
BOUNCED PROMISES: ANALYZING THE CONSEQUENCES OF DISHONoured CHEQUES

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ABSTRACT

The cheque despite being a very old system of transfer of cash still remains as an integral part of the banking and finance system. The Negotiable Instruments Act of 1881 is the legislation that deals with the law related to various “negotiable instruments like promissory notes, bills of exchange and cheques”. “Section 138 of the Act deals with the dishonour of cheque” it specifically mentions the elements that must be present to conclude that a cheque can be said to be dishonoured.

A cheque transaction involves a minimum of three parties, the person who drafts the cheque called as the “drawer and the person in whose favour it is drawn is known as the payee” and the bank to which the cheque is to be presented is called as the drawee. A cheque is said to be dishonoured when the drawee bank refuses payment on any of the valid grounds provided by law along with a cheque return memo. The most common reason for a cheque return is the insufficiency of “funds in the account of the drawer”. However, a notice and opportunity will be given to the drawer to pay the amount failing which it will be a dishonour of cheque.

The dishonour of a cheque or commonly known as cheque bounce is a criminal offence with criminal liability under “Section 138 of The Negotiable Instruments Act, 1881 and Section 420 of the Indian Penal Code”. A person held liable for the dishonour of a cheque may be imprisoned for a term not exceeding two years or may be directed to pay twice the amount mentioned in the cheque. This research paper analyses and describes when a cheque can be said to be dishonoured and what are the consequences and legal remedies available for the offence.

CHAPTER - I

INTRODUCTION

The cheques have become an integral part of the banking and finance system, especially as a negotiable instrument payable on demand. The first usage of cheques in printed form originated from England in the modern-day United Kingdom. In 1700s the Bank of England and a Britain-based banking institution Lawrence Childs issued printed forms known as cheques with a serial number¹ in them to prevent fraud. The banking customer must personally obtain the numbered form from the cashier.

In India, cheques were introduced by the Bank of Hindustan in 1770 itself as India was then a colonial subject of the Great Britain. Further, Bank of England officially began printing cheques from 1717². The cheque was the only and most prevalent form of transfer of money etc till the 19th century. After internet banking service was introduced in 1997 in U.K and 1998 by ICICI Bank in India³ the usage of cheque gradually declined.

However, the usage of the cheque will not stop as it can be easily used to guarantee future payment of dues, gifts etc which cannot be substituted by modern net banking tools which are only good for quick and easy transfer of money. Further, cheques have the advantage of not only being used as a mode of transfer of cash but also as security for future payment and as evidence of a contract or payment.

However, cheques can be easily mis-used if it reaches the hands of the wrong person and therefore it is prudent to cross the cheque on the left corner as "Account Payee Only". These types of cheque cannot be negotiated by others and only by the payee for whom it is intended. A cheque can be said to be dishonoured when the bank (drawee) denies to pay the amount mentioned in the cheque on any of the accepted grounds which shall be mentioned in the upcoming chapters of the paper.

After the Bank (drawee) denies payment on a cheque which is dishonoured it must issue a "Cheque Return Memo" to the payee specifically mentioning the reason or ground for non-payment. Thereafter, the payee must send a notice to the "drawer of the cheque within 30 days"

¹ Menezes, Amith, and Dr Pinto. "Emergence of Cheque Truncation System." *International Journal of Management, IT and Engineering* 5.7 (2015).

² Menezes, Amith Donald, and Prakash Pinto. "Evolution of payment system." *Int. J. Manag. Technol. Soc. Sci* 2 (2017): 45-52.

³ Balakrishnan, Mahadevan. "Does India need a cheque truncation system?." *Journal of Payments Strategy & Systems* 4.2 (2010): 191-207.

of the dishonour of the cheque and within a maximum duration of 45 days of sending the legal notice, a case must be filed by the payee against the drawer. The law that governs issues related to the dishonour of a cheque is “The Negotiable Instruments Act, 1881.

CHAPTER – II

DEFINITION AND MEANING OF CHEQUE

The Banking Regulation Act, 1949 does not define the term “cheque” the definition of cheque can be found in “The Negotiable Instruments Act, 1881”. In Section 6⁴ of the said act, a cheque has been defined as a “bill of exchange” that is drawn on a particular banker and is payable on demand⁵. The provision also clarifies that cheque includes an electronic form of a cheque and an image of a truncated cheque. Further, for additional clarity, the legislature has provided three further explanations in the same provision.

