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Legal Insights:
Un-secured Transactions

RECENT IMPORTANT LEGAL DEVELOPMENT

1. **A POST-DATED CHEQUE GIVEN AS SECURITY, CAN ATTRACT SECTION 138 NI ACT, ONCE LIABILITY IS CRYSTALLIZED.**

   In the case titled as ***Manmohan Gaind v. Negolice India Pvt. Ltd.*** [Crl. MC 1379 / 2021] [Crl. M.A. 8542 / 2021] [Crl M.A. 14167 / 2024], it was held by the Hon'ble High Court of Delhi as:

   28. Where a cheque is given as security for a contract or a loan and the liability arising from that contract or loan, crystallizes into a legally enforceable debt at a later date, the cheque, even if originally a "security" one, assumes the character of a cheque issued in discharge of that debt for the purpose of Section 138.

   29. In this regard reference may be made to the judgement of the Apex Court in Indus Airways Private Limited versus Magnum Aviation Private Limited, (2014) 12 SCC 539, wherein the Court considered the question whether post-dated cheque issued by way of advance payment for a Purchase Order, could be considered for discharge of legally enforceable debt. It was held that while the purchaser may be liable for breach of the contract, when a contract provides that the purchaser has to pay in advance.

   30. This proposition was reiterated by the Apex Court in Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458, wherein it was observed by the Court that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, Section 138 is attracted.

2. **SECTION 138 OF NIA – "A CIVIL SHEEP IN A CRIMINAL WOLF'S CLOTHING", QUASI CRIMINAL IN NATURE.**

In the case titled as ***P. Mohanran & Ors. v. M/s Shah Brothers Ispat Pvt. Ltd.*** [Civil Appeal No. 10355 of 2018], it was held by the Hon'ble Supreme Court of India as:

43. […] Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.

64. Clearly, therefore, given the hybrid nature of a civil contempt proceeding, described as "quasi-criminal" by several judgments of this Court, there is nothing wrong with the same appellation "quasi-criminal" being applied to a Section 138 proceeding for the reasons given by us on an analysis of Chapter XVII of the Negotiable Instruments Act. We, therefore, reject the learned Additional Solicitor General's strenuous argument that the appellation "quasi-criminal" is a misnomer when it comes to Section 138 proceedings and that therefore some of the cases cited in this judgment should be given a fresh look.

3. NO NEED FOR PRE-COGNIZANCE SUMMON TO ACCUSED IN SEC. 138 OF NI ACT CASE. LOWER COURT TO UNDERTAKE SPEEDY TRIAL.

In the case titled as ***Sanjabij Tari v. Kishore S. Borcar & Anr.*** [Criminal Appeal No. 1755 of 2010], it was held by the Hon'ble Supreme Court of India as:

39. This Court is of the view that if the Accused is willing to pay in accordance with the aforesaid guidelines, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.

This judgment also narrates many important case laws relating to NIA and also lays down important guidelines which needs to be followed towards NIA Complaint.

4. **IT IS TO BE PRESUMED THAT THE HOLDER OF CHEQUE HAD RECEIVED THE CHEQUE FOR DISCHARGING THE DEBT OR LIABILITY.**

In the case titled as ***M.M.T.C. Limited & Anr. v. Medchl Chemical & Pharma Pvt. Ltd. & Anr.*** [Criminal Appeal No. 1173 - 1174 of 2001] [Special Leave Petition (Crl.) 289 – 290 / 2000] [2002 1 SCC 234], it was held by the Hon'ble Supreme Court of India as:

*In the case of **Maruti Udyog Ltd. v. Narender,** reported in (1999) 1 SCC 113, this Court has held that, by virtue of Section 139 of the Negotiable Instruments Act, the Court has to draw a presumption that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. This Court has held that at the initial stage of the proceedings the High Court was not justified in entertaining and accepting a plea that there was no debt or liability and thereby quashing the complaint. A similar view has been taken by this Court in the case of K. N. Beena v. Muniyappan reported in 2001 (7) SCALE 331, wherein again it has been held that under Section 139 of the Negotiable Instruments Act the Court has to presume, in a complaint under Section 138, that the cheque had been issued for a debt or liability.*

5. **ACCUSED IN CHEQUE BOUNCE CASE ENTITLED TO BENEFITS OF "PROBATION OF OFFENDERS ACT".**

In the case titled as ***Sanjabij Tari v. Kishore S. Borcar & Anr.*** [Criminal Appeal No. 1755 of 2010] [2025 LiveLaw (SC) 952], it was held by the Hon'ble Supreme Court of India as:

