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Dishonour of Cheque : Legal Approach

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Abstract

Before incorporation of Section 138 of Negotiable Instrument Act, the criminal action for dishonour of cheque was covered under Section 420 of Indian Penal Code that was difficult to prove as mens-rea or intention to commit offence is difficult to establish but this provision has created a deemed offence on dishonour of cheque. The complainant now need not prove mens-rea or intention to cheat on the part of the drawer of the cheque. Cheque is negotiable in nature and can be transferred to any other person by making endorsement and delivery or by simple delivery. It can be said as improved version of bill of exchange. Cheque can be dishonoured on various grounds but the basic effect is that banker of the drawer is not making payment of the same and thus be a ground to take action against the accused. The law has not created the offence on simple dishonour of the cheque but a mandatory notice is required to be given to the drawer of the cheque within 30 days of receipt of written intimation of dishonour of the cheque by complainant payee. This is a major safeguard and in the interest of the drawer who after receipt of notice can make enquiry why his cheque had bounced and to avoid penalty attracted under the law can make payment to the payee within 15 days of the receipt of notice of demand. The whole law of prosecution under Section 138 N. I. Act revolves around the 'cheque' which is a backbone of this provision. If any instrument is not covered within the definition of the cheque, then no criminal action lies for its dishonour or non-payment under Section 138 of the Act. Hence before launching prosecution, it should be clear to the complainant that dishonoured instrument is a cheque and not other instrument defined under the Negotiable Instrument Act.

Keywords: Negotiable Insrument Act, Indian Penal Code, Section, Cheque, Dishonour, Drawer.

Introduction

The general dictionary meaning of word 'dishonour1 is refusal to accept and pay the amount of a legal and valid instrument when duly presented. Black's Law Dictionary defines 'dishonour' in relation to a negotiable instrument as being a situation whereby "payment is refused or cannot be obtained." Section 92 of N.I. Act specifies that when the drawee of the cheque i.e. bank, makes default in payment upon being duly required to pay the same, the cheque is said to have been dishonoured. If on presentation, the banker does not pay, then it is treated as dishonoured and the holder acquires the right of recourse against the drawer and other defaulting parties. Drawer is treated as discharged when payment is made of the cheque in due course. The payment of cheque can be refused by bank on various grounds. Almost all the banks use a printed Performa giving various reasons of dishonour of cheque and the concerned ground of dishonour is generally identified by putting some mark on the relevant column or by writing specific ground. Sometimes, the relevant ground of dishonour is highlighted or specifically written through computer printout of the returning memo.

Offence under Section 138 of the Act may not be attracted in all cases of dishonour of cheque. In Section 138 N.I. Act, two grounds i.e. 'insufficient funds' and 'exceed arrangements' are only specified but a question may arise where the cheque is dishonoured on any other ground, whether drawer can avoid his prosecution under Section 138 N.I. Act ? There are divergence opinions among various High Courts in interpreting this provision. In *S. Prasnna v. R. Vijaylakshmi*[1] case the Court held that if cheque is dishonoured on any ground other than insufficiency of funds and exceeds arrangement, then offence under Section 138 shall not be attracted. Different situations and grounds when cheque is dishonoured can be discussed as urider.

Objectives of the Study

The object of the study is to disrcusses the effect of filing of civil suit of recovery or taking of any other steps in the Court/forum on basis of dishonour of cheque or making of full or part payment of the cheque amount during the pendency of the complaint under Section 138 of the Act.

Method of the Study

To accomplish the present study doctrinal research method has been used with the help of relevant case law and literature available in the form of report, journals, commentaries and cases to meet out the problem of dishonor of cheques.

Insufficient Funds

This ground is already specified in Section 138 of the Act. If a dispute is raised whether there was deficiency of funds in the account of the drawer in order to honour the cheque, the evidence of the banker of the accused is very relevant. in case *Ex. Major Uday Sathe v. Rahul Rajendra Borundia*[2], cheque of accused was dishonoured on the ground 'insufficient funds'. During trial, it was proved by accused that on that particular day, accused had sufficient balance in his account at start of the day. Several transactions took place also on that day by which money was deposited and withdrawn from his account. However, at the lime when turn of cheque in question came, there was insufficient balance but lateron again due to some further payments received, the balance becomes sufficient in the account at the end of the day. Court even in this situation upheld the conviction by holding that accused has to take care that his account does not go into red during the period, when the cheque issued by him can come to his bank for collection.