The first explanation is further divided into sub-clause (a) and (b) with (a) explaining the meaning of a cheque in electronic form as a cheque which is drawn in electronic form by using a computer wherein the digital sign is laid using some secure system like biometrics etc. The sub-clause (b) explains a truncated cheque as a cheque which is truncated in the course of clearing cycle by either bank or clearing house which pays or receives payment after generating an electronic image which shall be transmitted instead of physically moving a cheque in writing⁶. Further, the second explanation to the provision mentions that clearing house refers to the Reserve Bank of India managed or recognised clearing house.

Furthermore, Section 13⁷ of the same act while defining a negotiable instrument in clause 1 mentions that a negotiable instrument includes a cheque. However, Section 19⁸ makes it clear that a cheque is a negotiable instrument payable on the order of the drawer. Section 14⁹ mentions that when a cheque is transferred to any person it is said to be negotiated. Further, Section 46 makes it clear that the acceptance of a cheque is completed by actual or constructive delivery. A cheque is a prominent form of a bill of exchange in which the drawer of the

⁴ Section 6, The Negotiable Instruments Act, 1881.

⁵ Chaudhary, Anubha. "Analysing Section 6 of the Negotiable Instrument Act, 1881." *Available at SSRN 3604195* (2020).

⁶ “Damle, Devendra, et al, Characterising cheque dishonour cases in India: Causes for delays and policy implications, *Available at SSRN 4082939*” (2022).

⁷ Section 13, The Negotiable Instruments Act, 1881.

⁸ “Section 19, The Negotiable Instruments Act, 1881”.

⁹ “Section 14, The Negotiable Instruments Act, 1881”.

instrument orders the drawee which is the bank to provide the prescribed sum of money to the holder of the cheque known as the drawee.

The three parties involved in a transaction of a cheque are the drawer who basically draws the particular cheque and he is the one who basically intends to make the payment. He also signs below the cheque to authorise the transaction. The second party involved in the transaction is the payee who is the person in whose name and favour the drawer draws the cheque and hands the possession of it making him the holder of the cheque¹⁰. The payee takes it to the drawee which is the banker that must complete the transaction when all necessary requirements have been fulfilled. Further, a cheque can be issued both on a savings or current account of the drawer.

CHAPTER - III

CHEQUE AS A NEGOTIABLE INSTRUMENT

TYPES OF CHEQUES:

The different types of cheques were specifically analysed in detail in the 2015 Punjab & Haryana High Court case of *Nitin Chadha v. M/s Swastik Vegetable Products*¹¹:

1. **Open cheque:** In this type of cheque the drawer will only fill the name of the payee with the amount and finally sign below the cheque. An open cheque is also known as a “bearer type cheque or uncrossed cheque¹²”. The holder or payee of the cheque must present it to the drawee bank within three months of the date signed by the drawer. After this duration the cheque becomes stale.
2. **Crossed cheque:** The written format of this cheque is also similar to the open cheque but the only difference is that in the top left corner of the cheque it is crossed and mentioned as “account payee only”. The benefit of doing this is it prevents the further misuse of the cheque by the payee or any holder of it as they cannot further mortgage or pledge it to someone else. The crossed cheque is also known as an account payee cheque.

¹⁰ Das, Ashish, and Praggya Das. "On benchmarking cheque collections in India." *ISI Technical Report isid/ms/2006/08*. <http://www.isid.ac.in/~statmath/eprints> (2006).

¹¹ 2015(3) RCR (Civil) 872 (P&H)

¹² Pasupuleti, Bhavya Sree. "Indorsement under Negotiable Instruments Act, 1881." *Compilation of Research-A Handbook*: 10.

