

Report on the Negotiable Instruments Act, 1881

Introduction

The Negotiable Instruments Act, 1881 (NI Act) is a foundational statute in India that governs instruments like promissory notes, bills of exchange, and cheques. Chapter XVII (Sections 138-147), inserted by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, criminalizes the dishonour of cheques due to insufficient funds or exceeding arrangements, aiming to enhance credibility in commercial transactions. Amendments in 2002, 2015, and 2018 further refined provisions on jurisdiction, interim compensation, and compounding.

The object of Section 138 is to inculcate faith in banking operations, protect honest drawers, and penalize erring ones to prevent irresponsibility in business dealings (Vinaya Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., AIR 2008 SC 716; Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197).

This report addresses key aspects through a Q&A format, drawing from judicial interpretations and statutory provisions. Citations are from Supreme Court (SC) and High Court decisions, as referenced in the provided documents.

1. Definitions and Scope

Q1: What is a 'cheque' under the NI Act?

A: A cheque is a bill of exchange drawn on a specified banker, payable on demand, including electronic images or truncated cheques (Section 6, NI Act). It must be presented within 3 months from the draw date (RBI Notification DBOD.AML BC.No.47/14.01.001/2011-12). Post-dated cheques become effective only on the mentioned date (Ashok Yashavant Badave v. Surendra Madhavarao Nigojekar, AIR 2001 SC 1315).

Q2: Does a 'pay order' qualify as a cheque?

A: Yes, a pay order is a bill of exchange and falls under Section 138 if dishonoured (Punjab & Sindh Bank v. Vinkar Sahakari Bank Ltd., AIR 2001 SC 3641).

2. Ingredients of Offence under Section 138

Q3: What are the essential ingredients for an offence under Section 138?

A: (a) Cheque drawn on an account maintained by the drawer; (b) Issued for discharge of legally enforceable debt/liability; (c) Dishonoured due to insufficient funds/exceeding arrangement; (d) Presented within validity period; (e) Demand notice within 30 days of dishonour info; (f) No payment within 15 days of notice; (g) Debt

legally enforceable (*Kusum Ingots and Alloys Ltd. v. Pennar Peterson Securities Ltd.*, (2000) 2 SCC 745; *Goa Plast (P) Ltd. v. Chico Ursula D'Souza*, (2004) 2 SCC 235).

Q4: What constitutes a legally enforceable debt or liability?

A: The cheque must be for an existing debt/liability; time-barred debts or supari money for crimes are not enforceable (*Somnath v. Mukesh Kumar*, 2015 (4) Law Herald 3629 (P&H)). Presumption under Section 139 favors the complainant unless rebutted by preponderance of probabilities (*Rangappa v. Sri Mohan*, (2010) 11 SCC 441; *Uttam Ram v. Devinder Singh Hudan*, (2019) 10 SCC 287).

Q5: Who bears the burden of proving consideration for the cheque?

A: The accused must rebut the presumption under Sections 118/139; mere denial is insufficient (*K.N. Beena v. Muniyappan*, AIR 2001 SC 2895; *Vijay v. Laxman*, (2013) 3 SCC 86).

Q6: What is the nature of presumption under Section 139?

A: It is a rebuttable presumption of law favoring the complainant; accused must prove by preponderance of probabilities (*Hiten P. Dalal v. Bratindranath Banerjee*, AIR 2001 SC 3897; *Rangappa v. Sri Mohan*, AIR 2010 SC 1898; *Basavalingappa v. Mudibasappa*, (2019) 5 SCC 418).

3. Specific Scenarios Leading to Dishonour

Q7: Does 'stop payment' instructions attract Section 138?

A: Yes, if cheque was for existing debt; presumption under Section 139 applies unless rebutted (*Modi Cements Ltd. v. Kuchil Kumar Nandi*, AIR 1998 SC 1056; *Rangappa v. Sri Mohan*, AIR 2010 SC 1898; *Vijay v. Laxman*, (2013) 3 SCC 86).

Q8: What if the account is closed after issuing the cheque?

A: It amounts to dishonour due to insufficient funds; offence applies (*NEPC Micon Ltd. v. Magma Leasing Ltd.*, AIR 1999 SC 1952). Re-presentation not needed to save limitation (*H. Nanjundappa v. H. Hanumantharayappa*, ILR 2007 Kar 2706).

Q9: Does incomplete signature lead to offence under Section 138?

A: No, if returned solely for incomplete signature; must be due to insufficient funds (*Vinod Tanna v. Zaheer Siddiqui*, (2002) 7 SCC 541). Mismatch after notification may attract it (*Laxmi Dyechem v. State of Gujarat*, (2012) 13 SCC 375).

Q10: Can a blank signed cheque lead to offence?

