

THE NEGOTIABLE INSTRUMENTS (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2002

An Act further to amend the Negotiable Instruments Act, 1881, the Banker's Books Evidence Act, 1891 and the Information Technology Act, 2000

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title and commencement

(1) This Act may be called the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENTS TO THE NEGOTIABLE INSTRUMENTS ACT, 1881

2. Substitution of new section for section 6

For section 6 of the Negotiable Instruments Act, 1881 (26 of 1881) (hereinafter in this Chapter referred to as the principal Act), the following section shall be substituted, namely:—

"6. "Cheque"

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I: For the purposes of this section, the expressions—

- (a) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;
- (b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II: For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India".

Amendment of section 64

Section 64 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

PROVIDED that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly."

Amendment of section 81

Section 81 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) Where the cheque is an electronic image of a truncated cheque, even after the payment the banker who received the payment shall be entitled to retain the truncated cheque.

(3) A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker who paid the instrument, shall be *prima facie* proof of such payment."

Amendment of section 89

Section 89 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) Where the cheque is an electronic image of a truncated cheque; any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

(3) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same."

Amendment of section 131

In section 131 of the principal Act, *Explanation* shall be re-numbered as *Explanation* thereof, and after *Explanation I* as so re-numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II* : It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the *prima facie* genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care."

7. Amendment of section 138

In section 138 of the principal Act,—

- (a) for the words "a term which may be extended to one year", the words "a term which may be extended to two years" shall be substituted;
- (b) in the proviso, in clause (b), for the words "within fifteen days", the words "within thirty days" shall be substituted.

8. Amendment of section 141

In section 141 of the principal Act, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

"PROVIDED FURTHER that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter."

9. Amendment of section 142

In section 142 of the principal Act, after clause (b), the following proviso shall be inserted, namely:—

"PROVIDED that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period."

10. Insertion of new sections after section 142

After section 142 of the principal Act, the following sections shall be inserted, namely:—

"143. Power of court to try cases summarily

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

PROVIDED that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

PROVIDED FURTHER that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date

144. Mode of service of summons

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

145. Evidence on affidavit

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. Bank's slip prima facie evidence of certain facts

The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

147. Offences to be compoundable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

CHAPTER III**AMENDMENT TO THE BANKERS' BOOKS EVIDENCE ACT, 1891****11. Amendment of section 2**

In section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891),—

(a) for clause (3), the following clause shall be substituted, namely:—

'(3) "bankers' books" include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both;'

(b) In clause (8), after sub-clause (b), the following sub-clause shall be inserted, namely:—

"(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A."

CHAPTER IV**AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000****12. Amendment of section 1**

In the Information Technology Act, 2000 (hereinafter in this Chapter referred to as the principal Act), in section 1, in sub-section (4), for clause (a), the following clause shall be substituted, namely:—

"(a) a negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881);"

13. Insertion of new section 81A

After section 81 of the principal Act, the following section shall be inserted, namely:—

'81A. Application of the Act to electronic cheque and truncated cheque

(1) The provisions of this Act, for the time being in force, shall apply to, or in relation to, electronic cheques and the truncated cheques subject to such modifications and amendments as may be necessary for carrying out the purposes of the Negotiable Instruments Act, 1881 (26 of 1881) by the Central Government, in consultation with the Reserve Bank of India, by notification in the Official Gazette.

(2) Every notification made by the Central Government under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Explanation : For the purposes of this Act, the expressions "electronic cheque" and "truncated cheque" shall have the same meaning as assigned to them in section 6 of the Negotiable Instruments Act, 1881 (26 of 1881).'

THE NEGOTIABLE INSTRUMENTS ACT, 1881

[26 of 1881, dt. 9-12-1881]

As amended by Amendment Act, 2002

An Act to define the law relating to promissory notes, bills of exchange and cheques
WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques;

It is hereby enacted as follows :

CHAPTER I PRELIMINARY

1. Short title

This Act may be called the Negotiable Instruments Act, 1881.

Local extent, saving of usage relating to hundis, etc., commencement : It extends¹ to ²[the whole of India³ [* * *]]; but nothing herein contained affects the⁴ [Indian Paper Currency Act, 1871 (3 of 1871)], section 21, or affects any local usage relating to any instrument in an oriental language:

PROVIDED that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

2. Repeal of enactments

[Rep. by the Amending Act, 1891 (12 of 1891), sec. 2 and Sch. 1, part 1.]

3. Interpretation clause

In this Act—

⁵[* * *]

"Banker" : ⁶["banker" includes any person acting as a banker and any post office savings bank].

⁷[* * *]

1 The Act has been extended to Goa, Daman, and Diu by Regulation 12 of 1962, and to Dadra and Nagar Haveli w.e.f. 1-7-1965 by Regulation 6 of 1963.

2 Substituted by the AO 1950 for "all the Provinces of India".

3 Words "except the State of Jammu and Kashmir" omitted by Act 62 of 1956.

4 See now the Reserve Bank of India Act, 1934 (2 of 1934).

5 Definition of "India" omitted by Act 62 of 1956.

6 Substituted by Act 37 of 1955, for the definition of word "banker" w.e.f. 1-4-1956.

7 Definition of "notary public" omitted by Act 53 of 1952 w.e.f. 14-2-1956.

CHAPTER II

OF NOTES, BILLS AND CHEQUES

4. "Promissory note"

A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

- (a) "I promise to pay B or order Rs. 500".
- (b) "I acknowledge myself to be indebted to B in Rs. 1, 000, to be paid on demand, for value received."
- (c) "Mr B, I.O.U Rs. 1,000."
- (d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- (e) "I promise to pay B Rs. 500 first deducting thereout any money which he may owe me."
- (f) "I promise to pay B Rs. 500 seven days after my marriage with C."
- (g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
- (h) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

COMMENTS

A document which contains a promise to pay on demand a certain sum to a specified person is a promissory note though there may be no words of negotiability. The unconditional understanding to pay a specified amount to the sine qua non in a promissory note. The promise to pay must not be dependent upon a contingency.—*C.N. Sankaran Nambudiripad v. Vijayan AIR 1988 Ker 120*

If indebtedness is acknowledged in a document for a defined sum of money payable "on demand" that is enough to make the document a promissory note.—*P.C. Sramulu v. T.P. Sathyanarayan 1992 (2) Banking CLR 265*.

