

A Brief Overview of Law Relating to Dishonour of Cheques in India

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Abstract: The dishonour of bank cheques is a common occurrence and in fact such cases constitute the majority of the pending cases in India. It is in this perspective that a brief overview of the law relating to dishonour of cheques in India deserves a careful read.

Keywords: Cheques, Dishonour, Negotiable Instruments Act, 1881.

1. Introduction

In this brief write up this author proposes to introduce to the reader the law and practice relating to dishonour of cheques in India. With every passing day, as our country is marching towards a cashless economy, the importance of bank cheques is increasing exponentially. It is in this backdrop that this author believes that every citizen of our country should have a basic understanding relating to the law of dishonour of cheques existing in our country.

What are bank cheques?

In simple language, a bank cheque is a document that orders a bank to pay a specific sum of money from a person's account to the person in whose name the cheque has been issued.

What is meant by dishonour of cheques?

In simple parlance, if a cheque presented before a bank for encashment in favour of the person in whose name the cheque is issued is returned unpaid by the bank due to insufficiency of funds in the account of the person who issued the cheque or for any other specified reason, then such return is called as dishonour of cheque.

What is the specific law/legislation relating to dishonour of cheques in india?

The Negotiable Instruments Act, 1881 is the main legislation relating to the law of dishonour of cheques in India. Section 138 of the said Act is the penal provision relating to the dishonour of cheque due to insufficiency of funds in the account of the person who issued the cheque. The essential ingredients of the said Section are as follows:

- 1) a cheque was issued;
- 2) the same was presented;
- 3) but, it was dishonoured;
- 4) a notice in terms of the said provision was served on the

person sought to be made liable; and

5) despite service of notice, neither any payment was made nor other obligations, if any, were complied with within fifteen days from the date of receipt of the notice.

What would happen if a person issues cheque in favour of another person without sufficient balance in his account and the said cheque is dishonoured?

In such a case the person who issued the cheque in favour of another person without sufficient balance in his account and the said cheque is then dishonoured due to insufficiency of funds, he would be liable to face a criminal case in a Criminal Court U/S 138 of Negotiable Instruments Act, 1881 and he may be punished with imprisonment for up to two years or with fine twice the cheque amount or with both. Such a person may also face a civil suit in a competent Civil Court for recovery of the cheque amount.

What are the steps to be taken by a person if the cheque issued in his favour is dishonoured on being presented before the bank?

The following steps are to be taken by a person if the cheque issued in his favour is dishonoured on being presented before the Bank,

- 1) Such a person should give a notice to the person who issued the cheque in his favour in writing within 30(thirty) days of receipt of information from the Bank regarding the dishonour of the cheque demanding repayment of the cheque amount within 15(fifteen) days of receipt of such notice.
- 2) If the person who issued the cheque fails to repay the cheque amount, the person in whose favour the cheque is issued has to then file a complaint under Section 138 of Negotiable Instruments Act, 1881 against the person who issued the cheque before the Court of Sub-Divisional Judicial Magistrate/Chief Judicial Magistrate within one month of the expiry of the period of 15(fifteen) days of the receipt of notice by the person who issued the cheque;
- 3) Such a person also has the option of filing a money suit in the competent Civil Court demanding recovery of the cheque amount from the person who issued the cheque in his favour.

What is the period within which a cheque has to be presented before the bank for encashment?

As per the guidelines of Reserve Bank of India, a cheque has to be presented before the Bank for encashment within 3(three) months from the date on which it is drawn or within the period of its validity, whichever is earlier.

Which court has the jurisdiction to try cases of dishonour of cheques?

Court of Judicial Magistrate First Class, Court of Sub-Divisional Judicial Magistrate and the Court of Chief Judicial Magistrate situated within the local jurisdiction of the branch of the bank where the person in whose favour the cheque is issued presented the cheque for payment in his account is the competent court to try cases of dishonour of cheques under Section 138 of Negotiable Instruments Act, 1881.

What are the precautions which are to be taken regarding cheques?

Cheques are documents which are prone to misuse if misplaced or lost. It is therefore imperative that cheques and cheque books are to be kept in safe custody at all times. In case a cheque is lost, stolen or misplaced necessary information regarding the same should be given to the concerned Bank as well as to the jurisdictional Police Station in writing at the earliest to prevent future complication. Signed blank cheques should ideally never be handed over to anyone as it can invite legal complications as any amount can be subsequently filled up by the person to whom such blank signed cheque is handed over.

What are the steps to be taken by a person against whom a case under section 138 of negotiable instruments act, 1881 is filed?

A person against whom a case under Section 138 of Negotiable Instruments Act, 1881 is filed in a Criminal Court on receipt of summons in such a case can deposit the cheque

amount/assessed amount by the Court in the bank account of the accused mentioned in such summons and the case will be closed against him by the Court on the date fixed without his appearance before the Court.

Can a case filed under section 138 of negotiable instruments act, 1881 be settled between the parties?

Yes, a case filed under Section 138 of Negotiable Instruments Act, 1881 is compoundable in nature and therefore it can be settled amicably between the Complainant and the accused on mutual understanding. The Complainant then has the option to withdraw the instant case from the concerned Court or both the parties can choose to file a joint petition before the Court for composition of the offence.

Whether assistance of legal aid counsel or free legal aid counsel is available in cases of dishonour of cheques?

Yes, assistance of Legal Aid Counsel at State cost is available to both complainant and the accused in cases of dishonour of cheques if he is a member of a Scheduled Caste or Scheduled Tribe, a victim of trafficking in human being, a woman or child, a mentally ill or disabled person, a victim of mass disaster or ethnic violence, any industrial workman, a person in custody or a person having annual income less than the prescribed limit [1]. The complainant and the accused in such cases can approach the jurisdictional office of District Legal Services Authority or the Sub-Divisional Legal Services Committee or the Office of State Legal Services Authority for getting free legal assistance.

2. Conclusion

This paper presented an overview of law relating to dishonour of cheques in India.

References

- [1] Section 12, Legal Services Authorities Act, 1987.