



FACULTY OF JURIDICAL SCIENCES

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Penalties in case of dishonour of Cheque:

The dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both

Cheques are used in almost all transactions such as re-payment of loan, payment of salary, bills, fees, etc. A vast majority of cheques are processed and cleared by banks on daily basis. Cheques are issued for the reason of securing proof of payment.

Nevertheless, cheques remain a reliable method of payment for many people. On the other hand, it is always advisable to issue crossed "Account Payee Only" cheques in order to avoid its misuse.

A cheque is a negotiable instrument. Crossed and account payee cheques are not negotiable by any person other than the payee. The cheques have to be deposited into the payee's bank account.

Legally, the author of the cheque is called 'drawer', the person in whose favour, the cheque is drawn is called 'payee', and the bank who is directed to pay the amount is known as 'drawee'.

However, cases of cheque bounce are common these days. Sometimes cheques bearing large amounts remain unpaid and are returned by the bank on which they are drawn.

The below article provides information on what you may do if your cheque is dishonoured? Here's a step-by-step guide to the legal procedure that is available to you.

If a cheque is dishonoured

When a cheque is dishonoured, the drawee bank immediately issues a 'Cheque Return Memo' to the banker of the payee mentioning the reason for non-payment. The payee's banker then gives the dishonoured cheque and the memo to the payee. The holder or payee can resubmit the cheque within three months of the date on it, if he

believes it will be honoured the second time. However, if the cheque issuer fails to make a payment, then the payee has the right to prosecute the drawer legally.

The payee may legally sue the defaulter / drawer for dishonour of cheque only if the amount mentioned in the cheque is towards discharge of a debt or any other liability of the defaulter towards payee.

If the cheque was issued as a gift, towards lending a loan or for unlawful purposes, then the drawer cannot be prosecuted in such cases.

Legal action

The Negotiable Instruments Act, 1881 is applicable for the cases of dishonour of cheque. This Act has been amended many times since 1881.

According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both.

If payee decides to proceed legally, then the drawer should be given a chance of repaying the cheque amount immediately. Such a chance has to be given only in the form of notice in writing.

The payee has to send the notice to the drawer with 30 days from the date of receiving "Cheque Return Memo" from the bank. The notice should mention that the cheque amount has to be paid to the payee within 15 days from the date of receipt of the notice by the drawer. 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. It is essential in this case to consult an advocate who is well versed and experienced in this area of practice to proceed further in the matter.

Fine points: Conditions for prosecution - Legally, certain conditions have to be

fulfilled in order to use the provisions of Section 138.

The cheque should have been drawn by the drawer on an account maintained by him.

The cheque should have been returned or dishonoured because of insufficient funds in the drawer's account.

The cheque is issued towards discharge of a debt or legal liability.

After receiving the notice, if the drawer doesn't make the payment within 15 days from the day of receiving the notice, then he commits an offence punishable under Section 138 of the Negotiable Instruments Act.

Punishment & penalty

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 monetary penalty which may be twice the amount of the cheque or imprisonment for a term which may be extended to two years or both. The bank also has the right to stop the cheque book facility and close the account for repeat offences of bounced cheques.

If the drawer makes payment of the cheque amount within 15 days from the date of receipt of the notice, then drawer does not commit any offence. Otherwise, the payee may proceed to file a complaint in the court of the jurisdictional magistrate within one month from the date of expiry of 15 days prescribed in the notice.

MCQs

1. _____ means 'something legally transferable from one person to another for a consideration'.

- a. Instrument
- b. Negotiable
- c. Negotiable Instruments
- d. all of the above

a. Interest
motive

b. consideration

c. legal relation

d. business