5. "Bill of exchange"

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be "certain person", within the meaning of this section and section 4, although he is misnamed or designated by description only.

COMMENTS

A Bill of Exchange makes the acceptor personally liable unless the acceptor states on the face of the bill that he subscribes for a disclosed principal. The usual mode of accepting a bill of exchange is for the drawee to write, "accepted" across the face of the bill and then to sign his or its name underneath.—*American Express Bank Ltd. v. Calcutta Steel Co. 1993 (1) Banking CLR 233*

¹16. "Cheque"

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I : For the purposes of this section, the expressions—

- (a) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;
- (b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II : For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.]

7. "Drawer", "drawee"

The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

"Drawee in case of need" : When the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".

"Acceptor" : After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour" : ²[When a bill of exchange has been noted or protested for non-acceptance or for better security], and any person accepts it *supra protest* for honour of the drawer or of any one of the endorser, such person is called an "acceptor for honour".

¹ Substituted vide Amendment Act, 2002.

² Substituted by Act 2 of 1885, for words "When acceptance is refused and the bill is protested for non-acceptance".

"Payee" : The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

COMMENTS

Though it cannot be the defence for the bank as of the negligence of the customs in a claim where a cheque not signed by the customer has been paid out, yet the banker would be permitted in an appropriately framed action in tort to claim for loss or damage suffered by it on account of the negligence of the customer.—*Mahabir Prasad v. United Bank of India* 1992 (2) Banking CLR 327

8. "Holder"

The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course"

"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if ¹[payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course"

"Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. "Inland instrument"

A promissory note, bill of exchange or cheque drawn or made in ²[India] and made payable in, or drawn upon any person resident in ²[India] shall be deemed to be an inland instrument.

12. "Foreign instrument"

Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

13. "Negotiable instrument"

³[(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation 1 : A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation 2 : A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

1 Substituted by Act 8 of 1919, for words "payable to, or to the order of, a payee".

2 Substituted by Act 36 of 1957, for words "a State".

3 Substituted by Act 8 of 1919.

Explanation 3 : Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

¹[(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

14. Negotiation

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated.

15. Endorsement

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same, and is called the "endorser".

16. Endorsement "in blank" and "in full"—"endorsee"

²[(1) If the endorser signs his name only, the endorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be "in full", and the person so specified is called the "endorsee" of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an endorsee.]

17. Ambiguous instruments

Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

18. Where amount is stated differently in figures and words

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. Instruments payable on demand

A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Inchoate stamped instruments

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in ³[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover

1 Added by Act 5 of 1914.

2 Section 16 renumbered as sub-s. (1) and sub-s. (2) added by Act 5 of 1914.

3 Substituted by Act 3 of 1951 for words "the States".

from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

COMMENTS

A promissory note which does not mention the rate of interest cannot be said to be an incomplete instrument enabling the promisee to fill up the same or as to complete the instrument within the meaning of s. 20 of the Act.—*N. Narayanaswamy v. Madanlal* AIR 1988 Kar 227.

21. "At sight", "On presentment", "After sight"

In a promissory note or bill of exchange the expressions "at sight" and "on presentment" means on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

22. "Maturity"

The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace : Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

23. Calculating maturity of bill or note payable so many months after date or sight

In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens or, where the instrument is a bill of exchange made payable at stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

- (a) A negotiable instrument dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.
- (b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.
- (c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. Calculating maturity of bill or note payable so many days after date or sight

In calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When day of maturity is a holiday

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation: The expression "Public Holiday" includes Sundays ¹[* * *] and any other day declared by the ²[Central Government], by notification in the Official Gazette, to be a public holiday.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

26. Capacity to make, etc., promissory notes, etc.

Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor: A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

COMMENTS

Unless the maker has clearly affixed his signature to the instrument as agent or on account of or on behalf of a principal whose name is disclosed or, unless though he has signed unconditionally he has unequivocally and clearly disclaimed in some portion of the document his own responsibility and mentions the name of the person really liable, he cannot escape liability.—*Mahadevan Pillai v. Smt. Vedavalli Ammal 1992 (2) Banking CLR 214*

27. Agency

Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorised agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or endorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to endorse.

28. Liability of agent signing

An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

COMMENTS

Acknowledgement of liability should indicate the existence of jural relationship between the parties such as that of debtor and creditor, it must appear that the statement could admit such jural relationship.—*Mahadevan Pillai v. Vedavalli Ammal 1992 (2) Bank CLR 214*

29. Liability of legal representative signing

A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

1 Words "New-Year's day, Christmas day; if either of such days falls on a Sunday, the next following Monday; Good-Friday;" omitted by Act 37 of 1955 w.e.f. 1-4-1956.

2 Substituted by the AO 1937, for "LG".

30. Liability of drawer

The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

COMMENTS

The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof to compensate the holder provided due notice of dishonour has been given to or received by the drawer.—*Union Bank of India v. Swastik Motors AIR 1983 Del 240*

31. Liability of drawee of cheque

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. Liability of maker of note and acceptor of bill

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

COMMENTS

In case of bill of exchange after acceptance the primary liability is of the acceptor and the drawer is liable only as a surety. It is necessary for the creditor to preserve the security, whether it is an actionable claim or whether it is pledge mortgage or a negotiable instrument. The advantage of security available to the creditor must be kept alive so as to enable the surety to proceed against such security in case the principal debtor fails to discharge the liability.—*Ramnarain (P) Ltd. v. State Trading Corporation of India Ltd. 1988 Bank J 266*

33. Only drawee can be acceptor except in need or for honour

No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Acceptance by several drawees not partners

Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. Liability of endorser

In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such endorser as hereinafter provided.

Every endorser after dishonour is liable as upon an instrument payable on demand.

