bank ,ay reject it but if it is torn in such a way that all the information on the cheque is visible then it may be accepted by the bank.
10. Traveler's cheque- This type of cheque can be carried by the traveler to the abroad where Indian currency is not used and encash it.
11. Stale cheque- As per Indian Law, it is mandatory to withdraw the cheque amount from the bank within 3 months from the date on which it is issued and if it is not done so then such a cheque will be rejected and will be declared Stale Cheque.

Scope and Objective of Section- 138 of The Negotiable Instruments Act, 1881

Section-138² provides remedy for the offence of cheque dishonor due to insufficiency of funds etc. This section defines cheque dishonor as a situation where when payee presents cheque received by drawer to the bank, the bank returns the cheque without encashing it due to insufficiency of funds or amount mentioned in the cheque was not arranged for by the drawer at the time of presentment. The drawer shall be deemed to have committed an offence under Section- 138 of the Negotiable Instrument Act, 1881. Punishment is also mentioned in this section for the person committing an offence of cheque dishonor.

² Section 138 of the Negotiable Instruments Act, 1881

Such an act of Parliament of bringing this section was mandatory to ensure the integrity of the transactions involving cheques and also to establish the trustworthiness of Indian Banking System. This was enshrined in the case *Modi Cements Ltd. v. Kuchil Kumar Nandi*³.

Legal Procedure

Once the cheque is received by the payee, he has to present it to the drawee bank within 3 months from the date he received it. If the bank returns the cheque declaring it as dishonored, the date on which it was declared dishonored, the payee has to send the written notice within 30 days from such date to drawer intimating him to pay the cheque amount within 15 days from such notice.⁴ If the drawer fails to pay the amount within 15 days then payee can file a complaint in the court. The court will issue summons to the accused. Along with such summon the court can attach an application in which it can mention that if the accused agrees to compound⁵ the case at the initial stage of hearing he will not have to pay any costs. It was highlighted in the case *Damodar S Prabhu vs. Sayed Babalal H*⁶ that if the accused agrees for compounding at the first or second hearing of the case he will not have to pay any fine. Compounding is also possible at the later stage of proceedings.

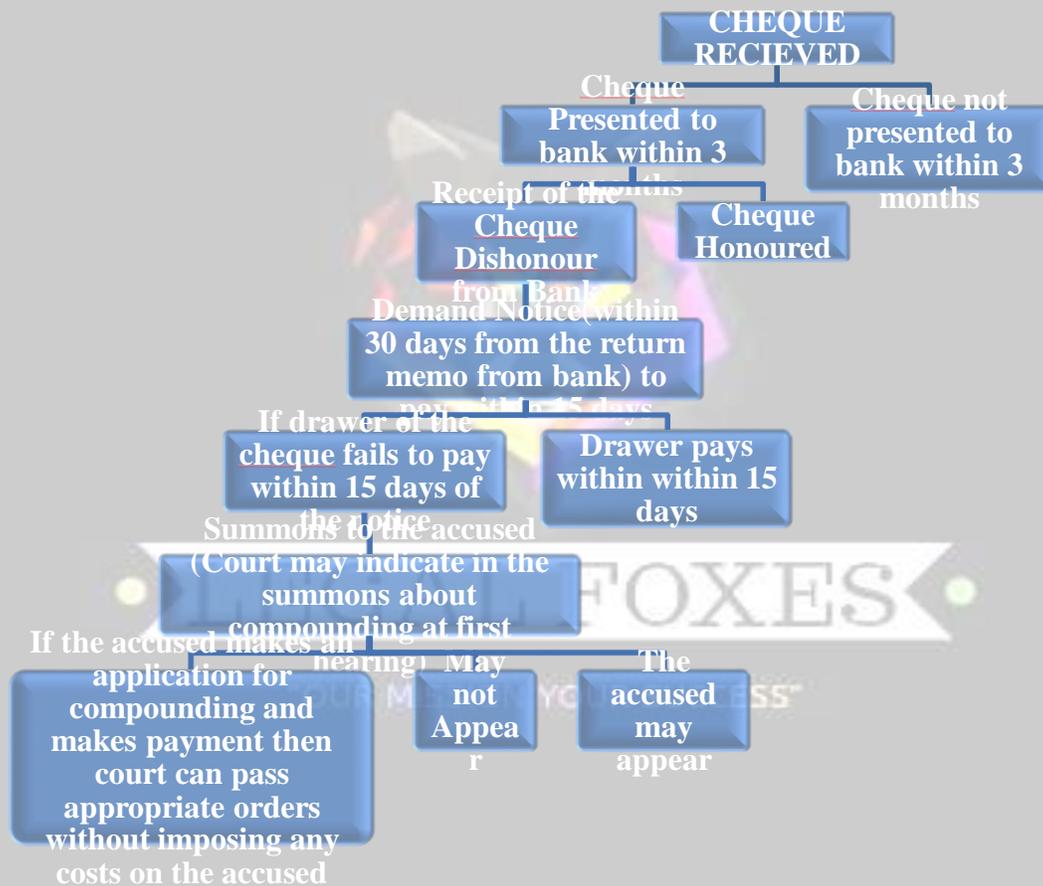
³ (1998) 3 SCC 249

⁴ Section 138 of the Negotiable Instruments Act, 1881

⁵ Section 147 of the Negotiable Instruments Act, 1881

⁶ (2010) 5 SCC 633

Flowchart depicting legal procedure involved in cheque dishonor case



Settlement of Cheque Dishonour cases through Mediation

When the parties go to court for making complaint under Section 138 of the Negotiable Instruments Act, 1881, before taking up complaint for hearing the court can communicate about

alternate dispute resolution mechanisms available for settling of dispute. Court can ask parties if they want to resort to such mechanisms for resolution of dispute.

If parties agree on Mediation, then court can list the matter before concerned mediator or mediation centre. Court fixes the date and directs the parties to appear before such mediator on that date.

During the mediation proceedings mediator encourages parties to resolve their overall dispute and not just dispute confining to subject matter.

The parties shall be punctual in making appearance before the mediator. They shall resolve the dispute within the time period fixed by the court.

If the parties seek extension of time period beyond the initial 6 week period then court keeping in view, interest of justice, may grant such extension for resolution of dispute.

In *Dayawati v. Yogesh Kumar Gosain*⁷, it provided for amicable dispute resolution mechanism i.e. Mediation and also procedure for Mediation.

Speedy Disposal of Cheque Dishonor cases

Due to large number of cases under section 138 of the NI Act, 1881, the courts have become overcrowded with such cases. Online resolution of such cases will obviate the appearance of parties in the court which will ultimately make the courts less crowded. It is open to High Court to prescribe such category of cases which can be resolved online and issue any directions which it considers fit in this regard, *Meters and Instruments (P) Ltd. v. Kanchan Mehta*⁸.

Stance of Courts on Security Cheques

Security cheques are blank cheques which are issued as security against any loan taken⁹. Presence of legally recoverable debt is not there at the time of issuance of such cheque. If the security cheque is dishonored due to insufficiency of funds or any other reason mentioned in Section 138 NI Act, it will not attract an offence under Section-138 because to bring an offence

⁷ 243 (2017) Delhi Law Times 117 (DB)

⁸ [\(2018\) 1 SCC 560](#).

⁹ PCA and RD Bank Ltd. v. Suresh Das, [2018 SCC OnLine Kar 492](#)

*under this section, the presence of legally recoverable debt or liability should exist on the date of issuance of cheque, Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*¹⁰



¹⁰ [\(2016\) 10 SCC 458](#)