

Chapter - 18

\* Law Relating to Negotiable Instruments.

\* Protection of Paying Banker [Section 10, 85 & 128]

- Section 10 protects banker if payment is made in good faith and due course.
- Section 85 protects banker from liability for forged endorsement if payment is made in good faith.

\* Collecting Banker :-

- Collecting Banker collects cheque for a customer.
- But he must follow certain rules :-
  - (a) A cheque with general crossing must be paid to another bank and special crossed cheque must be paid to specific banker named in the crossing.
- Banker is protected from liability of wrongful collection if they act in good faith and without negligence, they acted only as customer agent and collect the cheque for customer.

## \* Crossing of cheques :-

Cheque can be Open (paid over the counter) or Crossed (paid only through a Bank) Crossing serves as direction to paying banker to ensure payment is made through a bank. enhancing Securities. only

### → Types of Crossing :-

1. General Crossing → it is identified by two parallel lines on the cheque and paying banker can pay any banker.

2. Special Crossing → it includes the name of specific banker and payment is made only to that banker or their agent.

\* Account Payee's Crossing → It indicates that cheques proceeds should go only to account of named payee and if collecting banker pays it to wrong account. they lose protection given to them.

### \* Not Negotiable Crossing →

• A cheque marked is not negotiable restricts its negotiability but not its transferability.

• A person receiving not negotiable cheque cannot claim a better title than transferor had.

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- If any endorser has defective title, <sup>then</sup> all subsequent holder will get same.

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\* \* Holder :- Holder of negotiable instrument is someone who :-

- (i) Has legal possession in their own name.
- (ii) Entitled to recover or receive its amount.

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\* \* Holder in Due Course :-

- Holder in Due Course is someone who ;

- (i) is holder of instrument.
- (ii) Obtain it for value.
- (iii) Receive it (before maturity) → validity of that check.
- (iv) instrument is complete and regular.
- (v) He took it in good faith without knowing of defect in the title.

• Benefits :-

- (i) He is protected from all defects entitling of previous holder.
- (ii) He can recover the amount from all previous parties, even they didn't pay value.

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### \* Maturity :-

- Maturity refers to the date on which Promissory Note or Bills of Exchange becomes payable.
- Instrument payable after specified period, are entitled to 3 days grace period.
- cheque being payable on demand do not get this grace period.
- If Maturity falls on a Public Holiday, payment is due on preceeding business day.

### \* Endorsement [Section 15.16]

- Endorsement is act of Maker or Holder of negotiable instrument.
- Signing it on the back or front or in attached slip called as allong (जो साथ-साथ चलाया है) to facilitate its negotiation.

### \* Negotiation Back :-

- When endorser negotiates <sup>instrument</sup> to other party and later become holder again this process is called negotiation back.
- In such cases intermediary endorsees are not liable.

to Original endorser.

- This rule prevents unnecessary legal complications.

- Example :-

- 'A' is holder of Bill and endorse it to 'B' who passes it to 'C' and 'C' to 'D'.  
'D' then endorse it back to 'A'.

- Since 'A' has written to his original position he cannot sue 'B', 'C' and 'D' for payment as liability is reset.

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imp. \* Dishonour of cheque for insufficiency etc. of funds for profits in the Account :-  
too.

Section :- 138

A person whose cheque is written unpaid for insufficient funds or exceeding the arranged limit may face :-

(i) Imprisonment for up to 2 years. or

(ii) fine up to twice the amount of cheque or both.

- For section 138 to apply following conditions must be met :-

(i) Cheque must be presented to Bank within

3 months of date it was issued or within its Validity period which ever is earlier. (According to RBI guidelines.)

(ii) Payee must issue written demand for payment to drawer within 30 days of receiving notice from Bank about cheque's dishonour.

(iii) Drawer must failed to pay amount within 15 days of receiving notice.

## CASE LAW

\* in Dayawati vs. Yogesh Kumar Gosain.

- Delhi High Court ruled that while there is no specific law allowing Criminal Court to refer Section 138 Cases of negotiable instrument act for mediation.

- Court held that alternative dispute resolution method like mediation, Arbitration, Conciliation can be used to settle these disputes.

\* in Meters and Instruments Private Ltd vs. Kanchan Mehta.