36. Liability of prior parties to holder in due course

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

COMMENTS

Right of action available to an endorsee of a cheque who comes to hold the cheque in due course is based upon conferment on him by the statutory provisions, the right to sue the maker of the cheque and also the endorser.—*Kerala Arecanut Stores v. Ramkishore & Sons AIR 1975 Ker 144.*

37. Maker, drawer and acceptor principals

The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. Prior party a principal in respect of each subsequent party

As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration

A draws a bill payable to his own order on *B*, who accepts. *A* afterwards endorses the bill to *C*, *C* to *D* and *D* to *E*. As between *E* and *B*, *B* is the principal debtor, and *A*, *C* and *D* are his sureties. As between *E* and *A*, *A* is the principal debtor, and *C* and *D* are his sureties. As between *E* and *C*, *C* is the principal debtor and *D* is his surety.

39. Suretyship

When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872 (9 of 1872), would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Discharge of endorser's liability

Where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration

A is the holder of a bill of exchange made payable to the order of *B*, which contains the following endorsements in blank—

First endorsement, "*B*".

Second endorsement, "*Peter Williams*".

Third endorsement, "*Wright & Co.*".

Fourth endorsement "*John Rozario*".

This bill *A* puts in suit against *John Rozario* and strikes out, without *John Rozario*'s consent, the endorsements by *Peter Williams* and *Wright & Co.*

A is not entitled to recover anything from *John Rozario*.

41. Acceptor bound, although endorsement forged

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.

42. Acceptance of bill drawn in fictitious name

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. Negotiable instrument made, etc. without consideration

A negotiable instrument made, drawn, accepted, endorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for a consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I: No party for whose accommodation a negotiable instrument has been made, drawn, accepted or endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II: No party to the instrument who has induced any other party to make draw, accept, endorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover therein an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

COMMENTS

Although s. 43 of the Act provides for a common consequence of a negotiable instrument made, drawn and accepted, etc., it is without consideration or for a consideration which fails yet the two causes envisaged therein are different, each arises in different circumstances and really contradicts the other.—*Canara Bank v. Sanjeev Enterprises AIR 1988 Del 372*

44. Partial absence or failure of money-consideration

When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money and was originally absent in part, or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation: The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Partial failure of consideration not consisting of money

Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

¹[45A. Holder's right to duplicate of lost bill

Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

**CHAPTER IV
OF NEGOTIATION****46. Delivery**

The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or endorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof.

COMMENTS

Where the cheque belongs to one account the same cannot be used as regards other account even though the same person may be having two accounts. It is only the cheque relating to that account wherefrom money is to be drawn is to be issued.—*State Bank of India v. Vathi Samba Murty AIR 1988 Ori 50*

Where the banker with endorsement in its favour accepts the bills and the relevant documents presented by the drawer, and the same are immediately discounted by the banker without waiting for its collection by giving full credit for the entire amount of the document so presented, the banker itself becomes a purchaser and the holder thereof for full value.—*Dena Bank v. Madhya Pradesh National Textiles Corpn. Ltd AIR 1982 MP 85*

47. Negotiation by delivery

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception : A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

¹ Inserted by Act 2 of 1885.

Illustrations

- (a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
- (b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Negotiation by endorsements

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque¹ [payable to order], is negotiable by the holder by endorsement and delivery thereof.

49. Conversion of endorsement in blank into endorsement in full

The holder of a negotiable instrument endorsed in blank may, without signing his own name, by writing above the endorser's signature a direction to pay to any other person as endorsee, convert the endorsement in blank into an endorsement in full; and the holder does not thereby incur the responsibility of an endorser.

50. Effect of endorsement

The endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation, but the endorsement may by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument, or to receive its contents for the endorser, or for some other specified person.

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer,—

- (a) "pay the contents to C only".
- (b) "pay C for my use".
- (c) "pay C on order for the account to B".
- (d) "the within must be credited to C".

These endorsements exclude the right of further negotiation by C.

- (e) "pay C".
- (f) "pay C value in account with the Oriental Bank".
- (g) "pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others".

These endorsements do not exclude the right of further negotiation by C.

51. Who may negotiate

Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, endorse and negotiate the same.

Explanation : Nothing in this section enables a maker or drawer to endorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or endorsee to endorse or negotiate an instrument, unless he is holder thereof.

1. Substituted by Act 8 of 1919 for words "payable to the order of a specified person, or to a specified person on order".

Illustration

A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. Endorser who excludes his own liability or makes it conditional

The endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates endorsers are liable to him.

Illustration

- (a) The endorser of a negotiable instrument signs his name, adding the words "without recourse".

Upon this endorsement he incurs no liability.

- (b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, "without recourse", he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights, but has the rights of an endorsee against B and C.

53. Holder deriving title from holder in due course

A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Instrument endorsed in blank

Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument endorsed in blank is payable to the bearer thereof even although originally payable to order.

55. Conversion of endorsement in blank into endorsement in full

If a negotiable instrument, after having been endorsed in blank, is endorsed in full, the amount of it cannot be claimed from the endorser in full, except by the person to whom it has been endorsed in full, or by one who derives title through such person.

56. Endorsement for part of sum due

No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be endorsed on the instrument, which, may then be negotiated for the balance.

57. Legal representative cannot by delivery only negotiate instrument endorsed by deceased

The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and endorsed by the deceased but not delivered.

58. Instrument obtained by unlawful means or for unlawful consideration

When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

59. Instrument acquired after dishonour or when overdue

The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Accommodation note or bill : Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but endorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. Instrument negotiable till payment or satisfaction

A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V OF PRESENTMENT

61. Presentment for acceptance

A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured.

¹[When authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

62. Presentment of promissory note for sight

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. Drawee's time for deliberation

The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee ¹[forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

64. Presentment for payment

²[(1)] Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

³[Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception : Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

⁴[(2)] Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

PROVIDED that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.]

