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DISHONOUR OF CHEQUE AND NEGOTIABLE INSTRUMENTS ACT

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Introduction

The dishonour of cheque mainly happens because most of the people are not aware of creating and operating our bank accounts and the services given by the banks. That is the main reason that we make minor mistakes while writing the cheque. So, it becomes important for us to know about the exact meaning of the banking terms to safe our money and to protect our cheque of being rejected by the banks. Section 138 of Negotiable Instruments Act deals with the punishment and Meaning of dishonour of cheque. First, let's know about the Drawer, drawee and payee which are the parties in the case of Cheque. The person who has a bank account and writes or draws the cheque of his bank is known as Drawer. The bank is known as the drawee and the person to whom the cheque is payable is known as Payee.

Meaning of Dishonour of cheque

When the cheque is rejected or dishonoured by the bank, the bank issues the receipt, which is called Cheque return Memo and dishonoured check to the payee of the cheque. The payee can resubmit the cheque within 3 months, after resolving the issues with the cheque. Also, the Payee has to give the notice to the drawer of the cheque within the 30 days after receiving the Cheque return Memo which is given by the bank. The notice should contain the point that cheque amount will be paid within 15 days by the drawer after receiving the notice.

It the Drawer is still failed to pay the money to the payee within 30 days after receiving the notice sent by the payee; The Payee has the right to file a criminal case against the Drawer under section 138 of Negotiable Instruments Act.

Section 138 of Negotiable Instruments Act, 1881

According to Section 138 of Negotiable Instruments Act, if a cheque which is given to Payee by the Drawer, drawn by the drawer on the account maintained by him with a bank, is returned by the bank unpaid, either the reason is insufficient of money in the account or the cheque exceeds the amount to be paid from that account by an agreement between Drawer and bank, the Drawer shall be recognized as the accused of committing the crime of Dishonour of cheque and shall be punished with the imprisonment, which can be extended upto 2 Years, or fine which can be extended to two times of the amount given in the Cheque or Both.

The condition is, the cheque must be presented in the bank within the 6 months from the date when the cheque was drawn by the Drawer or within the period of the validity of the cheque.

Reasons for the dishonour of Cheque

If you have written everything mentioned above, then your cheque is dishonoured due to any of give reason:

- 1. Insufficient funds:** – it is a very common reason due to which the bank refuses to accept the cheque because of insufficient balance in your account. Let's make it easy to understand, You write a check with the amount of one lakh because you know that your salary which is 2 lakh will be credited shortly into your account but due to some reasons, salary is not credited to your account and in the meantime, payee tries to apply the check into your account, the bank will dishonour the check because of the insufficient amount.
- 2. Different Amount in Words and Figures:** – if you have written the different amount in words and figures, the bank will dishonour the cheque.
- 3. Signature Differ:** – if your signature is not correct or doesn't match with the specimen available in the bank.
- 4. Alterations / Overwriting on cheque:** – bank will not accept the cheque which is altered or overwritten.
- 5. The cheque is Post Dated:** – postdated cheque means the date written on the cheque is yet to come. Let's take an example, you have written the date 1st November 2021 on the cheque, but the payee present in for payment on 29th October 2021, the cheque will not be accepted by the bank.

Cases of Dishonour of Cheque

1) Birendra Prasad Sah v. State of Bihar and Others (2019 7 SCC 273) In the case of Birendra Prasad Sah v. State of Bihar and Others (2019 7 SCC 273), the appellant served a legal notice within 30 days of receipt the memo of dishonour. As a result, the proviso (b) to section 139's requirement was met. The respondent claimed that he was not served with the legal notice. The appellant specifically claimed in the complaint that despite numerous requests to the Postal Department, no acknowledgement of notice was provided. As a result, the appellant had no choice but to issue a second notice. The Court held that the first notice formed the cause of action for a complaint under s.138 since it had to be issued within the time limit.

2) K Bhaskaran v. Sankaran Raidhyan Balan(1999) 7 SCC 510

K Bhaskaran v. Sankaran Raidhyan Balan, reported in (1999) 7 SCC 510, the Apex court held that a crime under section 138 of the Act can only be committed by concatenating several acts.

1. The Cheque Drawing
2. The presentation of cheque to the bank
3. The drawee bank's unpaid cheque is returned to the sender.
4. giving written notice to the cheque drawer requesting payment of the cheque amount
5. The drawer's failure to make within 15 days of receipt the notice these elements combine to form the crime of cheque dishonour.

Conclusion

The law related to Negotiable Instruments is a law of commercial world that was enacted to facilitate trade and commerce by providing for the sanctification of a credit instrument that would be deemed convertible into money and easily transferable from one person to another. In absence such instruments, trade and commerce activities were expected to affected, as it was not practical for the trading community to continue using the bulk of the currency in force.

The Act's key objective is to legalize the instruments covered by it can be passed from hand to hand through negotiation, just like any other good. Though the penal provisions have served to reduce the issue of cheques in a lighthearted or playful manner, or with a dishonest intention, the trading community today feels more comfortable in receiving payment by cheques.