Refer to Drawer

Refer to drawer' in the ordinary meaning amounts to a statement by the banker, "We are not paying, go back to the drawer and ask him why." from the endorsement 'refer to drawer', the complainant cannot draw an inference that the cheque was issued without funds and that in such a case offence under Section 138 may not be made out. When the 'cheque return memo' of drawee bank shows this endorsement, then ordinarily it is advised that payee should contact the drawer of the cheque. endorsement 'refer to drawer' does not necessarily mean that dishonour of cheque was for want of sufficiency of funds and complainant has to prove from the record of bank that there was no sufficient funds in the account of drawer.

This controversy is now cleared by Supreme Court in case *M/s. Electronics Trade and Technology Development Corporation Ltd. vs. M/s. Indian Technologists and Engineers Pvt. Ltd.*[3] wherein it is held that 'refer to drawer' ground amounts to dishonour of cheque which is covered within meaning of Section 138 of the Act.

Account Closed

Cheque should be presented at the bank upon which it is drawn before the relation between the drawer who is customer and his banker has been altered to the prejudice of the drawer as per provisions of Section 72 of the N.I. Act. When an account is closed, the relation between customer and banker comes to an end, so far that particular account is concerned and bank is left with no other option except to return the cheque presented afterwards. Dishonour of cheque on ground of account closed attracts offence under Section 138 N.I. Act. According to the Court, the drawer of the cheque who closes his account with the bank before the cheque reaches the bank for presentation is actually causing insufficiency of funds standing to the credit of that account.

There was a controversy whether ground of 'account closed' can attract punishment under Section 138 N.I. Act or not but now this position is clarified by Supreme Court wherein it is held that offence under Section 138 N.I. Act is also attracted when account is closed. It is held that returning of cheque on ground of 'account being closed' would be similar to a situation where the cheque is returned on account of insufficiency of funds in the account of the drawer of the cheque. Before one closes his account in the Bank, he withdraws the entire amount standing to his credit. Withdrawl of the entire amount would therefore mean that there was no fund in the account to honour the cheque that clearly brings the case within the four corners of Section 138 of the Act. Thus, this would certainly help in frustrating the nefarious designs of fraudulent and cheater drawers who after issue of cheque close the account immediately to deprive payee, of the cheque proceeds and to avoid penalty. If a cheque is issued from an account, which has already been closed, then presumption of commission of offence of cheating under Section 420 IPC also arises.

In Urban Co-op. Credit Society v. State of Gujarat[4] distinguished two situations in between closure of account before as well as after issue of cheque. As per decision of the Court, if a cheque is issued first and account is closed lateron, then offence is made out however Court while interpreting the words "cheque drawn by a person on an account maintained by him" held that when the account was not in existence on the date of issue of the cheque, then in that case, it would not amount to an offence under Section 1 38 of the Act. It was further held that person signing the cheque, if had no account with the bank on the date of presentation, then initial requirement of maintaining of account not complied with and no offence under Section 138 is attracted.

Stop Payment

One of the main reasons in prosecution of dower on the ground of 'stop payment' of cheque. The stop payment means where the customer by givimg duly signed instructions in writing to his banker mentioning therein details of cheque. Most of the times such situation arises when there some genuine dispute between the parties regarding transaction had arisen. Earlier view of some High Courts was that on simple 'stop payment' offence is not made out but if it is also established by payee that in fact sufficient funds were not in the account of drawer and he had intentionally and maliciously issued directions to the bank to 'stop payment' then only Section 138 comes into picture.

Supreme Court however modified the views of different High Courts and held in *M/s. Electronics Trade and Technology Development Corporation Ltd. v. M/s. Indian Technologists and Engineers Pvt. Ltd.*[5] case "Despite civil remedy Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Section 138 draws presumptions that one commits the offence if he issues the cheque dishonestly. If it is seen that once the cheque has been drawn and issued to the payee and payee has presented the cheque and thereafter if any instructions are issued to the bank for nonpayment and the cheque is returned to the payee with such endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138. Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course present the cheque to the bank for payment and when it is returned on instructions. Section 138 does not attracted."

