


HANDBOOK OF DEVELOPMENTS IN CHEQUE BOUNCE CASES

Issue: Expediting Cheque Bounce Cases & Ease of Doing Business

© Adv. Jyoti Srivastava

Indian Law Watch

 भारतीय स्टेट बैंक State Bank Of India		(11724) KARAMANA KARAIJ PLAZA, NH-47, KARAMANA THERUVANANTHURAM-695002 IFS CODE: SBIN0011724	केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY D D M M Y Y Y Y
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Cheque Bounce Cases

Section 138 OF NIA

Dishonour of cheque for insufficiency, etc., of funds in the account:

Where 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 by the bank unpaid, 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 for¹⁹ [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 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.

Ingredients

- The person draws a cheque on an account maintained by him for payment of an amount of money in discharge of any debt and liability.
- This cheque is returned by bank unpaid due to insufficiency of funds or exceeding the amount arranged. The person issuing the cheque has then committed the offence of cheque bounce.
- The period of validity of presenting the cheque was six months and now it is three months.
- Demand of payment can be made within 30 days of receipt of information of cheque bounce from the bank.
- The drawer of the cheque has an opportunity to make good the payment within 15 days of receipt of such legal notice.

Payment of Cheque/Drafts/Pay Orders/Banker's Cheques

[November 4, 2011, Notification of RBI]

In India, it has been the usual practice among bankers to make payment of only such cheques and drafts as are presented for payment within a period of six months from the date of the instrument. It has been brought to the notice of Reserve Bank by Government of India that some persons are taking undue advantage of the said practice of banks of making payment of cheque/drafts/pay orders/banker's cheque presented within a period of six months from the date of the instrument as these instruments are being circulated in the market like cash for six months. Reserve Bank is satisfied that in public interest and in the interest of banking policy it is necessary to reduce the period within which cheques/drafts/pay orders/banker's cheque are presented for payment from six months to three months from the date of such instrument. Accordingly, in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, Reserve Bank hereby directs that with effect from April 1, 2012, banks should not make payment of cheque/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from the date of such instrument. **Banks should ensure strict compliance of these directions and notify the holders of such instruments of the change in practice by printing or stamping on the cheque leaves, drafts, pay orders and banker's cheques issued on or after April 1, 2012, by issuing suitable instruction for presentment within the period of three months from the date of the instrument.** The notification was applicable to Scheduled Commercial banks (excluding RRBs)/Local Area Bank.

RBI Notification: For dishonor of Cheque for Amount of Rs 1 Crore

[Notification dated: June 26, 2003]

4.II Information on dishonored cheques

- (i) Data in respect of each dishonored cheque for amount of Rs.1 crore and above should be made part of bank's MIS on constituents and concerned branches should report such data to their respective controlling office / Head Office.
- (ii) Data in respect of cheques drawn in favour of stock exchanges and dishonoured should be consolidated separately by banks irrespective of the value of such cheques as a part of their MIS relating to broker entities, and be reported to their respective Head Offices / Central Offices.

4.IV General

- (i) For the purpose of adducing evidence to prove the fact of dishonour of cheque on behalf of a complainant (i.e. payee / holder of a dishonoured cheque) in any proceeding relating to dishonoured cheque before a court, consumer forum or any other competent authority, banks should extend full co-operation, and should furnish him/her documentary proof of fact of dishonour of cheques.

RBI Notification: Dishonour / Return of Cheques: Need to Mention the 'Date of Return' in the Cheque Return Memo

As you are aware, the 'Cheque Return Memo' that should accompany a cheque dishonoured / returned for any reason is a critical document, more so in case recourse to legal action is necessitated. The procedure for handling dishonoured cheques including the return / dispatch thereof to the payee has been advised, vide, Reserve Bank circular DBOD.BC.Leg.No.113 / 09.12.001 / 2002-03 dated June 26, 2003. Rule 6 of the Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH) also prescribes that instruments returned unpaid should have a signed / initialed objection slip on which a definite and valid reason for refusing payment must be stated. Format of the Return Memo (including the field for indicating the Date of Return) and the Model List of Objections is contained in Annexure D to the URRBCH. Certain instances of banks not mentioning the date of return on the Cheque Return Memo have been brought to our notice Keeping in view the larger interests of customers and to ensure that uniform practices are adopted, banks are hereby advised to indicate the 'date of return' in the Cheque Return Memo without fail.

Punishment

On receiving the complaint, along with an affidavit and relevant paper trail, the court will issue summons and hear the matter. If found guilty, the defaulter can be punished with monetary penalty which may be twice the amount of the cheque or imprisonment for a term which may be extended to two years or both. The bank also has the right to stop the cheque book facility and close the account for repeat offences of bounced cheque. If the drawer makes payment of the cheque amount within 30 days from the date of receipt of the notice, then drawer does not commit any offence. Otherwise, the payee may proceed to file a complaint in the court of the jurisdictional magistrate within one month from the date of expiry of 15 days prescribed in the notice Section 357 (1) (b) of the CrPC provides for compensation of the loss by way of fine. Section 357 (3) CrPC provides fine where compensation was not awarded and sentence in default. The direction to pay compensation can be enforced by default sentence under section 64 IPC and by recovery procedure under section 437 CrPC.

