**LEGAL PROCESS FOR CHEQUE BOUNCE**

Bounced cheques are one of the most common offences plaguing the financial world. According to the Supreme Court, there are over 40 lakh such pending cases in the country. A cheque can be dishonoured for various reasons, the most common being insufficient funds in the account of the person drawing the cheque, and a mismatch of signatures with the bank records. But what do you do if you land a bad cheque.

**Filing a criminal complaint**

When a cheque bounces the first time, the bank issues a ‘cheque return memo’, stating the reasons for non-payment. The holder can resubmit the cheque to the bank within three months of the date on it, if he believes it will be honoured the second time. The other option would be to prosecute the defaulter legally. The first step is to send a legal notice to the defaulter within 30 days of receiving the cheque return memo. All the relevant facts of the case, including the nature of transaction, amount, date of depositing the instrument in the bank, and subsequent date of dishonouring, should be clearly mentioned in the notice. In *C.C. Alavi Haji v. Palapetty Muhammed*[[1]](#footnote-0) it was held that when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of clause (b) of proviso to Section 138 of the Act stands complied with. It is needless to emphasise that the complaint must contain basic facts regarding the mode and manner of the issuance of notice to the drawer of the cheque.

If the cheque issuer fails to make a fresh payment within 30 days of receiving the notice, the payee has the right to file a criminal complaint under Section 138 of the Negotiable Instruments Act. However, the complaint should be registered in a magistrate’s court within a month of the expiry of the notice period.

If you fail to file the complaint within this period, your suit will become time-barred and, hence, not be entertained by the court unless you show sufficient and reasonable cause for the delay. 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 a prison term of two years and/or a fine, which can be as high as twice the cheque amount.

The following basic documents are necessary to file a Complaint under section 138 of Negotiable Instruments Act.

* Memo of Parties
* Complaint U/S 138 Negotiable Instruments Act, 1881
* Pre-Summoning Evidence/ By Way Of Affidavit (in some courts)
* List of Witnesses
* List of Documents with Documents
* Vakalatnama in favour of the Counsel

The following are the other documents necessary to file criminal complaint Under Section 138 of Negotiable Instruments Act.

* Copy of the resolution authorizing Complainant's Attorney (in case of Company, firm etc).
* Original dishonored cheques
* Returning memo with date
* Copy of legal notice dated with date
* Postal Receipt
* UPC
* Limitation Document (This is required in some court, attach, If applicable)

In *Meters and Instruments (P) Ltd. v. Kanchan Mehta*[[2]](#footnote-1), it was held that the sentence prescribed under Section 138 is up to two years or with fine which may extend to twice the amount or with both. What needs to be noted is the fact that power under Section 357(3) CrPC to direct payment of compensation is in addition to the said prescribed sentence, if sentence of fine is not imposed. The direction to pay compensation can be enforced by default sentence under Section 64 IPC and by recovery procedure prescribed under Section 431 CrPC.

**Filing a civil suit**

While the above-mentioned process is helpful in taking a defaulter to task, it may not always result in recovery of the pending dues. Hence, one can file a separate civil suit for recovery of the cheque amount, along with the cost borne and the lost interest.

This is where a summary suit under Order 37 of the Code of Civil Procedure (1908) comes in. A summary suit is different from an ordinary suit as it does not give the accused the right to Defend himself. Instead, the defendant has to procure permission from the court to do so. However, summary suits can be availed of only in recovery matters, be it promissory notes, bills of exchange or cheques.

1. (2007) 6 SCC 555 [↑](#footnote-ref-0)
2. (2018) 1 SCC 560 [↑](#footnote-ref-1)