COMMENTS

Any place in India is apparently an indeterminate place. It amounts to a place not specified. No presentment is necessary under the law when the suit is against the maker of the promote. The place of payment has got to be ascertained. Where there is the naming of two places for payment or preferences, the choice lies presumptively with the creditor or promisee who must give notice of the place as a condition of charging the debtor or promisor in default.—*L.N Gupta V. Tara Mani AIR 1984 Del 49*

65. Hours for presentment

Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

66. Presentment for payment of instrument payable after date or sight

A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. Presentment for payment of promissory note payable by instalments

A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

1 Substituted by Act 12 of 1921 for "twenty-four".

2 Existing section re-numbered as sub-section (1) thereof vide Amendment Act, 2002.

3 Inserted by Act 6 of 1897.

4 Inserted by Amendment Act, 2002.

68. Presentment for payment of instrument payable at specified place and not elsewhere

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

69. Instrument payable at specified place

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at the place.

70. Presentment where no exclusive place specified

A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any) or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

71. Presentment when maker, etc., has no known place of business or residence

If the maker, drawee, or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment such presentment may be made to him in person wherever he can be found.

72. Presentment of cheque to charge drawer

¹[Subject to the provisions of section 84] a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. Presentment of cheque to charge any other person

A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Presentment of instrument payable at demand

Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment by or to agent, representative of deceased, or assignee of insolvent

Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

²[75A. Excuse for delay in presentment for acceptance or payment

Delay in presentment ³[for acceptance of payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.]

76. When presentment unnecessary

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

1 Inserted by Act 6 of 1897.

2 Inserted by Act 25 of 1920.

3 Inserted by Act 12 of 1921.

- (a) if the maker, drawee or acceptor intentionally prevents the presentation of the instrument, or
 If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 If the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
 If the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
 he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due therein whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. Liability of banker for negligently dealing with bill presented for payment

When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI

OF PAYMENT AND INTEREST

78. To whom payment should be made

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

COMMENTS

Where the cheque is drawn which is meant to be paid to the account of the payee but the bearer if paid the payment by the bank and the cheque as such apparently tampered and counted by erasures into a cheque payable to the bearer, it is the negligence of the bank, while it makes the payment to the bearer instead of payee hence bound to reimburse the amount to the customer.—*J. Ladies Beauty v. State Bank of India AIR 1984 Guj 33*

Where two signatures in spite of big difference are not scrutinised and payment is negligently made to the holders of the traveller's cheques which were lost the decree is rightly passed against the bank.—*Manikkam v. Kamala AIR 1987 Ker 72*

79. Interest when rate specified

When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realisation of such amount, or until such date after the institution of a suit to recover such amount as the court directs.

COMMENTS

A discretion is conferred upon the court for granting interest even from the date of the instrument until tendered or realisation as the court may deem fit and direct in that behalf. No such obligation is cast upon the court in awarding the contractual rate of interest after institution of the suit.—*United Commercial Bank v. Hans Raj Saraf 1988 (2) Banking CLR 14*

Sec. 34 CPC is applicable to claim based on negotiable instruments and prevails over s. 79 of Negotiable Instruments Act.—*Union Bank of India v. Krishna Jha AIR 1989 AP 211*

Where the agreed rate of interest is allowed despite the fact that there is the institution of suit that would amount as against the public policy and deprive the court to its right to ascertain whether the rate is excessive.—*United Commercial Bank v. Hans Raj Saraf AIR 1989 J & K 28*

80. Interest when no rate specified

When no rate of interest is specified in the instrument, interest on the amount due thereon shall, ¹[notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of ²[eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.

Explanation: When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

COMMENTS

Section 34 of CPC has its application in the award of interest during the pendency of the proceedings. Interest prior to the institution of the proceeding cannot rest upon s. 34, CPC but must depend upon some substantive law.—*Kotrasarappa v. Indian Bank 1987 Bank J 659*

A promissory note which does not mention the rate of the interest cannot be said to be an incomplete instrument enabling the promisee to fill up the same so as to complete the instrument within the meaning of s. 20 of the Act.—*N. Narayanaswamy v. Madanlal AIR 1988 Kar. 227*

81. Delivery of instrument on payment or indemnity in case of loss

³[(1)] Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

⁴[(2)] Where the cheque is an electronic image of a truncated cheque, even after the payment the banker who received the payment shall be entitled to retain the truncated cheque.

(3) A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker who paid the instrument, shall be *prima facie* proof of such payment.]

1 Substituted by Act 30, of 1926, for "except in cases provided for by the Code of Civil Procedure".

2 Substituted by Act 66 of 1988 for words "six per centum", w.e.f. 30-12-1988.

3 Existing section re-numbered as sub-section (1) thereof vide Amendment Act, 2002.

4 Inserted, *ibid.*

CHAPTER VII

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

82. Discharge from liability

The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon—

- (a) By cancellation—to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,
- (b) By release—to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) By payment—to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

83. Discharge by allowing drawee more than forty-eight hours to accept

If the holder of a bill of exchange allows the drawee more than ¹[fortyeight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. When cheque not duly presented and drawer damaged thereby

²{(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheques as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations

- (a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.
- (b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

1 Substituted by Act 12 of 1921 for "twenty-four".

2 Substituted by Act 6 of 1987.

85. Cheque payable to order

¹[(1) Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

²[85A. Drafts drawn by one branch of a bank on another payable to order

Where any draft, that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or behalf of the payee, the bank is discharged by payment in due course.]