3. **Self-cheque:** This refers to a cheque written by the drawer in his favour itself to collect hard cash from the bank where he holds the account.
4. **Pay yourself cheque:** In this type of “crossed cheque”, the drawer demands the “bank to transfer money from his account to the account of the bank to buy their products like drafts, pay orders, fixed deposit receipts or for depositing money into other accounts held by him like recurring deposits and loan accounts”.
5. **Post-dated cheque:** This type of cheque is usually made by the drawer as a security for a loan or advance to guarantee trustworthiness. These types of cheques contain a future date in them and may be presented for collection to the bank before the date mentioned in it also. However, it is also valid only for three months.
6. **Local cheque:** These are cheques issued and payable within the jurisdiction of a particular branch of the bank in a place. It does not mean that they are not valid for payment in other cities but there might be some additional charges on it.
7. **At par cheque:** It is a type of cheque which is accepted equally in all the bank branches across the country without any additional charges on it.
8. **Banker cheque:** This is a type of cheque issued by the bank on itself and a person can buy it and give it to a person who is not willing to accept ordinary cheques as there will not be any cheque bounces in this type of cheque unless it is fake¹³.
9. **Traveller's cheque:** These cheques are purchased by people willing to go for long-distance travel but want to carry money in a safer form than physical cash.
10. **Gift cheque:** This type of cheques is issued by the bank to gift money to someone in the form of cheque instead of hard cash.

ESSENTIAL CHARACTERISTICS OF A CHEQUE

1. The first basic condition for a cheque is it must be in writing and a mere oral order to pay cannot be construed as a cheque¹⁴. A cheque can be in hard copy or soft copy as an electronic cheque is also legally permissible.
2. A cheque cannot be drawn by or in favour of a fictitious person there must be a specific natural or legal person and a cheque cannot be drawn in favour of an uncertain or not existing person¹⁵.

¹³ Soe, Myint. "Law of Negotiable Instruments." (1994): 252-253.

¹⁴ Ghany, Abdel, and Abdullah Qazi. "Dishonour of Cheques in India." *Ct. Uncourt* 6 (2019): 13.

¹⁵ Nita, Manuela. "Distinctive Elements of Cheque Payments." *Jurnalul de Studii Juridice* 8 (2013): 107.

3. The cheque must be drawn on a specific banker and it is usually the bank in which the drawer has a savings or current account.
4. The drawer of a cheque must mention a specific sum of money or amount in it both in words and figures. For example, a cheque cannot be drawn as an amount of 1000 – 15,000 can be paid to the payee.
5. The details mentioned in the cheque must be legible and clear and failure to do so can also result in dishonour of the cheque.
6. A cheque must be unconditional as it is an order to pay and not a request. It must not contain any additional terms in it regarding payment or encashment. If there is any additional conditions to be fulfilled in it the cheque loses its negotiable character.
7. A cheque must be presented for payment by the payee to the drawee within 3 months of it being issued to him by the drawer according to the RBI notification regarding payment of cheques¹⁶. It is important to present the cheque within this specific time else it loses its validity as a negotiable instrument. After six months the cheque becomes stale cheque.
8. The cheque must be dated and signed by the original drawer of it and if it is not signed by the original drawer, it loses its validity.

CHAPTER - IV

IMPLICATIONS ON A CHEQUE OBTAINED ILLEGALLY.

The general rule regarding a cheque provided in Section 58¹⁷ of the Act is that when a cheque has been lost and found, obtained from the drawer through fraud, coercion or for unlawful consideration by any person cannot be used to receive the amount mentioned in the cheque unless the person has obtained it as a holder in due course with a genuine belief that the transaction was legal.

According to “Section 9 of the Negotiable Instruments Act, 1881 a holder in due course is a person who has for some consideration become the possessor of the cheque” without any adequate reason to believe that there was a defect in the title of the person from whom he has obtained the same¹⁸.

¹⁶ Ackermann, Ina. "The Issue of the Blank Cheque." *S. African LJ* 107 (1990): 63.

¹⁷ Section 58, The Negotiable Instruments Act, 1881.

¹⁸ Solanki, Vinay. "Holder in Due Course and Rights and Privileges Provided to Holder in Due Course Under Negotiable Instruments Act (India)." *Available at SSRN 2250222* (2013).

The holder in due course exception was given by the act only to protect any innocent person or business entity. However, Section 55 of the Act also states that if such a person has accepted the cheque knowing that there was something wrong with the title or other details of the cheque he will not be considered as a holder in due course and will not get a perfect title¹⁹. The principle behind this law is that the transferor of a cheque cannot transfer a title that he himself does not adequately possess.

