***LEGAL REQUIREMENTS FOR PROSECUTION UNDER SECTION 138 OF N.I.ACT, 1881 FOR DISHONOUR OF CHEQUE: JURISDICTION, LIMITATION PERIOD, AND BURDEN OF PROOF***

**Abstract**

Cheque bounce cases have become prevalent in the financial landscape, causing inconvenience and financial loss for individuals and businesses alike. A cheque bounce occurs when a cheque issued by an individual or organization is returned unpaid by the bank due to insufficient funds, account dormant, signature difference, or various other reasons. This article aims to shed light on the implications of cheque bounce cases, including the legal consequences, reasons for dishonouring cheques, and measures to prevent such occurrences.

**Introduction**

The Negotiable Instrument Act, of 1881 [Hereinafter referred to as “Act” for brevity] was enacted with the object to legalize the system under which the negotiable instrument passed from hand to hand like ordinary goods.

To achieve the Act’s goal, the Legislature thought it prudent to incorporate provisions in the Act for conferring privileges to the mercantile instruments contemplated by it as well as special penalties and procedures in the event that the obligations under the instruments are not met. The law relating to negotiable instruments is the commercial law enacted to facilitate trade and commerce activities by making provisions for giving sanctity to the instruments of credit deemed to be convertible into money or liquidated and easily passable from one person to another.

**Negotiable Instrument**

Sub-Section 1 of section 13 of the Act provides that a negotiable instrument means a promissory note, bill of exchange, or cheque payable to order or bearer.

**Cheque**

A cheque is a bill of exchange drawn on a specific banker that is not expressly stated to be payable other than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form  [Section 6 as amended in 2002 by Act 55 of 2002 effective from 6 February 2003].

A cheque to be valid should certainly specify the amount and also the details regarding the Payee. If at the time of the issue, the amount is not specified and the payee is uncertain, then the cheque does not become

a valid negotiable instrument as defined in the Act. For being a valid negotiable instrument the essential requite was certainty, regarding the amount to be paid as well as the person to whom the amount has to be paid, as stated in ***Capital Syndicate V. Jameela***, 2003 (1) CCC 579(Kerela).

**Parties to the Cheque:** Drawer – The Drawer is one who makes or issues or draws the cheque. Drawee – The Drawee is one who is ordered or directed by the Drawer to pay the amount i.e. the Bank, in which the Drawer has its account.  Payee – The Payee is the one to whom the payment is to be made or the person in whose favour the cheque is drawn.

**Cheque bouncing in India : Relevant Legal Provisions**

Section 138 of the Act as revised by Act 55 of 2002 takes effect on 6 February 2003, and governs the law relating to cheque bounce. Section 138 of the Act states-

Dishonour of cheque for insufficiency, etc., of funds in the account. —When 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 unpaid by  the bank, 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 provisions 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 (reduced to three months vide notification no. RBI/201112/251, DBOD AMLBCNo. 47/19.01.0062011/12, dated 04.11.2011) 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 or other liability” means a legally enforceable debt or  other liability.]

**The following Ingredients are required to be fulfilled to constitute an offence under section 138 of N.I. Act**.

1. The cheque or an amount is issued by the drawer to the payee or complainant on a bank account maintained by him.
2. That cheque is issued for the purpose of discharging any debt or other liability either in whole or in part.
3. The cheque is returned by the bank unpaid on account of the insufficient amount to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with the bank.
4. The cheque is presented to the bank within 3 months from the date on which it is drawn or within the period of its validity whichever is earlier.
5. Giving demand notice in writing to the drawee by the payee or the holder in due course within 30 days from receipt of information by him from the bank regarding the dishonor of the cheque.
6. The drawer of the said cheque fails to make the payment of the cheque amount to the payee or the holder in due course within 15 days of the receipt of  the notice.
7. The debt or liability for the discharge of which the cheque was issued is enforceable by law i.e. it should not be time-barred.

**Element of Mens Rea: Whether required or not?**

The offence under Section 138 of the Act is a statutory offence. This section excludes the need of mens rea i.e. intention on the part of Drawer, by making it as a strict liability. It doesn't say that there should be a direct nexus between the person who commits the act and the offence. Section 140 of the Act clearly excludes the defence that the drawer had no intention to believe when he issued the cheque that it may be dishonoured  on presentment for the grounds provided under section 138 of the Act. The exclusion of mens rea as a necessary ingredient of an offence under Section 138 of the Act is very explicit. The same was also supported in ***G. Rukkumani V. Rajendran***, 2001 Cr.L.J. 3120 (Mad).