LIMITATION

Legal Notice from 1 month of date of receipt of return memo+30 days for making good of payment from date of receipt of legal notice+1 month for filing complaint before Magistrate failing response of accused)

ANNEXURE- D
MODEL LIST OF OBJECTIONS FOR CHEQUE COUNCE
(Both for Instrument and Image-based Cheque Clearing)

To,

.....Bank

The enclosed cheque / refund order / pay order /... . . . is / are returned for the following reason(s)

Code No. Reason for Return Funds
(01-03)

- | | |
|----|------------------------------------|
| 01 | Funds insufficient |
| 02 | Exceeds arrangement |
| 03 | Effects not cleared; present again |

(04-09) Refer to Drawer

- | | |
|----|--|
| 04 | Refer to drawer |
| 05 | Kindly contact drawer / drawee bank and please present again |

(10-19) Signature

- | | |
|----|--|
| 10 | Drawer's signature incomplete |
| 11 | Drawer's signature illegible |
| 12 | Drawer's signature differs |
| 13 | Drawer's signature required |
| 14 | Drawer's signature not as per mandate |
| 15 | Drawer's signature to operate account not received |
| 16 | Drawer's authority to operate account not received |
| 17 | Alterations require drawer's authentication |

(20-29) Stop Payment

- | | |
|----|--|
| 20 | Payment stopped by drawer |
| 21 | Payment stopped by attachment order |
| 22 | Payment stopped by court order |
| 23 | Withdrawal stopped owing to death of account holder |
| 24 | Withdrawal stopped owing to lunacy of account holder |
| 25 | Withdrawal stopped owing to insolvency of account holder |

(30-49) Instrument

- | | |
|----|---|
| 30 | Instrument post dated |
| 31 | Instrument out-dated / stale |
| 32 | Instrument undated / without proper date |
| 33 | Instrument mutilated; requires bank's guarantee |
| 34 | Cheque irregularly drawn / amount in words and figures differ |
| 35 | Clearing House stamp / date required |
| 36 | Wrongly delivered / not drawn on us |
| 37 | Present in proper zone |
| 38 | Instrument contains extraneous matter |
| 39 | Image not clear; present again with paper |
| 40 | Present with document |
| 41 | Item listed twice |
| 42 | Paper not received |

50-59	Account
50	Account closed
51	Account transferred to another branch
52	No such account
53	Title of account required
54	Title of account wrong / incomplete
55	Account blocked (situation covered in 21-25)
60-69	Crossing / Endorsement
60	Crossed to two banks
61	Crossing stamp not cancelled
62	Clearing stamp not cancelled
63	Instrument specially crossed to another bank
64	Amount in protective crossing incorrect
65	Amount in protective crossing required / illegible
66	Payee's endorsement required
67	Payee's endorsement irregular / requires collecting bank's confirmation
68	Endorsement by mark / thumb impression requires attestation by Magistrate with seal
(70-79)	RBI / Government
70	Advice not received
71	Amount / Name differs on advice
72	Drawee bank's fund with sponsor bank insufficient
73	Payee's separate discharge to bank required
74	Not payable till 1st proximo
75	Pay order / cheque requires counter signature
76	Required information not legible / correct
(80-99)	Miscellaneous
80	Bank's certificate ambiguous / incomplete / required
81	Draft lost by issuing office; confirmation required from issuing office
82	Bank / Branch blocked
83	Digital Certificate validation failure
84	Other reasons-connectivity failure
85	Alterations on instrument-Other than; Date'; filed (Alteration/correction on instruments are prohibited under Cheque Truncation System. Return reason code applicable to instruments presented in CTS)
86	Fake / Forged / Stolen- draft / cheque / cash order / interest warrant / dividend warrant
87	'Payee's a/c Credited' - Stamp required
88	Other reasons (Please specify)
92	Bank excluded

Cheque No.(s)..... Amount Rs.
Date of return:
Signature & Stamp of returning bank

Cheque bounce is a criminal offence which is tried by a Summary Procedure

1. How can court take cognizance offence under section 138 NIA?

Ans. By a complaint made in writing either by:

- (a) Payee
- (b) Holder in due course

2. Which court has jurisdiction to entertain the complaint under the Cheque bounce cases?

Ans. Metropolitan Magistrate or Judicial Magistrate of First Class.

3. What is the object of Section 138 of Negotiable Instrument Act, 1888?

Ans. The object of introducing the Chapter XVII of the NIA, 1988 is to enhance the acceptability of cheque for settlement of liabilities. The drawer of the cheque is made liable to prosecution of dishonor of cheque with safeguards to prevent the harassment of honest drawers. The object is both punitive and compensatory.