*House of Lords in Raphael V. Bank of England*²⁰:

In this case, some banknotes were robbed from a bank in Liverpool, the UK and eventually a money exchanger in France received the notes. The Bank from which such notes were stolen has actually issued a notice before 12 months with the serial number of the bank notes that were stolen. Thereafter when he went to liquidate it, he was informed that the notes were a part of the stolen notes from the bank. However, the court held that he is a holder in due course taking into account the fact that the notice was issued before 12 months of this transaction and he cannot be expected to remember all those serial numbers for such a long time period. Further, there was no malafide in the whole transaction as he had no knowledge or reason to suspect that something was wrong with the title of the person who gave him the notes.

PRESUMPTION IN FAVOR OF HOLDER.

In sections 118 and 139 of the “Negotiable Instruments Act”, there is always a rebuttable presumption in the favour of the holder or payee of the cheque²¹. This presumption stands valid until it is proved otherwise. The reason for having this provision is to prevent the drawer of the cheque from later making false claims that it was a lost and found cheque etc. The drawer cannot be simply allowed to make such claims without proof²². The objective of this provision is to protect an innocent payee who in good faith conducted the transaction²³.

Further, Section 114²⁴ of the Evidence Act in clause (c) also presumes that a bill of exchange was accepted for some good consideration. The drawer of the cheque cannot escape from the liability by closing the account. To prevent frivolous suits a safeguard has been made in the

¹⁹ Goel, Shivam. "The Negotiable Instruments Act, 1881: Critical Analysis." *Available at SSRN* 2867355 (2016).

²⁰ (1855), 17 C. B. 161).

²¹ Das, Aparna, Apurba Pattanayak, and Suvangi Ray. "Critical Analysis of Section 138 of Negotiable Instruments Act, 1881." *Issue 6 Int'l JL Mgmt. & Human.* 4 (2021): 432.

²² Laszlo, Traian. "The Cheque Formalism." *Acta Universitatis Lucian Blaga* (2005): 65.

²³ Kapparashetty, B. V. "Impact of Negotiable Instrument Act and Development of Banking System in India." *IJRAR-International Journal of Research and Analytical Reviews (IJRAR)* 6.2 (2019): 379-387.

²⁴ Section 114, The Indian Evidence Act, 1972.

form of a mandate on the part of the payee or holder of the cheque to issue notice to the drawer of the cheque within thirty days of cheque bounce and after receiving the notice and another fifteen days if the drawer does not pay the amount only it becomes an offence under Section 138²⁵ of the Act. Further, in the case of *K. Prakashan Vs. P.K. Surenderan*²⁶, 2007 the Supreme Court held that to claim the presumption under Section 139 of the Act the complainant must prove that he had sufficient funds or sources to give loan to the drawer or accused.

CAUSE OF ACTION & JURISDICTION

In a cheque dishonour case, the cause of action arises when the cheque issued by the drawer bounces for the inadequacy of funds and despite notice being served to the drawer, he fails to make the payment within fifteen days of receiving the notice. Thus, the cause of action arises only after default on the part of the drawer at the expiry of the fifteen days from the notice. There is a one-month limitation to file the suit from the expiry of the said fifteen days. However, the court has the discretion to accept the case even if it is filed after a month if the complainant can show sufficient reasons to condone the delay. The same was upheld in the case of “*Dashrath Rupsingh Rathod v. State of Maharashtra*”²⁷.

The decision as to which court has jurisdiction to try the case shall be made after the cause of action has clearly accrued and the particular place where the cheque was dishonoured. As dishonour of cheque for insufficiency of fund is a criminal provision the Criminal Procedure Code will be applicable to this case specifically Section 177 which states that the ordinary place of trial or inquiry shall be within the “local jurisdiction of the court where the offence” has occurred.