COMMENTS

There cannot be the avoidance of liability by the bank only by proving the payment made in due course accordingly to the apparent tenor of the cheque or by verifying the signature of the cheque with specimen signature and finding no discrepancy therein.—*Babulal Agarwal v. State Bank of Bikaner and Jaipur 1990 (2) Banking CLR 533*

Where the cheques in spite of big differences are not scrutinised and the payment is negligently made to the holders of traveller's cheques which were lost, the decree is rightly passed against the bank.—*Manikkam v. Kamla AIR 1987 Ker 72*

Inaction for a sufficiently long period on the part of customer means a ground for the bank escaping the liability.—*Canara Bank v. Canara Sales Corporation AIR 1987 SC 1603*

86. Parties not consenting discharged by qualified or limited acceptance

If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation : An acceptance is qualified,—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
- (b) where it undertakes the payment of part only of the sum ordered to be paid;
- (c) where, no place of payment being specified on the order it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Affect of material alteration

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent

1 Section 85 re-numbered as sub-s. (1) and sub-s. (2), added by Act 17 of 1934.

2 Inserted by Act 25 of 1930.

thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by endorsee :

and any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

COMMENTS

It is not any alteration that becomes a material alteration but only such alteration as would adversely affect the interests of the other side that can be termed as material alteration.—*N. Narayanaswamy v. Madanlal AIR 1988 Kan 227*

Where the date is inserted whom the bill does not bear any date upon its face, it is a material alteration.—*Jayanthilal Goel v. Zubaid Khaneem AIR 1986 AP 120*

88. Acceptor or endorser bound notwithstanding previous alteration

An acceptor or endorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

89. Payment of instrument on which alteration is not apparent

¹[(1)] Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such a person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

²[(2)] Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

(3) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same.]

90. Extinguishment of rights of action on bill in acceptor's hands

If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII

OF NOTICE OF DISHONOUR

91. Dishonour by non-acceptance

A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being

1 Existing section re-numbered as sub-section (1) thereof vide Amendment Act, 2002.

2 Inserted, *ibid*.

duly required to accept the bill, or where presentment is excused and the bill is not accepted :

Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured.

92. Dishonour by non-payment

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. By and to whom notice should be given

When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Mode in which notice may be given

Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Party receiving must transmit notice of dishonour

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

96. Agent for presentment

When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When party to whom notice given is dead

When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. When notice of dishonour is unnecessary

No notice of dishonour is necessary,—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damages for want of notice;

- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX OF NOTING AND PROTEST

99. Noting

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each,

such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. Protest

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security : When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. Contents of protest

A protest under section 100 must contain,—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the nature of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

¹[A notary public may make the demand mentioned in clause(c) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter.]

102. Notice of protest

When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. Protest for non-payment after dishonour by non-acceptance

All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Protest of foreign bills

Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

²[104A. When noting equivalent to protest

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

CHAPTER X OF REASONABLE TIME

105. Reasonable time

In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. Reasonable time of giving notice of dishonour

If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the date next after the day of dishonour.

107. Reasonable time for transmitting such notice

A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

¹ Added by Act 2 of 1885.

² Inserted by Act 2 of 1885.

CHAPTER XI
OF ACCEPTANCE AND PAYMENT FOR HONOUR AND
REFERENCE IN CASE OF NEED

108. Acceptance for honour

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill accept the same for the honour of any party thereto ¹[* * *].

109. How acceptance for honour must be made

A person desiring to accept for honour must, ²[by writing on the bill under his hand], declare that he accepts under protest the protested bill for the honour of the drawer or of a particular endorser whom he names, or generally for honour ³[* * *].

110. Acceptance not specifying for whose honour it is made

Where the acceptance does not express for whose honour it is made it shall be deemed to be made for the honour of the drawer.

111. Liability of acceptor for honour

An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bills is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. When acceptor for honour may be charged

An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. Payment for honour

When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same; provided that the person so paying ⁴[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Right of payer for honour

Any person so paying is entitled to all the rights in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

1 Second sentence omitted by Act 2 of 1885.

2 Substituted by Act 2 of 1885, for words "in the presence of a notary public, subscribe the bill with his own hand, and".

3 Words "and such declaration must be recorded by the notary in his register" omitted by Act 2 of 1885.

4 Inserted by Act 2 of 1885.

115. Drawee in case of need

Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. Acceptance and payment without protest

A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII OF COMPENSATION

117. Rules as to compensation

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall ¹[* * *] be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument together with the expense properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at ²[eighteen per centum] per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

COMMENTS

Provisions of 117(c) lays down that an endorser who being liable has paid the amount due on the bill is entitled to the amount so paid with interest at the rate of 6% and that clearly indicate that the compensation can be sought only by person who is that holder of the bill.—*Ramnarain (P) Ltd. v. STC of India Ltd 1989 (1) Banking CLR 59*

CHAPTER XIII SPECIAL RULES OF EVIDENCE

118. Presumptions as to negotiable instruments

Until the contrary is proved, the following presumptions shall be made:—

- 1 Words, figure and brackets "(except in cases provided for by the Code of Civil Procedure, s. 532)" omitted by Act 30 of 1926.
- 2 Substituted by Act 66 of 1988 for "six per centum" w.e.f. 30-12-1988.

- (a) of consideration—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
- (b) as to date—that every negotiable instrument bearing a date was made or drawn on such date;
- (c) as to time of acceptance—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) as to time of transfer—that every transfer of a negotiable instrument was made before its maturity;
- (e) as to order of endorsements—that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) as to stamps—that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) that holder is a holder in due course—that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

COMMENTS

Section 118 only says for consideration it does not say consideration. The words "for consideration" are quite general and have to be applied in their full literal sense.—*Satya Narain Singh v. Janardhan Kanth AIR 1980 Pat. 277*

The burden of proof may be rebutted not only by direct or circumstantial evidence, but also by presumption of law or fact. In spite of the obligatory presumption under this section, the party concerned is required to adduce independent proof of passing of consideration, even though nothing had been proved to the contrary, the presumption under this section would become useless and otiose—*Sahney Motor Corpn. v. Sora Mukherjee AIR 1988 Cal 59*

The mere fact that the plaintiff did not adduce sufficient evidence to prove passing of consideration did not in any way relieve that defendant from the burden of establishing the contrary of the presumption arising under s. 118 of the Negotiable Instruments Act.—*Ram Raja Ram v. Dhruva Chandra Jain AIR 1982 Ori 264*

The words "until the contrary is proved" in s. 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the court to consider than in existence of considerate so probable that a prudent man ought under the circumstances of the case to act upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of s. 118, it can be retreated by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote or in the suit notice or in the plaint does not exist and once the presumption is to be rebutted, the said presumption disappears.—*G. Vasu v. Siyed Yasem Saijuddin 1987 (1) Banking CLR 387*

Where the place of signature or thumb impression upon a blank paper is taken by the defendant burden lies upon the plaintiff to prove the execution of promissory note by the defendant whereafter onus shifts upon the defendant to prove that there was no consideration for such document in view of s. 118(a) of the Negotiable Instruments Act.—*K. Roy v. Udaynarain Panda AIR 1991 Ori 25*

119. Presumption on proof of protest

In a suit upon an instrument which has been dishonoured, the court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. Estoppel against denying original validity of instrument

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. Estoppel against denying capacity of payee to endorse

No maker of a promissory note, and no acceptor of a bill of exchange¹ [payable to order] shall, in suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to endorse the same.