35. Recently, in Gian Chand Garg v. Harpal Singh & Anr. (Criminal Appeal No. 3789 of 2025 dated 11th August 2025), a co-ordinate Bench of this Court has set aside concurrent convictions rendered by the Courts below on the ground that the proceeding *under Section 138 of the NI Act is essentially a civil proceeding and it is open to the parties to enter into a voluntary compromise. Consequently, this Court is of the view that not only a voluntary compromise can bring the proceedings under Section 138 NI Act to an end, but the accused under the said offence are entitled to benefit under the Probation of Offenders Act, 1958 [See: Chellammal & Another vs. State Represented by the Inspector of Police, 2025 SCC OnLine SC 870]. Observations to the contrary by Kerala HC in M.V. Nalinakshan vs. M. Rameshan & Anr. 2009 All MR (Cri) Journal 273 are set aside.*

6. **PROCEEDINGS UNDER SECTION 138 OF NIA ARE NOT SUSTAINABLE FOR DISHONOUR OF CHEQUES PRESENTED ON BEHALF OF DISSOLVED COMPANY.**

In the case titled as ***Mr. Krishan Lal Gulati & Anr. v. State of NCT of Delhi & Anr.*** [Criminal Appeal No. 1755 of 2010] [2025 LiveLaw (SC) 952], it was held by the Hon'ble Supreme Court of India as:

12. Once a company is struck off and stands dissolved, it loses its juristic personality, rendering any act done on its behalf void ab initio unless the company is restored under Section 252 of the Companies Act. Consequently, a cheque issued in the name of or by such a dissolved company cannot be treated as a legally enforceable instrument, since no valid drawer or account-holder exists in law. Proceedings under Section 138 of the Negotiable Instruments Act, which presuppose a validly issued cheque, therefore, cannot be sustained in such circumstances.

13. Continuation of the trial would thus serve no legal purpose when the complainant company itself has ceased to exist. Criminal prosecution cannot be maintained by or against a dissolved entity.

7. **CHEQUE BOUNCE COMPLAINT U/S 138 OF NIA MAINTAINABLE EVEN IF CIVIL SUIT FOR RECOVERY IS INSTITUTED.**

In the case titled as ***D. Purushotama Reddy v. K. Satheesh*** [2008 8 SCC 505], it was held by the Hon'ble Supreme Court of India as:

9. A suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint petition under terms of Section 138 of the Act would also be maintainable."

In the case titled as ***CREF Finance Limited v. Sree Shanthi Homes Private Limited*** [2013 SCC OnLine Kar. 7562], it was held by the Hon'ble Supreme Court of India as:

"There is no dispute so far as this position is concerned. The Apex Court in the aforesaid decision has held "simultaneous civil suit and complaint case under Section 138 of the N.I. Act for the same cause of action are maintainable". Therefore, the respondents cannot take any advantage of filing the suit by the appellant for recovery of dues."

8. **CHEQUE BOUNCE COMPLAINT FILED BEFORE EXPIRY OF 15 DAYS FROM THE DATE OF RECEIPT OF NOTICE BY DRAWER IS NOT MAINTAINABLE.**

In the case titled as ***Gajanand Burangi v. Laxmi Chand Goyal*** [Criminal Appeal No. 1229 / 2022] arising from [SLP (Crl.) 1415 / 2019] [2022 LiveLaw (SC) 682], it was held by the Hon'ble Supreme Court of India as:

8. As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at *any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly."*

9. COMPLAINT U/S 138 OF NIA CANNOT BE QUASHED WHEN DISPUTED QUESTION OF FACTS ARE INVOLVED.

In the case titled as ***Rajeshbhai Muljibhai Patel & Ors. v. State of Gujarat & Anr.*** [Criminal Appeal Nos. 251 – 252 / 2020], it was held by the Hon'ble Supreme Court of India as:

20. […] When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under Section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there are inter se dispute between appellant No.3 and respondent No.2. Without keeping in view the statutory presumption raised under Section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C.No.367/2016 filed under Section 138 of N.I. Act.

10. ONCE EXECUTION OF CHEQUE IS ADMITTED, DISPUTE REGARDING INTEREST RATE OF LOAN IS NO DEFENCE.

In the case titled as ***Sri Sujies Benefit Funds Limited v. M. Jaganathuan*** [Criminal Appeal Nos. 3369 / 2024] [SLP (Crl.) 4022 / 2022], it was held by the Hon'ble Supreme Court of India as:

17. […] Thus, if the parties amongst themselves, agreed to a rate which is not in conformity with the Tamil Nadu Act, it was for the respondent to raise an objection or *move the appropriate forum for getting the same corrected/taken care of, so that the interest rate did not exceed 1% per month but having agreed to a rate of 1.8% per month, the subsequent amount of interest calculated @ 3% per month does not have much force for it was upon the respondent to challenge the rate of interest. The respondent also cannot be said to be a layman, and being a subscriber to a chit-fund company, he is expected to be aware of the laws and also of what is beneficial for him. Having issued the pronotes, he cannot now take a plea in these collateral proceedings under the N.I. Act to contend that the rate of interest was more than what was permissible under the Tamil Nadu Act.*

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