**Onus of Proof**

Section 139 of the Act states that it shall be presumed, unless the contrary is proved that the holder of the cheque received the cheque, of the cheque referred to in section 138 for the discharge, in whole or in part, of any debt or other liability. Therefore, in such cases the onus shifts upon the payee to prove the non-existence of debt or other liability. The presumption under section 139 of the Act is rebuttable in nature. Payee is given the opportunity to rebut the presumption of liability by cross-examining the drawer or his authorized representative or by producing and leading direct defence evidence in the Hon’ble Trial Court. If the payee rebuts the presumption successfully, the onus to prove liability shifts upon the drawer and such onus requires to prove the liability or debt beyond a reasonable doubt.

**Case Laws**

***Dashrath Rupsingh V. State of Maharashtra*** AIR 2014 SC 3519

In this landmark judgment, the Hon’ble Supreme Court of India addressed several crucial aspects of the cheque bounce case:

* The court clarified that the presumption of liability arises against the drawer of the dishonoured cheque. It is the drawer’s responsibility to rebut this presumption.
* The court emphasized the importance of presenting the cheque for encashment within a reasonable period. A delay in presenting the cheque can be a valid defence for a drawer, relieving him of liability.
* The court reiterated that a legal notice demanding payment must be issued to the drawer within 30 days of receiving the information about the dishonoured cheque. Failure to issue the notice within the stipulated time may result in the drawer being discharged from liability.

***Anil Hada V. Indian Acrylic Ltd.*** (2000) 1 SCC 1

It was held that the drawer of a cheque can be presented whether it be a company, a partnership firm or he be an individual.

***N. Harihara Krishnan V. J. Thomas*** (2018) 13 SCC 663

This case addressed the liability of directors of a company in cheque bounce cases.

* The court held that directors of a company can be held personally liable for dishonoured cheque issued on behalf of the company if they are responsible for the conduct of the business. The defence of lack of knowledge or negligence may not absolve the directors from liability.
* The court emphasized that directors should exercise due diligence and ensure that the company has adequate funds to honour issued cheques. Negligence in fulfilling these obligations can attract personal liability.

***Indian Bank Association V. Union of India*** (2014) SC 2528

Hon’ble Supreme Court clarified certain provisions of the Negotiable Instrument Act.

* The court held that the cheque bounce cases should be filed in the place where the branch of t   drawee bank is situated. This decision aimed to streamline the adjudication process and prevent forum shopping.
* The court directed the establishment of special courts to ensure the speedy resolution of cheque bounce cases. This measure aimed to reduce the burden on regular courts and expedite justice.

**Other grounds for the cheque bouncing:**

1. Account closure – If the bank account on which the cheque was drawn has been closed or is non-operational at the time of presentation, the cheque will bounce. This can be a valid ground for a cheque bounce case, as the issuer or drawer is responsible for ensuring that the account is active.
2. Signature mismatch or irregularity – If there is a significant difference between the signature on the cheque and the specimen signature available with the bank, or if there are other irregularities in the cheque, it may be considered invalid and result in a cheque bounce case
3. Post–Dated cheque – If a post-dated cheque is presented for payment before the date mentioned on the cheque, it can lead to a cheque bounce case. The cheque becomes payable only on the date mentioned, and presenting it before that date is a violation of the agreement.

**Limitation Period**

For initiating any proceeding under section 138 of the Act a complaint has to be filed in writing by the payee or the holder of the cheque in due course in the competent Court of Magistrate or Metropolitan Magistrate. Such complaint has to be filed within one month from the date on which cause of action arises i.e. the drawer fails to make the payment of the cheque amount within the stipulated time period as provided under clause (c) of the provision attached to Section 138 of the Act, as provided under clause (b) of subsection (1) of Section 142 of the Act. However, the court can also take cognizance of the matter even after the expiry of the stipulated time period, if the court gets satisfied with the sufficient cause shown by the complainant for not filing the complaint within the given time period on the ground of Justice, Equity, and Good Conscience.

**Interim Compensation (Section 143-A)**

The Parliament inserted a new provision by adding Section 143-A in the Act by Amendment Act 20 of 2018 with effect from 01.09.2018, which provides for the interim compensation to the Payee or the complainant in a summary trial or summons case and upon framing of charge, in other cases. The interim compensation that is payable under this Act cannot exceed 20% of the cheque amount, which is to be paid by the drawer to the complainant within 60 days from the date of order of the court but which may be extended to further 30 days upon reasonable or sufficient cause being shown for not paying the amount within the stipulated time. The Court’s power to pass an order for granting interim compensation is directory and discretionary in nature not mandatory.

**Conclusion**

Cheque bounce cases can have severe consequences for both issuer and the payee. It is crucial for individuals and businesses to exercise caution while issuing and accepting cheques. By understanding the legal implications, and reasons for dishonouring cheques, and implementing preventive measures, one can significantly reduce the likelihood of encountering cheque bounce cases. Additionally, promoting awareness and education about cheque-related matters can contribute to a more efficient and reliable financial system.

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