4. What are the important highlights of the 2002 Amendment in the NIA?

- (a) Service by speed post/courier (As approved by Court of Session). Refusal to take service should be accompanied by endorsement by server of refusal to take service and the same would be taken as deemed service.
- (b) Summary trial
- (c) Compounding of offence.
- (d) The punishment for offence was extended by this amendment to two years as against one year.
- (e) A person nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the state Government, as the case may be, he shall not be liable for prosecution under this Chapter.
- (f) Sufficient cause a ground for taking cognizance after the limitation period, if court is satisfied.
- (g) Summary trial to apply. This means section 262 CrPC to Section 265 CrPC to apply. Further, trial would take place by summon case. In summary trial, if accused does not plead guilty, then magistrate shall record the substance of evidence and a judgment containing brief statement of reasons for findings. Summary trial empowers the magistrate to pass a sentence of one year with fine exceeding Five Thousand Rupees.
- (h) Court has power to recall witness when it is of the opinion the matter cannot be tried summarily. Further the court is required to have day-to-day hearing until the conclusion of trial and adjournment beyond one day only if necessary and beyond control for reasons in writing.
- (i) Endeavour to complete the trial within months of filing of the complaint.
- (j) Evidence of the Complainant may be given on affidavit.
- (k) Presumption in favour of dishonor of cheque unless disproved if complaint with return memo.

5. How is trial under section 138 different from normal criminal trial?

Ans. Once evidence was given on affidavit, the court determined the extent and nature of examination of such witness. Only the evidence must be relevant and admissible. The affidavit could be used to prove the documents as well. The procedure may not be exactly as same as that of criminal trial enough flexibility has been given in hands of magistrate. Appropriate orders can be passed under Section 143 of NIA under inherent powers. Thus, section 258 CrPC which empowers the court to stop proceedings in summon cases not applicable strictly to complaint cases can be applied to

stop proceedings for trial in complaint case in exercise of power vested in Section 143 of the NIA to bring speedy trial in cheque bounce matters.

6. Whether the accused is required to make personal attendance in the matter?

Ans. No bar to issue directions, which do not affect the exercise of power under Section 205 CrPC, to require personal attendance wherever necessary. In **Bhaskar Industries Ltd. versus Bhiwani Denim & Apparels Ltd.** (2001) 7 SCC 401 this Court considered the issue of hardship caused in personal attendance by an accused particularly where accused is located far away from the jurisdiction of the Court where the complaint is filed. This Court held that even in absence of accused, evidence can be recorded in presence of counsel under Section 273 CrPC. and Section 317 Cr.P.C. permitted trial to be held in absence of accused. Section 205 CrPC. specifically enabled the Magistrate to dispense with the personal appearance. Having regard to the nature of offence under Section 138, this Court held that the Magistrates ought to consider exercise of the jurisdiction under Section 205 CrPC. to relieve accused of the hardship without prejudice to the prosecution proceedings. It was observed:

“15. These are days when prosecutions for the offence under Section 138 are galloping up in criminal courts. Due to the increase of inter-State transactions through the facilities of the banks it is not uncommon that when prosecutions are instituted in one State the accused might belong to a different State, sometimes a far distant State. Not very rarely such accused would be ladies also. For prosecution under Section 138 of the NI Act the trial should be that of summons case. When a magistrate feels that insistence of personal attendance of the accused in a summons case, in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the magistrate to consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings.”

7. What is the provision for Compounding of offence under the Cheque Bounce Case?

Ans. The concept of compounding involves consent of Complainant and hence cannot be done unilaterally, even if the accused is ready and willing to make good payment. It requires consent of both the parties. Compounding is done under both IPC and other laws.

Important Judgments

1. J.V. Baharuni vs. State of Gujarat and Anr. etc. (2014) 10 SCC 494

The apex court observed that the Court should make endeavor to expedite hearing in a time bound manner. The magistrate should make attempt to compound the offence at an early stage of litigation over the punitive action.

2. Subramanian Sethuraman vs. State of Maharashtra (2004) 13 SCC 324

After 2002 Amendment Act, Section 143 confers implied power on the magistrate to discharge the accused if the Complainant is compensated to the satisfaction of the court, where the accused tenders the cheque amount and tenders the cheque amount and reasonable cost of litigation.

3. Indian Bank Association vs. Union of India (2014) 5 SCC 590

“23.2 The MM should take pragmatic and realistic approach for issuance of summons. Summons must be properly addressed and sent by post as well as e-mail address got by the complainant. The Court in appropriate cases may take the assistance of police or nearby court to serve notice on the accused. For notice of appearance a short date be fixed. If the summons are unserved then immediate follow up action.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of an offence at the first hearing of the case and if such an application is passed the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court.”

4. M/s Meters Instruments & Pvt. Ltd. vs. Kanchan Mehta Crl. Appeal of 1731 of 2017

“18. From the above discussion following aspects emerge:

(i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under the CrPC. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

(iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

(iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) CrPC. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

(v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person-giving affidavit can be as per Section 264 CrPC. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

19. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) CrPC. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be

assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea-bargaining. Subject to this, the trial can be on day-to-day basis and endeavor must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

21. It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court."

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