Thus, the prosecution of an offence under “Section 138 against the drawer of the cheque normally lies in the court in whose jurisdiction dishonour of cheque” has happened. However, the Supreme Court has while addressing the issue regarding jurisdiction of trying offences under Section 138 of the Act given conflicting decisions in various judgements²⁸ in the past which finally prompted the Parliament to enact The Negotiable Instruments (Amendment) Act, 2015. This resulted in some amendments to Section 142 of the Act. In sub-clause (c) of the said

²⁵ Section 138, The Negotiable Instruments Act, 1881.

²⁶ 2007(4) RCR (Criminal) 588 (SC)

²⁷ AIR 2014 SC 3519

²⁸ Das, Ashish. "Some issues related to policies on cheque collections." (2009).

Section 142, the provision makes it clear that a court below that of a First-class judicial magistrate and in cities a Metropolitan Magistrate cannot try the suit.

Further, the amendment act made it clear that to determine the jurisdiction of place to institute the suit two factors may be used. The place “where the payee or holder in due course has an bank account, to which branch they have sent the cheque for collection or the branch of the drawee bank where the drawer” of the cheque maintains account shall be considered as the jurisdiction or place where the offence has been committed. These changes were proposed in the amendment owing to misuse of the place of instituting suits.

CHAPTER - V

DISHONOUR OF CHEQUE

A cheque can be said to be dishonoured when the bank (drawee) denies to pay the amount mentioned in the cheque on any of the accepted grounds which shall be mentioned in the upcoming chapters of the paper. After the Bank (drawee) denies payment on a cheque which is dishonoured it must issue a “Cheque Return Memo” to the payee specifically mentioning the reason or ground for non-payment. Further, if the drawer of the cheque still fails to pay the prescribed amount in the cheque despite receiving legal notice and the passing of fifteen days from receiving such notice, he is said to have committed the criminal offence of dishonour of cheque²⁹.

A bill of exchange or cheque can be said to be dishonoured in two ways, firstly dishonour of the bill can be committed by non-acceptance and secondly by non-payment. Section 91 of the Act deals with the dishonour of a bill of exchange and it states that a bill may be dishonoured for non-acceptance if the drawee fails to accept the bill of exchange which they are legally required to accept when presented for payment.

Further, Section 92 states that A bill of exchange or cheque is said to be dishonoured by non-payment if the drawer or drawee of the cheque defaults to pay the amount that they are duly required to pay³⁰. Usually, a cheque gets dishonoured for insufficiency of funds in the bank account of the drawer. Dishonour of cheque is penalised by Section 138³¹ of the Act which states that if a cheque given by the drawer to the payee is returned by the bank owing to

²⁹ Sindhu, Sanjay. "DISHONOUR OF CHEQUES." (2012): 570-572.

³⁰ Singh, Pushpit. "Critical Analysis of the Liability of Drawer and Drawee of Cheque with Respect to the Negotiable Instruments Act, 1881." Issue 2 Int'l JL Mgmt. & Human. 3 (2020): 428.

³¹ Section 138, The Negotiable Instruments Act, 1881.

insufficient funds the drawer of the cheque shall be liable for the dishonour of cheque and shall be punished if he fails to pay the amount within fifteen days of receiving a legal notice³² from the drawer.

PROCEDURE:

Firstly, “section 142 of the Act creates a bar against taking cognizance of the offence under Section 138 of the Act except upon a complaint in writing by the payee or holder in due course”. The complaint can be issued by the payee himself or by a person having power of attorney over the cheque. However, if the person complaining with power of attorney has only filed the complaint without knowing the facts of the case, then the payee must be present while the recording of statement happens in the court.

After ensuring compliance to all these procedures and being satisfied that there are sufficient causes in the suit the Magistrate shall initiate the court process of issuing summons which shall be sent through post or other means as directed by the court to the drawer of the cheque who must appear before the court and present his side of the case with the necessary documents and evidence³³. If the accused is absent without any sufficient cause to be shown the court shall take coercive measures to ensure his appearance and after listening to both the sides of the argument pronounce its judgement and penalty if any.

PUNISHMENT

If the drawer has committed dishonour of cheque due to insufficient funds and fails to pay the same despite receiving legal notice, he shall be punished under Section 138 with a fine that may go up to twice the amount of the cheque or imprisonment to a maximum duration of two years or both fine and imprisonment³⁴.