122. Estoppel against denying signature or capacity of prior party

No endorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instruments.

CHAPTER XIV OF CROSSED CHEQUES

123. Cheque crossed generally

Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines or of two parallel transverse lines simply, either with or without the word "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Cheque crossed specially

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Crossing after issue

Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Payment of cheque crossed generally

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially: Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

¹ Substituted by Act 8 of 1919 for "payable to, or to the order of, a specified person".

127. Payment of cheque crossed specially more than once

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Payment in due course of crossed cheque

Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Payment of crossed cheque out of due course

Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. Cheque bearing "not negotiable"

A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. Non-liability of banker receiving payment of cheque

A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

¹[Explanation ²(1) : A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.]

³[Explanation ²(2) : It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the *prima facie* genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care.]

⁴[131A. Application of chapter to drafts

The provisions of this chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.

COMMENTS

The duty of taking care is purely one imposed by the statute on the banker for the benefit of the true owner as between whom there is no contractual relation giving rise to a duty. It is the price which the banker pays for the protection afforded by the statute. It is from the standpoint of true owner that the question of good faith and absence of negligence has to be considered. The negligence must relate to the collection of the cheque and not to any antecedent act such as opening

1. Added by Act 18 of 1922.

2. Existing Explanation renumbered as Explanation 1 vide Amendment Act, 2002.

3. Inserted, *ibid.*

4. Added by Act 33 of 1947.

an account though circumstances connected with it may show light on the question of negligence.—
Vijaya Bank Ltd. v. Indian Bank AIR 1988 Mad. 256

CHAPTER XV OF BILLS IN SETS

132. Set of bills

Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts of a separates bill, would be extinguished.

Exception : When a person accepts or endorses different parts of the bill in favour of different person, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill.

133. Holder of first acquired part entitled to all

As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI OF INTERNATIONAL LAW

134. Law governing liability of maker, acceptor or endorser of foreign instrument

In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and endorser by the law of the place where the instrument is made payable.

Illustration

A bill of exchange was drawn by A California where the rate of interest is 25 per cent, and accepted by B, payable in Washington where the rate of interest is 6 per cent. The bill is endorsed in ¹[India], and is dishonoured. An action on the bill is brought against B in ¹[India]. He is liable to pay interest at the rate of 6 per cent, only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Law of place of payment governs dishonour

Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or endorsed, the law of the place, where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration

A bill of exchange drawn and endorsed in ¹[India], but accepted payable in France, is dishonoured. The endorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. Instrument made, etc. out of India, but in accordance with the law of India

If a negotiable instrument is made, drawn, accepted or endorsed ²{outside India}, but in accordance with the law of ¹[India], the circumstance that any agreement

¹ Substituted by Act 3 of 1951 for words "the State".

² Words "out of British India" were successively amended by the AO 1948, the AO 1950 and Act 3 of 1951.

evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon within India.

137. Presumption as to foreign law

The law of any foreign country ¹[***] regarding promissory note, bills of exchange and cheques shall be presumed to be the same as that of ²[India], unless and until the contrary is proved.

³[CHAPTER XVII]

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

138. Dishonour of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for 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, 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 by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for ⁴[a term which may be extended to two years,] or with fine which may extend to twice the amount of the cheque, or with both:

PROVIDED that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, ⁵[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

COMMENTS

The instrument described as "pay order" is a cheque within the meaning of this section.—*Punjab & Sind Bank v. Vinkar Sahakari Bank Ltd. (2002) 36 SCL 286 (SC).*

1 The words "or the State of Jammu and Kashmir" omitted by Act 62 of 1956.

2 The words "British India" has been successively substituted by the AO 1948, AO 1950 and Act 3 of 1951 to read as above.

3 Inserted by Act 66 of 1988, w.e.f. 1-4-1989. Earlier Chapter XVII relating to "Notaries Public" Inserted by Act 2 of 1985 was replaced by the Notaries Act, 1952 (53 of 1952) w.e.f. 14-2-1956.

4 Substituted for "a term wich may be extended to one year" vide Amendment Act, 2002.

5 Substituted for "within fifteen days", *ibid.*

Where nothing has been alleged in the complaint that the directors were responsible to the company for the conduct of the business of the company, the proceedings against the directors are liable to be quashed in case of dishonour of cheque for insufficiency etc. of funds in the account of the company.—*S.K. Sood v. Tata Iron & Steel Co. Ltd (2002) 48 CLA (Snr.) 3 (Punj&Har)*

Where the fund is insufficient and consequently the cheque is dishonoured, the provisions of s. 138 of Negotiable Instruments Act would be attracted.—*Pawan Kumar v. Ashish Enterprises 1993 (1) Banking CLR 305.*

Sec. 138 contemplates only two contingencies and they being that the cheque should be dishonoured either for the insufficiency of the amount or because it exceeds the amount arranged to be paid from that account. Nor their contingency or eventuality has been contemplated and the specific clear wording of s. 138 eliminates any third contingency than mentioned in the section itself.—*Omprakash B. Maniyar v. Sirati Girish Bhide 1993 Banking CLR 1242*