A: Yes, if voluntarily issued for debt/liability; presumption applies (*Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197; *Kalamani Tex v. P. Balasubramanian*, (2021) 5 SCC 283).

Q11: Can a cheque issued by a guarantor attract Section 138?

A: Yes, as it covers 'any cheque' for 'other liability' (ICDS Ltd. v. Beena Shabeer, AIR 2002 SC 3014).

Q12: How many times can a cheque be presented?

A: Any number within validity (3 months now); fresh cause if no prior notice (MSR Leathers v. S. Palaniappan, (2013) 10 SCC 568).

4. Demand Notice and Cause of Action

Q13: What is the time limit for issuing demand notice?

A: 30 days from receipt of dishonour information; exclude the receipt day (Munoth Investments Ltd. v. Puttukota Properties Ltd., AIR 2001 SC 2752; Raju Indani v. Veerendra Hegade, ILR 2001 Kar 4987).

Q14: What if multiple notices are issued?

A: First valid notice counts; subsequent are reminders (N. Parameswaran Unni v. G. Kannan, (2017) 5 SCC 737).

Q15: When does cause of action arise?

A: On 16th day after notice receipt if no payment; complaint within 1 month thereafter (Saketh India Ltd. v. India Securities Ltd., AIR 1999 SC 1090; Econ Antri Ltd. v. Rom Industries Ltd., 2013 (8) LAWS (SC) 58).

5. Limitation, Cognizance, and Jurisdiction

Q16: What is the limitation for filing complaint?

A: 1 month from cause of action; no exclusion of first day (Saketh India Ltd. v. India Securities Ltd., AIR 1999 SC 1090).

Q17: When can cognizance be taken?

A: No cognizance without notice service (Central Bank of India v. Saxons Farms, (1999) 8 SCC 221).

Q18: Which court has jurisdiction?

A: Post-2015 amendment: Where payee's bank branch is if collected through account, or drawer's bank if presented otherwise (Section 142(2)). Overruling Bhaskaran v. Shankaran (AIR 1999 SC 3762), now where dishonour occurs (Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129).

6. Trial, Procedure, and Evidence

Q19: Is the offence compoundable?

A: Yes (Section 147); guidelines for costs (10-20% of cheque amount) based on stage (Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663; Madhya Pradesh State Legal Services Authority v. Prateek Jain, (2014) 10 SCC 690).

Q20: What if complainant refuses to compound despite payment?

A: Court can close proceedings under Section 143 read with Section 258 CrPC (now 281 BNSS) if satisfied of compensation (Meters and Instruments Pvt. Ltd. v. Kanchan Mehta, (2018) 1 SCC 560).

Q21: Can complaint be filed by Power of Attorney holder?

A: Yes, if authorized and knowledgeable (Shankar Finance v. State of Andhra Pradesh, (2008) 8 SCC 536; A.C. Narayan v. State of Maharashtra, (2013) 12 SCC 10).

Q22: What about offences by companies?

A: Company and responsible persons liable; arraigning company imperative (Aneeta Hada v. Godfather Travels, (2012) 5 SCC 661). No individual notices to directors needed (Kirshna Texport v. Ila A. Agarwal, (2015) 8 SCC 28).

Q23: Can expert evidence be sought for cheque age/handwriting?

A: Yes, if accused claims cheque issued long back or misused (Kalyani Bhasker v. M.S. Sampooram, (2007) 2 SCC 258; T. Nagappa v. Y.R. Muralidhar, AIR 2008 SC 2010).

7. Compensation, Recovery, and Appeals

Q24: Can interim compensation be granted?

A: Yes, discretionary under Section 143A (up to 20% of cheque amount); prospective (G.J. Raja v. Tejraj Surana, (2019) 19 SCC 469). Factors: merits, accused's distress (Rakesh Ranjan Shrivastava v. State of Jharkhand, 2024 INSC 205). Recovery via Section 421 CrPC (now 461 BNSS); bail cancellation possible (Surinder Singh Deswal v. Virender Gandhi, (2020) 2 SCC 514).

Q25: How is fine/compensation recovered?

A: As fine under Section 421 CrPC (now 461 BNSS); compensation under Section 357(3) CrPC (now 395 BNSS) (Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528).

Q26: Effect of depositing cheque amount in appeal?

A: Court may remit matter, allow withdrawal, or set aside conviction (Cranex Ltd. v. Nagarjuna Finance Ltd., AIR 2000 SC 3145).

Q27: Can Lok Adalat award in NI case be executed?

A: Yes, as civil decree or under Section 431 CrPC (now 471 BNSS) (K.N. Govind Kutty Menon v. C.D. Shaji, (2012) 2 SCC 195; Somashekhar Reddy v. G.S. Geetha, WP No.23519/2018 (Kar HC)).