A cheque can also bounce for other reasons apart from insufficiency of funds. A cheque may bounce if the validity of it has expired. This is because after the drawer issues the cheque it must be present for payment within three months. A cheque may also be rejected for overwriting of any statement or signature of the drawer. Similarly, a cheque may also be rejected if it mismatches with the sign available for verification with the bank. A cheque may

³² Gupta, Satya Narain. *Dishonour of Cheques: Liability-Civil & Criminal*. Universal Law Publishing, 1992.

³³ Nath, Siddh. "Legal Ramifications of-A New Category of Offense-Bouncing of Cheque." *Indian JL & Just.* 3 (2012): 31.

³⁴ "Satnalika, Sakshi". "Is Decriminalisation of Section 138 of Negotiable Instrument Act, 1881 a Step Ahead?." *Neolexvision Blogs* (2020) <https://www.aequivic.in/post/is-decriminalisation-of-section-138-of-negotiable-instrument-act-1881-a-step-ahead> (2020).

also be rejected if it is damaged or stained resulting in the inability of understanding the details mentioned in it. A cheque can also be rejected if the words and figure in it do not match.

However, relief cannot be claimed for all these issues in Section 138 of the Act and only for insufficiency of funds and consequential dishonour of cheque relief and penalty under Section 138 may be sought³⁵. If the cheque has been rejected for any other reason other than insufficiency of funds in the drawer's account there are other remedies in the form of resubmission of the cheque.

If the cheque has been rejected by the drawee bank for overwriting, mismatching signature, damage or stain in the cheque, mismatch in words and figure of the cheque the payee can ask the drawer to submit another cheque to rectify the issue and if the drawer refuses to do so he can initiate a civil proceeding against the drawer for recovery amount due to him and cannot pursue a criminal case under Section 138 of the Act.

EXCEPTIONS TO APPLICATION OF SECTION 138.

The most basic misunderstanding of Section 138 of the Act is that all returns or rejections of a cheque can be challenged under this Section. However, various judicial decisions show that every return of a cheque especially for a reason not mentioned in Section 139 (insufficiency of funds in drawer account) is not punishable under Section 138.

In *Babulal v. Khilji*³⁶ case, the cheque was returned as defective and referred to the drawer based on that the Magistrate Court accepted the complaint under Section 138 of the Act but the High Court quashed the proceedings as ultra vires³⁷ of Section 138 as it does not cover grounds other than inadequacy of fund. Similarly, in the case of *P. Raja Rathinalm vs. State of Maharashtra*³⁸ 1999, the court refused cognizance under Section 138 as no notice was given to the drawer. Further, in the case of *Vinod v. Jahir*³⁹, 2003 it was observed that if a cheque is given as a gift or if the complainant was not the payee or if the sign on it of the drawer was not completed the matter cannot be proceeded under Section 138⁴⁰ of the Act.

³⁵ Ghany, Abdel, and Abdullah Qazi. "Dishonour of Cheques in India." *Ct. Uncourt* 6 (2019): 13.

³⁶ 1998 (3) Mh L.J. 762).

³⁷ Phophalia, Shubham. "Section 138 of Negotiable Instruments Act, 1881." *Journal of Banking and Insurance Law* 1.1 (2018): 9-14.

³⁸ 1999 (1) Mh.L.J. 815).

³⁹ 1) Mh L.J. 456.)

⁴⁰ Section 138, The Negotiable Instruments Act, 1881.

CHAPTER – VI

FINDINGS OF THE RESEARCH

1. The consequence of a cheque bounce is it is a criminal offence for which FIR can be registered and a summary trial or criminal proceeding can be initiated against the drawer. The court can direct the drawer to pay twice the amount mentioned in the cheque or imprison him for a term not exceeding two years. The court has the discretion to give either of the punishment or both the punishment together.
2. A person cannot be said to have been liable for an offence of dishonour of cheque under Section 138 immediately after the cheque bounces. The offence is committed only when the drawer does not make good of the payment within 15 days of receiving a notice for payment from the payee. The notice part is mandatory and has been held so in various cases.
3. A cheque is said to have been dishonoured when the drawee bank does not fulfil the transaction due to some default on the part of the drawer of the cheque like insufficiency of fund. The drawee bank must provide a cheque return memo wherein the reason for the inability to fulfil the transaction shall be mentioned.
4. A cheque bounce cannot be claimed if the cheque was given as a gift and not for a payment or other related transaction.
5. In a dishonour of cheque case the intention or mens rea of the drawer is not relevant and need not be proved that he had a guilty mind. The main objective of the provision itself is to protect the payee from any fraud by the drawer.
6. After the technological development in recent years, a cheque is used more as a way of guaranteeing future payments or for loan purposes rather than day-to-day transfer of money.

