

# TRIAL OF CHEQUE BOUNCE CASES

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# INTRODUCTION

Cheque Bounce Cases are special breed of Quasi Criminal Cases mutually governed by Negotiable Instruments Act, 1881 and Code of Criminal Procedure, 1973. The Cheque Bounce Cases as commonly referred by acronym Section 138 Cases originates with the bouncing of the Cheque in discharge of liability.

Cheque Bounce Cases is usually misunderstood by majority as an effective tool for recovery of money. A Cheque Bounce Cases begins when a person files a complaint with the Court of Magistrate, alleging that the cheque as issued in discharge of legal liability by the another person or entity has bounced. This document endeavour to navigate the labyrinth of Cheque Bounce Cases for success Prosecution.

# 1. CONSPECTUS

A. The trial of the Cheque Bounce Cases or in legal terms prosecution under the provisions of Section 138 of the Negotiable Instruments Act, 1881 is generally governed by Code of Criminal Procedure, 1973 and tried summarily by the Hon'ble Courts.

B. The present document intends to educate about the various aspects and stages of the trial of the Cheque Bounce Cases under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

- i. Legal Provisions regarding Section 138 of the Negotiable Instruments Act, 1881
- ii. Jurisdiction for Prosecution
- iii. Compounding/Mediation in the Cheque Bounce Cases
- iv. Essentials of the Complaint
- v. Questions of the Hon'ble Court from the Complainant
- vi. Questions of the Hon'ble Court from the Accused
- vii. Interim Relief in the Cheque Bounce Cases
- viii. Role of the Banks in the Cheque Bounce Cases
- ix. Cross Examination and strategic questions
- x. Understanding the Judgment

## **2. LEGAL PROVISIONS REGARDING SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881**

A. The trial of the Cheque Bounce Cases is governed by Chapter XXI of the Code of Criminal Procedure, 1973 which is "Summary Trial".

B. Summary Trials provision can be found in the Section 143 of the Negotiable Instruments Act, 1881 which provides for invoking Sections 262 to Section 265 of the Code of Criminal Procedure, 1973.

C. Hon'ble Supreme Court of India in the matter *Expeditious Trial of Cases Under Section 138 of N.I. Act 1881, In re*, 2021 SCC OnLine SC 325 has specifically held that Hon'ble Court of Magistrate can only convert the summary trial to summons trial by the virtue of speaking order while providing valid justification for such conversions.

### **3. JURISDICTION FOR PROSECUTION**

**A. The trial of the Cheque Bounce cases primarily depends upon the provision of Section 142 of the Negotiable Instruments Act, 1881 which enumerates that jurisdiction can be made through: -**

- i. Branch of the bank where the payee or holder maintains the account.
- ii. Branch of the drawee bank where the drawer maintains the account is situated.

**B. Hon'ble Supreme Court of India in the matter Exeditious Trial of Cases Under Section 138 of N.I. Act 1881, In re, 2021 SCC OnLine SC 325 has specifically held that: -**

- i. Multiple cheques can be taken in single is committed within a period of 12 months.
- ii. Trial Courts must treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonor of cheques.
- iii. Trial Court does not have any jurisdiction to recall its summons.

## **4. COMPOUNDING / MEDIATION IN THE CHEQUE BOUNCE CASES**

A. All the cheque bounces cases are compoundable (amicably settled) under the provision of the Section 147 of the Negotiable Instruments Act, 1881.

B. Hon'ble Supreme Court of India in the matter Damodar S. Prabhu Vs. Sayed Babalal H, (2010) 5 SCC 663 has laid down guidelines for the compounding of the Cheque Bounce cases as:-

i. Accused can make an application for compounding of the offence at the first and second hearing of the case and if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused.

ii. If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the court at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the District Legal Services Authority.

## 5. ESSENTIALS OF THE COMPLAINT

A. It is submitted that The Hon'ble Supreme Court of India has mentioned three essential conditions for prosecution of the offence under Section 138 of The Negotiable Instruments Act, 1881.

The Hon'ble Supreme Court of India has mentioned two Judgment i.e., *Alka Khandu Avhad v. Amar Syamprasad Mishra*, (2021) 4 SCC 675 and *Jugesh Sehgal v. Shamsheer Singh Gogi*, (2009) 14 SCC 683

B. That the cheque is drawn by a person and on an account maintained by him with a banker.

C. For the 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.

D. The said cheque 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.

## **6. QUESTIONS OF THE HON'BLE COURT FROM THE COMPLAINANT**

1. Kindly Explain Why the Cheque was drawn in your favour ?
2. When did the cheque bounced ?
3. Does the Bank Memorandum says that the cheque was bounced due to insufficient funds ?
4. Does the legal notice sent within the prescribed period of 30 days through a legal petitioner ?
5. Did you receive any reply ? If yes, When ?
6. Have you file Affidavit of Evidence, List of witnesses ?



## **7. QUESTIONS OF THE HON'BLE COURT FROM THE ACCUSED**

1. Is the cheque issued from your Bank Account ?
2. Is the handwriting/ signatures on the cheque is yours (accused) ?
3. Do you wish to contest or compound ?
4. Do you file any application under section 145 (2) of The Negotiable Instruments Act, 1881 as a defense ?

## **8. ROLE OF THE BANKS IN THE CHEQUE BOUNCE CASES**

- A. The bank has to verify the signature if the accused denies his signatures.
- B. To verify the Bank's Memorandum to a certain that the cheque was bounced because of insufficient funds (only).

## **9. CROSS EXAMINATION AND STRATEGIC QUESTIONS**

- A. Cross examination question to the complainant is endeavored around :
- i. Questioning the authenticity of the liability as accrued on the accused as payable through the cheque in question.
  - ii. Whether the cheque issued for other liability or the same liability in whole or in part, of any debt or other liability.
  - iii. Whether the cheque of accused was written in his own handwriting or any other handwriting.
  - iv. Did you communicate the liability to the accused through legal notice or otherwise ?

**B. Cross examination question to the Accused is endeavored around :**

- i. Was this cheque issued by the accused in coercion, threat , undue influence ?
- ii. If yes, to the Question 1 have you preferred a complaint to the police or to the magistrate ?
- iii. Did you communicate your inability to make a payment to discharge liability to the complainant before hand ?
- iv. Other questions are based upon reply to the legal notice to the complainant.

## **10. UNDERSTANDING THE JUDGEMENTS**

**A. The judgments has following parts :**

- i. Analysis of the Complaint including all the documents, affidavits and exhibits as annexed with the complaints
- ii. Analysis of the Defense including Application under Section 145(2) The Negotiable Instruments Act, 1881.
- iii. Statement of the witnesses in support of the complainant including expert witnesses.
- iv. Liability of the accused :
  - a. That the cheque is drawn from the accused bank and on an account maintained by him with a banker.
  - b. For the payment of any amount of money to another accused from out of that account for the discharge, in whole or in part, of any debt or other liability.
  - c. The said cheque 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.

## **11. QUANTUM OF PUNISHMENT**

A. By the virtue of amount as a penalty and imprisonment term. In Addition the judgment has an element of decision of Bail Application 389 under The Code of Criminal Procedure,1973

- i. If in case conviction is done.
- ii. If conviction is not done, then the refund of interim compensation along with the interest to the accused



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