- Supreme Court ruled that while Compounding an offense typically requires both parties consent but Court can still discharged the accused if Complainant has been compensated.

- Court noted this offence is primarily a civil wrong and was made compoundable by 2002 Amendment.

## CASE LAW

\* in AR. Radha Krishna Vs. Dasari Deepthi

- Supreme Court clarified that cheque bounce complaint against a company director can be quashed if allegations in the complaint are insufficient or if clear evidence shows the director was not responsible for company operation.

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↓ \* Validation for transfer of pending cases :-

- Cases moved to specific court are automatic consider valid.
- New complaints about same person must be filed in same court.
- If there are multiple cases against the same person in different court, those cases will be transferred to the court where 1st case was filed.

## \* Power of Court to try Cases Summarily :-

- Cases of cheque dishonour can be tried summarily by Magistrate of first class or Metropolitan Magistrate.
- Magistrate can impose upto one year of imprisonment and fine not exceeding ₹5000
- Trial should aim to be completed within 6m. from the filing date of Complaint.

## \* Power to Direct Interim Compensation :-

- Court can order the person who issued bounce cheque to pay the complainant Interim Compensation.

(i) if accused pleads not guilty in Summary trial.

(ii) After charges are framed.

- Compensation cannot exceed 20% of cheque amount.
- Interim Compensation must be paid within 60 days of Court's order with a possible extension upto 30 days.
- if drawer is acquitted Court will require

Complainant to repay Interim Compensation with interest within 60 days.

\* Power of Appellate Court to order Payment Appeal against Conviction.

- When Drawer appeal against Conviction for Cheque dishonour appellate Court Can require them to deposit at least 20% or fine or Compensation awarded by trial Court.
- This deposit is in addition to any Interim Compensation already paid.
- It shall be deposited within 60 days of Court's order with the possible extension of upto 30 days
- Appellate Court Can give Such deposited amount to Complainant and if appellant is acquitted Court will require the Complainant to repay the deposited amount with interest within 60 days

### CASE LAW

\* in Surinder Singh Deswal Vs. Virendra Gandhi.

- Supreme Court held that Section 148 is retrospective, it means it applies to appeals against Order of Conviction even for

Complaints filed before amendment date.

\* In *Jambou bhandari vs. Mp State Industrial Development Corporation*.

- Supreme Court held that appellate Court can impose deposit of 20% but they can also waive this requirement if imposing 20% condition would be unjust on appellants right to appeal.

\* NEFT : —

- It is nation wide electronic payment system allowing individual's, firm or Corporation to transfer funds between different Bank Branches.
- Transactions are processed in batches at specific intervals. if you miss a cut-out time your transaction will wait for next batch.

\* RTGS : —

- It is a system for continuous real time transfer of funds settling each transaction individually, without batching.
- Transactions are processed immediately as they are received during business hours.

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## \* Dishonour by non Payment :-

- Negotiable instrument is dishonour if maker or drawee fails to pay.
- Holder must notify all parties about dishonour.
- Notice can be oral or written and must be given promptly.
- Failure to provide notice discharges all parties except maker or acceptor.

\* Notary :- when negotiable instrument is dishonour holder can get a notary public to make a noting. This records the dishonour including date, reason and notary charges it must be done promptly.

\* Protest :- It is a formal Certificate from notary confirming the dishonour based on noting.

- It can be done if acceptor becomes insolvent or suspends payment.
- Foreign bill need to be protested if there local law requires it but foreign promissory note do not.

• a valid protest must include's :-

- (i) Name of parties.
- (ii) fact and reason for dishonour
- (iii) date and place of dishonour
- (iv) Notaries Signature

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### \* Ambiguous Instruments [Section 17]

• It is an instrument that can be treated as either a bill of exchange or promissory note

eg :- • Bills where Drawer and Drawee are Same person or Bills involving fictitious Party etc.

• Once classified as either a bill or note it cannot be reclassified.

### \* Inchoate or incomplete instrument [Section 20]

• These are instrument that are sign and stamp but either blank or incomplete.

• The signer allows the holder to complete the instrument for an amount upto a stamped limit

eg :- Blank cheque which can be filled in by the holder.