SUGGESTIONS.

1. The latest statistics compiled by an Amici Curiae report has informed the Supreme Court that at present till 2022 there are 33,44,290 cases pending under various courts waiting to and being tried under the Negotiable Instruments Act. This issue can be

solved to some extent by making it mandatory for every cheque case to be summarily tried as there is not that much confusion in a dishonour of cheque.

Further, these cases can be finished summarily rather than going through a long process of investigation, cross-examination etc. There are only certain factors to be looked into like was the cheque legally issued by the drawer and was there an insufficient sum of money in the account of the drawer to honour the cheque and fulfil the transaction. Further, whether adequate notice was given by the payee and did the drawer fail to settle the transaction within fifteen these days.

These things can be easily verified by documents and can be settled summarily thereby reducing the clogging of these types of cases on the already burdened legal system of India. This will also help in the ease of doing business demands by various domestic and international business owners.

2. The provision in Section 138 makes it clear that it only penalises cheque bounces arising out of insufficiency of funds alone and if the cheque is rejected for any other reasons the payee cannot seek remedy under Section 138 and must instead resort to a lengthy civil suit to recover the due amount from the drawer. This jeopardizes a payee who has sold or done some consideration in exchange for a cheque received from the drawer who intentionally makes a mistake in cheque such that it gets rejected by the bank.

Thus, there is a need to apply Section 138 generally for all reasons of cheque bounces and on the failure of the drawer to rectify it even after notice of fifteen days. The rationale is simple irrespective of the reason for rejection of cheque and consequential non-payment the impact remains the same on the payee that is he does not get the money.

CONCLUSION

A cheque is a negotiable instrument which is payable on demand and it is one of the most secure tools for financial transaction as it is issued by the bank. It is valid as a negotiable instrument for a period of three months calculated from the date on which the drawer issued it. After the expiry of the duration, the cheque is no more valid. Thus, a cheque is basically considered as a promise by the drawer to unconditionally pay a certain specified amount to the

payee. However, the Supreme Court has also clarified that a cheque which is issued as a security in a financial deal is also valid and cannot be claimed as worthless.

A cheque is said to have been dishonoured when the drawee bank does not fulfil the transaction due to some default on the part of the drawer of the cheque like insufficiency of the fund. A person cannot be said to have been liable for an offence of dishonour of cheque under Section 138 immediately after the cheque bounces. The offence is committed only when the drawer does not make good of the payment within 15 days of receiving a notice for payment from the payee. The drawee bank must provide a cheque return memo wherein the reason for the inability to fulfil the transaction shall be mentioned.

The remedies available to a payee if the cheque given by the drawer is dishonoured is he may prefer a criminal proceeding against the drawer of the cheque and a separate proceeding can also be initiated as fraud under “Section 420 of the Indian Penal Code”. As it is a criminal offence an FIR can also be filed against the drawer of the cheque. In a dishonour of cheque case, the intention or mens rea of the drawer is not relevant and need not be proved that he had a guilty mind. The main objective of the provision itself is to protect the payee from any fraud by the drawer.

In modern times specifically, after the development of technology in banking and the evolution of net banking cheques are rarely used for a proper financial transaction like transfer of cash etc. It is nowadays used as a proof of debt and a way to guarantee future payment to the creditor. This is one of the reasons for the huge amount of pending criminal cases of dishonour of cheque under Section 138.

This method of using cheque as a security in a financial deal is not illegal and the same has been approved as legal by the Supreme Court itself in various cases. The rationale behind the judgement given by a bench headed by Justice MR Shah is that while the drawer is issuing such a cheque, he is doing it with his free will as an assurance that the specified sum will be in his bank account.