The above view was further strengthened by Supreme Court but later on Full Bench of Supreme Court observed that earlier view was not appropriate and thus disapproved the same being contrary to the spirit and object of Section 138 and 139 of the Act and held that:

Once the cheque is issued by drawer a Presumption u/s 139 must follow and merely because the drawer issue a notice to the drawee or to the bank for stoppage of payment, it will not preclude in action u/s 138 of the Act by the drawee ar holder of a cheque in due course. The object of chapter XVII, which is instituted as "of penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts" and contains Sections 138 to 142 is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. It is for this reason we are of the considered view that the observations of this Court in Electronics Trade & Technology Development Corporation Ltd., " Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions, Section 138 does not attracted", does not fit in with the object and purpose for which the above chapter has been brought on the statute book.

If we are to accept this proposition it will make Section 138 a dead letter, for, giving instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence has been committed.Section 138 of the Act intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly" in our opinion, do not also lay down the law correctly."

Though on the ground of 'stop payment', provisions u/s 138 shall be attracted but accused if proves that there were sufficient funds in his account and stop payment instructions were given not due to insufficiency or paucity of funds but due to some other valid grounds including absence of debt or liability,, then no offence shall be made out against the accused but this controversy shall be decided only at the time of trial. The Apex Court further held that, "The accused can thus show that the 'stop payment' instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there are sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presumption of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused."

In Laxmi Dyechem (M/s) v. State of Gujarat[6] the question of 'stop payment1 was not directly before Supreme Court but some of observations made by one of the Judges of Division Bench needs to be quoted. It is held that in order to hold that the stop payment instructions to the bank would not constitute an offence, it is essential that there must have been sufficient funds in the accounts in the first place on the date of signing of the cheque, the date of presentation of the cheque, the date on which stop payment instruction were issued to the bank. Supreme Court further held that the cases arising out of stop payment situation where the drawer of cheques has sufficient funds in his account and yet stops payment for bonafide reasons, the same cannot be put on par with other variety of cases where the cheque has bounced on account of insufficiency of funds or where it exceeds the amount arranged to be paid from that account, since Section 138 cannot be applied in isolation ignoring Section 139 which envisages a right of rebuttal before an offence could be made out under Section 138 of the Act as the Legislature, already incorporates the expression, "unless the contrary is proved" which means that the presumption of law shall stand and unless it is rebutted or disproved, the holder of a cheque shall be presumed to have received the cheque of the nature referred to in Section 138 of the N.I. Act for the discharge of a debt or other liability. Hence the contrary is proved, the presumption shall be made that the holder of a negotiable instrument is holder in due course.

Accordingly, it can be said that once a cheque is issued by the drawer, presumption under Section 139 of the Act must follow and merely because drawer issues a notice to the drawee or the bank or general notice in newspapers for stoppage of payments, it would not restrict an action under Section 138 of the Act by the drawee or holder of the cheque.

However accused can show during trial that stop payment instructions were given for genuine and valid reasons and in his account funds were sufficient on the relevant day to honour the cheque.

Exceed Arrangements

Sometimes bank under an agreement with his customer provide credit facility up to certain limit even in absence of funds in the account and the customer is permitted to withdraw that credit amount upto prescribed maximum limit which can be returned lateron to bank by him. When amount withdrawn exceeds the drawing power of an account holder or goes beyond the credit limit allowed, then the cheques issued from that account is said to have been dishonoured on the ground of 'exceed arrangement'. As there are specific words used in the Section 138 N.I. Act regarding dishonour of cheque on ground of 'exceed arrangement' so generally no problem arises in prosecuting the drawer.

Not arranged for

When the cheque is dishonoured on the ground 'not arranged for' it means that either no overdraft facility is sanctioned or no overdraft facility exists exceeding the limit already sanctioned, then also the offence is deem to have been committed.

Effects not cleared

Owing to the exigencies of business, the banker usually credit articles paid in for collection to a customer's account before formal clearance thereof. Sometimes the drawer deposits the cheques or bills which are in the course of collection and its proceeds is yet not available for meeting the amount of the cheque in question, then bank return the cheque on the ground of effect not cleared. This is also a ground for prosecuting the drawer, as on the day when the cheque is dishonoured, there are no funds or sufficient funds in the account -of the drawer to meet the amount of cheque. Drawer cannot take defence that he was expecting funds to reach to his account and if it would have been come, then the cheque presented could have been encashed and thus he is not liable for offence and cannot be prosecuted.