Sec. 138 of the Act is a penal provision wherein if a person draws a cheque on an account maintained by him with the Banker for 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, is returned by the Bank unpaid, on the ground 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 by an agreement made with that bank, such person shall be deemed to have committed an offence. The distinction between the deeming provision and the presumption is well discernible. To illustrate, if a person, draws a cheque with no sufficient funds available to his credit on the date of issue, but makes the arrangement or deposits the amount thereafter before the cheque is put in the bank by the drawee, and the cheque is honoured, in such a situation drawing of presumption of dishonesty on the part of the drawer under section 138 would not be justified. Section 138 of the Act gets attracted only when the cheque is dishonoured.—*Modi Cements Ltd. v. Shri Kuchil Kumar Nandi 1998 (2) Supreme 471*

Penal provisions have to be construed strictly and liberally and then a cheque dishonoured on the ground of "account closed" cannot be construed as dishonoured for "insufficiency of funds" or "exceeding arrangement" as laid down in s. 138 of the Negotiable Instruments Act. If any other eventuality than mentioned in s. 138 of the said Act was also to be considered as one giving rise to a penal action the wording of s. 138 of the Act would have been used in that way.—*G.F. Hunsikathimath v. State of Karnataka 1991 (1) Crimes 227*

In the case of filing of the complaint by the payee or the holder in due course of the cheque which was dishonoured, the Magistrate has necessarily to take cognisance that the other ingredients are satisfied. He has no right or power to refer it for investigation to the police just like a private complaint filed in accordance with the provisions of the Cr.P.C.—*Jagatlamudi v. State of AP 1992 Cr LJ 597*

Where the cheque is returned with the endorsement "payment stopped by the drawer" and there is no averment that the bank dishonoured the cheque for want of adequate fund in the account of the drawer, s. 138 is not attracted.—*Bhageerathy v. Been 1993 (2) Banking CLR 139*

If there is a dishonour of the cheque on presentation for payment he must issue a notice in writing within a period of 15 days¹ to the drawer under s. 138(b) of the Act and he must be given 15 days¹ time to pay the amount covered by the cheque and if the drawer fails to make the payment of the said amount to the payee within 15 days¹ of the receipt of such notice under s. 142 (b) of the Act, the payee or holder in due course is entitled to file a complaint within one month of the date of cause of action that arises under clause (c) of the proviso to s. 138.—*Mahadevan Sunil Kumar v. Bhadrin 1991 (1) Banking CLR 211.*

¹ Now thirty days vide Amendment Act, 2002.

Commission of the offence would be only if the drawer of the cheque failed the payment within fifteen days¹ of receipt of the notice. An "offence" as defined in s. 2(n) of the Cr. P.C includes not only the doing of a positive act but by omitting to do something as well.—*Paramjeet Singh v. Jos* 1989 (2) Ker LT 740

There can be the filing of the complaint in a court within the jurisdiction of which the cheque has been drawn or the place where the cheque is presented for collection and received an endorsement about the dishonour of the cheque or the place where the cheque is dishonoured.—*Gautam T.V. Center v. Apex Agencies* 1993 (1) Banking CLR 389

When the proceeding is under s. 482 of the Cr.P.C, there cannot be the introduction of raw material by either party in support of their contention before the High Court.—*Rakesh Poreral v. Narayan Zoglekar* 1993 (1) Banking CLR 481

Where the dishonour has taken place due to the dishonesty of the depositor the drawer is still given a last chance to act otherwise, hence the reasons for dishonour even though they are most valid should not and cannot be taken into account by a Magistrate when entraining a complaint.—*Lakesh Nemkumar v. N.D. Joylekar* 1993 (1) Banking CLR 481

Where the circumstances contemplated by s. 138 of the Act are made out, the court has to examine whether the return of the cheque was on account of insufficiency of funds belonging to the drawer. This can be done even without reference to the endorsement made by the banker. Endorsement like "refer to drawer", "account closed", "payment has been stopped", etc., made by the banker at the time of the return of the cheque are having the effect of proving that the cheque has bounced. If insufficiency of fund is the reason of the bouncing of the cheque, drawer will be subjecting himself to proceedings under s. 139 of the Act.—*Thomas Vargese v. Jerome* 1992 (2) Banking CLR 126

The act of issuing a cheque cannot be considered as starting point of the commission of offence. Dishonour of cheque by itself does not give rise to cause of action because payment can be made on receipt of notice of demand contemplated in cl. (b) of s. 138 and in that event there is no offence, nor any attempt to commit the offence nor even a preparation to commit the offence.—*Prithiraj v. Mathew Koshy* 1991 (1) KLT 595

Notice in writing as required under s. 138(b) of the Negotiable Instruments Act need not necessarily be only by registered post and it can be a telegram or by a letter. —*V.P. Revathi v. Asha Bagre* 1992 Mad LJ (Cri) 11

The very object of the provisions is to enhance the acceptability of cheques by making the drawer liable for penalty in case the cheque is coursed for the reasons mentioned in section. If a postdated cheque is considered to be drawn on the date of its delivery the drawer of such a cheque can defeat s. 138 of the Negotiable Instruments Act by showing a date beyond six months of its delivery.—*Manoj K Seth v .R.J Femadez* 1991 (1) Ker LJ 90

Remark "refer to maker" necessarily means as per banking custom, that the cheque has been returned for want of funds in the account of drawer of the cheque.—*Voltas Ltd. v. Hiralal Agarwal* 1993 (1) Banking CLR 206.

A cheque otherwise valid does not become invalid merely by reason of its being either postdated or antedated. When a person received a cheque, postdated or antedated beyond a period of six months, he should be deemed to receive it with the knowledge that in the event of dishonour for want of fund, s. 138 of the Act will not help him.—*Babu Xavier v. Lal Chand Meenoth* 1990 (2) MWN (Cr) 1 (drawer of the cheque is given an opportunity by the provision of the section to make payment on a demand being made after the return of the cheque and only if fails to make payment within fifteen days¹ of the receipt of the said notice, the offence stands committed.—*V. S. Krishnan v. V.S. Narayanan* 1992 (2) Banking CLR 73

Sec. 138 would not apply in a case where a cheque was returned unpaid with the endorsement that the account was closed by the drawer.—*Om Prakash Maniyar v. Swati Bhide 1992 Mah LJ 302*

Where the cheque is presented for encashment after its currency, which is only three months and not six months, and the cheque got dishonoured, s. 138 would not be attracted, as the section itself contemplates a lesser period of validity than six months which is the general banking practice.—*Kesavan Thankappan v. State of Kerala (1998) 93 Comp Cas 574 (Ker)*

139. Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.

