1. INTRODUCTION

Cheque Dishonour generally happens when there are insufficient funds in a bank account and the bank fails to honour the cheque. Bouncing of a cheque invites criminal prosecution under section 138 of NI Act. Punishment for the offence under section 138 of NI Act is imprisonment up to two years or fine which may extend to twice the cheque amount or both. The offence is bailable, compoundable and non-cognizable.

Even though action has been initiated under the NI Act, the holder of bounced cheque can also file an First Information Report (FIR) with a police station or can file a criminal complaint before a magistrate under sections 406, 420 and other relevant sections of Indian Penal Code, 1860 (IPC). Proceedings under the NI Act and under IPC are independent and can proceed simultaneously.

Essential Ingredients of the offence are:-

1. A check is drawn by a person on his own bank account.
2. Cheque should be for the payment of a debt or any other liability.
3. Cheque is presented within the period of its validity
4. The payee makes a demand for payment by a notice in writing within 30 days.
5. Drawer fails to make payment of the said amount within 15 days.
6. Complaint is made within one month of cause of action
7. PROCEDURE
8. A legal notice is issued to the defaulter by the payee, within 30 days. All the details including the nature of transaction, amount of loan and or any other legally enforceable debt against which the said cheque was issued and the date of deposit in bank and date of dishonour of cheque should be mentioned in the notice.
9. The drawer is directed to make the payment within 15 days. If this doesn’t happen, the holder of cheque should file a criminal case in a court within 30 days from the expiry of notice period of 15 days. This complaint should be filed at a court where the cheque was presented.
10. The court will hear complainant / advocate of complainant and issue summons under section 138 of NI Act.
11. The accused and surety are required to appear in court and submit documents (ownership documents of house or land owned by surety, his address proof including ration card, election identity card, photo and address proof of surety and accused). The court will accept the surety and on signing bonds by accused and surety, the bail will be granted and accused will be released by court.
12. JUDGMENTS

Law related to cheque bouncing went through a major change on 1st August 2014 Dashrath Rupsingh Rathod vs. State of Maharashtra[[1]](#footnote-1), when a three-judge bench of the Honourable Supreme Court overturned many of the Court’s previous decisions. The Honourable Supreme Court had made it mandatory that the complaint related to cheque bouncing must be filed only where the drawee bank is located. This surely made life difficult for anyone who received a cheque, while simultaneously making it easy for the accused or the person whose cheque bounced. Supreme Court’s judgment has been overturned by the Parliament by passing of The Negotiable Instruments (Amendment) Act, 2015.[[2]](#footnote-2)

According to Lalit Kumar Sharma & Anr vs State of Uttar Pradesh & Anr.[[3]](#footnote-3), the Supreme Court stated that the latter cheque was issued in terms of a compromise agreement and not to satisfy any debt or payment due. Therefore, the second instance would not invite prosecution under Section 138.

In Vijay Polymers Pvt. Ltd. & Anr., relying upon the judgment of Hon'ble Supreme Court in Sasseriyil Joseph a coordinate bench of this court had held that cheques issued on a time barred debt would not fall within the definition of 'legally enforceable debt' which is the essential requirement for a complaint under Section 138 of NI Act; the extended meaning of debt or liability has been explained in the Explanation to the Section which means a legally enforceable debt or liability. The existence of a legally recoverable debt is also not a matter of presumption as has been held by the Supreme Court in Krishna Janardhan Bhat.

In Central Bank of India v. Saxons Farms, the Supreme Court held that the object of the notice is to give a chance to the drawer of cheque to rectify his omission and also to protect an honest drawer. The service of notice of demand in clause (B) of Section 138 is a condition precedent for filing a complaint u/Section 138 of NI Act.

1. CONCLUSION

Section 138 creates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker. It makes the matter of dishonouring of cheques on grounds of insufficient fund, a statutory offence. In the cases of dishonour of cheques mens rea is not required. Offence under 138 is an offence without any mens rea but it is based on a negotiable instrument i.e. cheque, If a cheque is issued in discharge of a legally enforceable debt and on presentation of the cheque for encashment the same is dishonoured and offence will come into existence under section 138 of the N.I act. The circumstances under which the dishonour took place is irrelevant. The law only takes cognizance of the fact that the payment has not been forthcoming and it matters little that any of the manifold reasons may have caused that situation.

1. MANU/SC/0655/2014 [↑](#footnote-ref-1)
2. No. 26 of 2015. [↑](#footnote-ref-2)
3. MANU/SC/2079/2008 [↑](#footnote-ref-3)