Full cover not received

It means that an adequate fund to honour the cheque or adequate security has not been given to cover the overdraft which might be created by paying the cheque.

Difference in signature

Every bank keeps specimen signatures of the drawer in its record before issuing cheque book so that in usual transactions including presentation of cheque, signature appearing on it can be verified from the record and payment to unauthorized person on the basis of forged signatures can be avoided. It is also judicially noticed that the signature or initial of a particular person may vary or differ on different occasions and such difference may be due to various reasons i.e. strokes of pen, not using a particular pen, flow of writing, mental condition of the writer, person used to sign differently on different documents, signing after a long period etc. These may be some of the grounds due to which signature put on the cheque may not tally with the record of the bank. In such circumstances, a question arises whether simple difference in signatures can be a ground of dishonour of cheque to make out an offence under Section 138 of N.I. Act ? when cheque is dishonoured on the ground that signature on the cheque was incomplete, then no offence under Section 138 is made out.

Where cheque was dishonoured on two grounds- 'refer to drawer' and 'signatures did not tally', then it was held that the expression 'refer to drawer' means that there were no sufficient funds with the bank in the account of drawer so case under Section 138 was made out. However the question as to whether signature of the drawer did or did not tally is a question of fact.

In case M/s. Investor Plaza v. Vijay Sachdeva[7] before Delhi High Court, the cheque was dishonoured on the ground insufficient funds as well as signatures differ. Bank witness examined by complainant also proved about insufficiency of funds in the account of the drawer. The assumption of trial Court without considering evidence of bank witness that endorsement of insufficient funds in the returning memo was added lateron in it was found perverse and illegal by High Court so the acquittal order was changed to conviction in an appeal of the complainant.

However Supreme Court in subsequent decision Laxmi Dvechem (M/s.) v. State of Gujarat[8] held that dishonour of cheque on ground of incomplete signature of drawer, no image was found or signature did not match still attracts offence under Section 138 N.I. Act. Supreme Court is of the view that expression "amount of money—is insufficient" appearing in Section 138 of the Act is genus and dishonour for reasons such as account closed, payment stopped, referred to drawer as well as signature do not match etc. are only species of that genus. Court is also of the view that there may be dishonest or fraudulent mandate behind the changing of specimen signature given to the bank by the drawer or change of authorized signatory in the case of company so that is why in case of honest drawer a precaution is there to issue prior notice to arrange payment to avoid penalty.

Absence of signature or seal

A offence was found not attracted under Section 138 N.I wherein insufficiency of funds was not established on record and the cheque was found dishonoured on the ground 'account number required' and 'proprietary not marked' i.e. absence of nibber stamp of the drawer concern. Court was of the view that Section 138 being penal provision should be strictly interpreted.

Bank's Role when Signature on the Cheque is Forged

In Canara Bank v. Canara Sales Corporation & Ors[9]*.* the Supreme Court while analyzing the Supreme Court's role in the case stated that "when a cheque which is presented for encashment contains a forged signature the bank has no authority to make payment against such a cheque. The bank would be acting against law in debiting the customer with the amounts covered by such cheques.

Attachment or seizure of account

Sometimes the cheques are dishonoured by the bank on other grounds such as account freezed by any govt. agency, or stay order of Court etc., then problem arises whether complainant has sufficient reasons available to prosecute the drawer accused. Where account of accused has been attached under orders of Court after issuance of cheque but before its presentation then it cannot be operated by him and he cannot be held liable for dishonour of cheque. Court in this matter quashed the proceedings against the accused by holding that act of attachment of bank account was not the voluntary act of the drawer accused even if there were insufficient funds in the account.