COMMENTS

On a complaint under section 138 filed by appellant on account of dishonour of cheque issued by respondent, latter was convicted by Trial Magistrate. Subsequently, High Court set aside conviction and acquitted respondent on ground that appellant had not proved that cheque had been issued for any debt or liability under this section unless contrary was proved the court has to presume that holder of cheque received same for discharge in whole or in part of a debt-liability. In the instant case, High Court erroneously set aside conviction since respondent had not proved during trial by leading cogent evidence that there was no debt or liability.—*K.N. Beena v. Muniyappan (2002) 37 SCL 583 (SC)*

Once a cheque is issued by a drawer, a presumption under s. 139 must follow and merely because a drawer issues a notice to the drawee or to the bank for stoppage of payment it will not preclude an action under s. 138.—*Modi Cements Ltd. v. Shri Kuchil Kumar Nandi 1998(2) Supreme 471*

140. Defence which may not be allowed in any prosecution under section 138

It shall not be a defence in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

141. Offences by companies

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

¹[PROVIDED FURTHER that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

⁸ Now 30 days vide Amendment Act, 2002.

¹ Inserted vide Amendment Act, 2002.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relating to a firm, means a partner in the firm.

COMMENTS

Where a person is prosecuted for the offence of dishonour of cheque by the firm on the ground that he had once received goods on behalf of the firm, while holding that prosecution against him cannot be continued, it was observed that the person concerned not being a signatory to the cheque and in the absence of allegation that he was in charge of day-to-day affairs of the firm, there was no prima-facie material to proceed further against him. Therefore, the parties cannot be directed to lead evidence against him.—*P. Dhamodharan v. Palani Andavar Mills Ltd. (2002) 48 CLA (Snr.) 4 (Mad).*

Where cheque given by a company is signed by its managing director, in the event of its dishonour, the notice must be in the name of the company and not in the name of the managing director. Notice by name to the managing director would not be legal and proper to fix criminal liability.—*A. Chinnaswamy v. Bilakchand Gyanchand Co. 1998 (3) Bom CR 120 (Bom)*

142. Cognisance of offences

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no court shall take cognisance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
- (b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 138:
¹[PROVIDED that the cognisance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]
- (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

COMMENTS

A complaint by the company can be filed by any person so authorised by the company, i.e. by manager or a director or any other persons so authorised by the resolution of the Board of Directors of the Company. And other views taken in this matter will defeat the very purpose of the Act. Where dishonoured cheques are issued in the name of the company, the de jure complainant is the company which has to act through some human agency. Hence, a complaint made by a

¹ Inserted vide Amendment Act, 2002.

company through any person connected with the company, cannot be dismissed on the ground of maintainability.—*Eita India Ltd. v. NCT of Delhi (2002) 48 CLA (Snr.) 5 (Del)*.

It cannot be said that one the cheque is bounced, an offence is committed. Enough time is given by the Act for the drawer fails in making the payment within 15 days of the receipt of notice, then only the drawer of the cheque shall be deemed to have committed an offence after the issue of notice under sub-s. (b) and (c) of s. 138 of the Act.—*Sugesan Finance Investment v. Union of India 1991 (1) Banking CLR 92*

The instance of the cheque and their dishonouring are only a part of cause of action, the offence is complete only when there is a failure in discharging the liability for discharging a debt, it is the debtor who has to find out his creditor.—*M/s. Ess Bee Food Specialities v. M/s. Kapoor Brithus 1992 Cr LJ 739*

The principle of *autre fois acquit* or *autre fois convict* comes into play and the drawer of the cheque cannot be subjected to repeated prosecution and concoctions on the strength of one cheque.—*R.S. Sherrat v. State of AP 1993 (1) Banking CLR 261*

Under the Act, the offence is complete only when the drawer of the cheque fails to make the payment within stipulated period of 15 days' from the date of service of notice. The period of limitation will start only from the expiry of 15 days' period from the date of delivery of notice—*Govatantra Kumar v. M/s. Harsh Kumar 1993 (1) CLR 566*

The Magistrate receiving the complaint has to proceed straightaway to take cognisance of the offence on a complaint being made to him in writing and that he cannot send the case for investigation to the police—*M/s. Cucusam v. State 1991 (2) Banking CLR 360*

No court shall take cognisance of any offence punishable under s. 138 of the Negotiable Instruments Act except upon a written complaint made by the payee.—*H. Mihan v. State of Karnataka ZLR 1991 Kar 612*

The cheque may be returned by the bank for various reason one of the reason can be that there is not found in the account of which the cheque is not found in the account of which the cheque is drawn to enable the bank to make the payment. Offence referred to in s. 138 to confined only to bouncing of cheque on the ground of inadequate balance in the account concerned. Where the cheque is returned unpaid for other ground, the same has not been made an offence agent the person drawing the cheque.—*R.K. Gupta v. Manmohan 1993 (1) Banking CLR 65*

A complaint can be filed after service of notice of 15 days if no payment is made within that period. No cognisance shall be taken of a complaint which is not filed within 45 days of service of notice. A second notice barred by time prescribed under s. 138 is unjustified.—*Mandhadi Ramchandra Reddy v. Gopumareddy Ram Reddy (1998) 93 Comp Cas 571 (AP)*

¹[143. Power of court to try cases summarily

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

PROVIDED that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

PROVIDED FURTHER that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case

¹ Inserted vide Amendment Act, 2002.

is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

144. Mode of service of summons

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

145. Evidence on affidavit

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. Bank's slip prima facie evidence of certain facts

The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

147. Offences to be compoundable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.]

SCHEDULE

Enactment repealed

[Rep. by the Amending Act, 1891 (12) of 1891), sec. 2 and Sch. 1, Pt. I].