

When dishonour of cheque constitutes an offence

When dishonour of cheque constitutes an offence (Section 138):

Where any cheque drawn by a person on an account maintained by him with the Banker for payment of any amount of money to another person from out of that Account is returned by the bank unpaid either because the amount is insufficient to honour the cheque or for any other reason such as stop payment or that it exceeds the amount arranged to be paid from that account by an agreement made with Bank, such person shall be deemed to have committed an offence under this Act.

Punishment for dishonour of cheque (Section 138):

Any person committed the offence of dishonour of cheque shall be liable to be punished with imprisonment up to one year, or with fine up to thrice the amount of the cheque, or with both.

Prior conditions to take legal action under the Act (Section 138):

In order to initiate a legal action against the person committed the offence of dishonour of cheque under the Negotiable Instruments Act, the following conditions shall have to be fulfilled:

The cheque has to be presented to the drawee Bank within 6 months from the date on which it is drawn or within the period of its validity, whichever is earlier.

Demand has to be made for the payment of the said amount of money by giving a 30 days written notice to the drawer of the cheque within 30 days from the date of dishonour;

Failure to make the payment by the drawer within 30 days of the receipt of the said notice (Clause c of the proviso to Section 138). After the expiry of this 30 days, the cause of action of the case arises. Viz.,

Presentation of cheque
(Within 6 months)

If dishonoured written notice
(Within 30 days)

Given the drawer time to a
(30 days from the notice)

Cause of action arises
(If failed to pay within the said 30 days)

Filing complaint petition
(Within 30 days from the cause of action)

Limitation period for filing complaint petition (Section 141):

The complaint petition has to be filed before the competent court within one month on which the cause of action arises.

Trial Court (Section 141):

The complaint petition under Section 138 of the Negotiable Instrument Act, 138 has to be filed before the Court of Metropolitan Magistrate or the Court of Magistrate of the First Class.

Offences of companies (Section 140):

The company as well as the person in charge for the conduct of the company's business shall be deemed to be guilty of the offence. The director, manager, secretary or other officer of the company shall also be deemed to be guilty, if the offence is committed with their consent. Here the company means any body corporate and includes a firm or other association of individuals.

Concluding remark:

The foregoing discussion reveals that a cheque can be 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. However, the Act does not stipulate as to how many times a cheque may be presented to the Bank. Scrutinizing the said provisions, the Hon'ble Appellate Division of the Supreme Court in the case of HABIBUR RAHMAN HAWLADER VS. STATE AND ANOTHER, 53 DLR (AD) (2001), P.111 refused to quash the proceeding under Section 138 of the Negotiable Instrument Act where the accused-petitioner issued two cheques and those were placed for encashment in the bank within 6 months. Once it was returned with the remark that the fund was insufficient and again it was returned with the remark that the account was closed. The complainant served a legal notice within 15 days of the receipt of the information of return of the cheques in question. Here the Appellate Division precisely pronounced its judgement without explaining the reasons.

But subsequently the Hon'ble High Court Division somehow failed to follow the previous decision of the Appellate Division and imposed restriction as to the presentation the cheque for more than one time in the case of ABDUS SALAM VS. MUNSHI RASHED KAMAL, reported at 54 DLR (2002), P. 234. According to this judgement, unless legal notice is issued within 15 days of the first time a notice of dishonour is obtained from the Bank (drawee), then Section 138 remedy is gone.

Nevertheless, having been aware of the decision of the Appellate Division, the Hon'ble High Court Division affirmed the said decision of the Appellate Division in 55 DLR (2003), P.199 and observed that a cheque may be presented to the bank more than once but the cheque must be presented to the bank within the period of its validity. Thus the limitation period shall be computed from the last dishonour so long as the cheque is presented during the period of its validity.

It may be mentioned here the offence of dishonouring cheque has also been punishable under Section 406 and Section 420 of the Penal Code. However, the punishment may be ensured under these Sections though the realization of money in question is not possible. Moreover, money suit may also be filed before the civil court for realization of the money of the cheque.

It is well known to us that bouncing cheque is a serious matter for the payee and unless it is an honest error on the part of the drawer it often causes severe hardship for the payee. Though filing a money suit to obtain payment is a method to make the drawer pay and Sections 406/420 of the Penal Code may also be applied to prosecute the drawer but nothing is as effective as the special procedure laid down in the Negotiable Instrument Act. Here the drawer upon conviction could face a sentence of imprisonment up to one year and a fine up to three times of the amount of cheque or both and the payee could get the cheque amount from the fine so imposed. Thus the Negotiable Instruments Act provides a

strict penal law which is otherwise was a matter of civil remedy simultaneously keeping the other options open.