Lost/Stolen Cheque

A question has arisen before Supreme Court in *Raj Kumar Khurana v. State of (NCT of Delhi)*[10] whether return of a cheque by the bank on the ground that it was reported lost by the drawer would attract the penal provisions contained in Section 138 N.I. Act or not? In this matter, blank signed cheques and some stamp papers of the accused were found stolen from his office and he lodged FIR and informed the bank. These cheques were presented by complainant and dishonoured by bank and dishonoured on the ground 'said cheque reported lost by the drawer'. Criminal case lodged by accused was closed so accused filed complaint case of forgery and cheating in Court. Another FIR was lodged against complainant and others for theft, cheating etc.

One another complaint case for commission of offence of criminal breach of trust was also filed in Court by the accused beside civil suit for recovery against the complainant. On the other hand complainant filed complaint under Section 138 of the Act in which there was no averment that on the day of presentation of cheque, funds were insufficient in the account of the accused. Supreme Court held that a bare perusal of the provisions of 138 would clearly go to show that by reason thereof a legal fiction has been created. A legal fiction as is well known although is required to be given full effect has its own limitations. It cannot be taken recourse to for any purpose other than the one mentioned in the statute itself. Moreover Section 138 provides for a penal provision and a penal provision created by reason of legal fiction must receive strict construction. Court is of the opinion that no offence is made out in such situation especially when in the complaint or in the statement of witnesses there was no averment that funds were not sufficient in the account of the drawer. Moreover complainant is not supposed to have knowledge in regard to the amount available in the account of the accused. Court also opined that at the time of taking cognizance only the averments made in the complaint and evidence of complainant and his witnesses is to be seen. In *T.P. Chandran v. M.K. Sathyanandan*[11] that intention of the drawer was to stop the payment of the cheque when the same was dishonoured by bank with endorsement 'cheque reported stolen '.

Others Reasons

On some occasions, bank suo-moto closes the operation of account keeping in view the conduct of its customer whose cheques are being regularly bounced or who is not following the rules and regulations or conditions of an agreement entered into with the bank at the time of opening of account. These grounds also becomes the basis of prosecution of drawer because merely on dishonour of cheque, offence under Section 138 is not made out and infact cause of action arises when despite receipt of notice of demand sent by the aggrieved, payment is not made within specified period by the drawer. Delhi High Court in *Ganpati Oil Pvt. Ltd. v. K.S. Consupro India P. Ltd .*[12] quashed the proceedings where it was found that cheque was dishonoured simply on the ground that it was not presented at proper branch of the drawer bank. Court held that such ground does not attract offence under Section 138 of N.I. Act as the penal provisions are required to be interpreted strictly.

Endorsement on Returning Memo: Not Relevant

Court should not be allowed to mislead upon the reasons given in cheque returning memo and in case of difficulty, vagueness and unclear reasons, steps should be taken by Court to find out by examining the drawer's bank what was the actual reason of dishonour of cheque. In *Thomas Varghese v. P. Jerome* [13] case Court held that the offence under Section 138 does not depend on the endorsement made by the banker while returning the cheque and such endorsement made by the banker cannot be the decisive factor. An endorsement by the banker that a cheque is returned due to insufficient funds in the account of the drawer will reveals the financial conditions of the drawer. Such an endorsement may adversely affect the reputation of the drawer. Sometimes a hanker may be slow to use the words 'no sufficient fund in the account' etc. because it may have adverse implication on the financial soundness of the drawer of the cheque and consequently affect its reputation also. Bank in order to attract more customers and to maintain their relations with them, sometimes conceal the real cause of dishonour of the cheque so that reputed customer does not break his relation with it. Even if the banker refrains from making such a derogatory endorsement, the object of the legislation should not be allowed to be defeated and if it is shown that cheque was not honoured due to lack of funds in the account, the drawer becomes liable for offence.

In *M. Arun Ahluwalia v. Arun Oberoi*[14] that where a cheque is dishonoured for any reason it has to be correlated to the insufficiency of funds in the account. Legislature intent is to stop the dishonoring of cheque and adopt a no nonsense situation and punish the unscrupulous person *who purport to discharge this liability by issuing cheques not intending to do honour it by insufficiency* of funds in their accounts. In this case, the returning memo point out reason of dishonour as 'alteration in cheque' but preliminary evidence also showed that funds were insufficient at the time of presentation of the cheque.

Use of Modern Technology for Speedy Disposal of cases

In *M/s Meters and Instruments Private Limited* v. *Kanchan Mehta*[15] *case, two-Judge Bench of Supreme*

Court made some key observations regarding dishonor of cheque cases and also issued directions for speedy disposal of cheque cases under Section 138 of NI Act. The Court took into consideration use of modern technologies for enabling speedy disposal of cases under Section 138 of NI Act and noted that *use of modern technology needs to be considered not only for paperless Courts but also to reduce overcrowding of Courts. There appears to be need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. Traffic challans may perhaps be one such category.* Atleast some number of Section 138 cases can be decided online. If complaint with affidavits and documents can be filed online, process issued online and accused pays the specified amount online, it may obviate the need for personal appearance of the complainant or the accused. Only if the accused contests, need for appearance of parties may arise which may be through Counsel and wherever viable, video conferencing can be used. Personal appearances can be dispensed with on suitable self-operating conditions.

Only Handing over of Dishonored Cheque does not Attract Offence under Section 138 of NI Act

In *Smt. Asha Baldwa* v. *Ram Gopal*[16] case, the Petitioner had instituted petition under Section 482 of CrPC for quashing of the entire proceeding of criminal case *qua* the petitioner for offence under Section 138 of N. I. Act. In the case, it was alleged that the dishonored cheque was handed over to the present respondent by the petitioner and, therefore, she was consenting party to the act of giving the cheque and hence responsible for any proceedings in consequence of giving the cheque. The Petitioner in the case contended that as per Section 141(2) of the Negotiable Instrument Act, 1881 the allegation can only be levelled against the Company or its partners or its Directors only when the offence was committed with the consent or connivance or, is attributable to, any neglect on the part of, any director, manager, secretary or partners.The Supreme Court held –

1. That the legislative intention while making a specific provision of Company/Firm was that any person who was not directly responsible or merely a Director of Company or Firm could be held guilty for the alleged offence, only if he had committed offence with the consent of such person.
2. That on a bare reading of the complaint as well as the record, it is clear that only role of the petitioner is that she handed over the cheque but it has not been alleged that what was her role in consenting to the offence that is a default or dishonoring of the cheque.
3. That the purport of the special law under the Negotiable Instrument Act is to ensure that the promise to pay is abided by the person so promising. The provision under Section 139 of the NI Act is that it shall be presumed that the holder of a cheque received the cheque of the nature referred to in Section 138 of NI Act for the discharge, in whole or in part, of any debt or other liability.
4. That the legislative intention was that the holder of the cheque shall be entitled to receive the amount so promised from the person from whom the cheque is received. Any person, other than the person could be held responsible under Section 141(2) of the NI Act only when he is an office bearer of the Company of Firm.
5. That a bare reading of the complaint as well as the relevant law, on the face of it, makes it clear that the offence is not made out against the present petitioner as she neither issued the cheque and it has not been attributed to her and the allegation was that she had handed over the cheques which does not mean she had consented to offence by any stretch of imagination.

Conclusion

Above discussion makes it is clear that the cheque which is dishonoured due to various reasons, is the subject matter of prosecution under Section 138 and number of grounds of dishonour of cheque can attract offence. However each case has to be decided on the facts and circumstances of a particular case. Mere dishonour of cheque does not result in accrual of cause of action but a right to prosecute drawer arises only when payment is not made within 15 days of receipt of notice of demand by drawer from the payee or holder in due course issued under Section 138 (b) of the Act. The time period given to the drawer to make payment after receipt of the demand notice is a major safeguard for him to avoid the mental agony, harassment, and punishment from criminal prosecution. But sometimes, under some circumstances such as illness, financial constraint, personal problems etc. it can be said that this time period is not sufficient to do justice with the accused drawer who is otherwise honest and always ready to discharge his liabilities. It is submitted that this time period should be increased to some an extent.

There is no doubt that law of prosecution of drawer as incorporated in the N.I. Act under Section 138 is very useful and important but it is made so technical and complicated that genuine cases can be thrown away due to some minor mistake, defect and technical point and interest of justice is ignored. Though, Supreme Court of India has laid down law on number of technicalities but still number of issues that came before different High Courts create difficulty due to conflicting decisions. This provision can be modified in the interest of justice and for the welfare of the society to some extent to make it a perfect law. Jew suggestion prescribed above are exhaustive but is only a sample one.

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